

Citizens Minus: Rights, Recognition and the Nubians of Kenya

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PhD Thesis

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July 2012

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Abstract

This thesis examines the unequal nature of the citizenship of Kenya's Nubians. The Nubians of Kenya trace their origins to the Egyptian slave armies of the nineteenth century. Brought by the British to Kenya as soldiers they were categorised as detribalized natives during the colonial era, neither settler nor fully native. This anomalous status has carried over into the postcolonial political community, and the Nubians can today be considered ethnic strangers. Far from being liminal in an inconsequential sense, the various ways in which the Nubians have occupied anomalous social, political and legal categories since they arrived in Kenya have been symptomatic of the hierarchical and exclusionary tendencies of the colonial and post-colonial citizenship regimes.

This thesis argues that the Nubians are not full citizens, but citizens minus. They experience an unequal and insufficient quality of citizenship. The deficit in the Nubians' citizenship can be measured by the extent to which they lack participatory parity. Although (most) Nubians now have formal membership in the form of citizenship status (a national identity card), they are lacking in social and political standing, that is, lacking in *effective* membership. Treated as inferior and limited to the margins of the political community, it is more difficult for Nubians to exercise their rights, and both their formal membership and those rights are insecure.

In understanding these deficits, this thesis explores three mechanisms which sustain the Nubians' marginalisation as ethnic strangers and citizens minus: discrimination in relation to access to national identity cards, the withholding of collective recognition as a tribe of Kenya, and the withholding of recognition of Nubian land in the form of communal land title. In evaluating these mechanisms the thesis draws on political theories of recognition and connects the Nubians' exclusion from full citizenship to the widespread privileging of indigeneity and autochthony as conditions of full citizenship in Kenya.

In making this argument, the thesis addresses a number of critical questions about the nature of citizenship in Kenya, arguing that national citizenship in Kenya is largely subordinate to and defined by ethnicity. Throughout the thesis, and particularly in the final chapters, the thesis seeks to understand the Nubians' response to their marginalisation, and the reasons why, and ways in which, they affirm a role for ethnicity in public affairs. In the final chapter the thesis engages in a critique of this role, and an exploration of a moderately transformative approach to ethnicity in the form of moral-inter ethnicity. Such an approach may allow Kenyans to affirm the importance of ethnicity in daily life and in the polity, without affirming ethnic parochialism and inter-ethnic competition, and thereby undermining equal citizenship.

Msamiati

Swahili

Tasinifu hii ni utafiti kuhusu uraia wa jamii ya Wanubi nchini Kenya. Utafiti unachunguza kwa makini vile Wanubi hawana haki sawa na Wakenya wengine. Wanubi wa Kenya, mwanzoni walitoka kwenye makabila mengi ya kisudani na walikuwa wanajeshi watumwa miaka ya karne ya kumi na tisa. Waingereza waliwaleta wanajeshi watumwa huku Kenya na wakawaita ‘Wenyeji wasio na Kabila’ – watu ambao wanaishi kimjini na hawakuwa na uhusiano na makabila yao. Hali hii isiyo ya kawaida kwenye jamii imedumu na sasa Wanubi nchini Kenya ni ‘Kabila geni’. Shida zinazowakumba wanubi ni kwa sababu ni ‘Kabila geni’ zinaeleza sana siasa na ujamii nchini Kenya.

Tasinifu hii inajadili kwamba Wanubi hawana uraia sawa na Wakenya wengine. Badala yake, ni ‘raia-bila’, kumaanisha wao ni raia lakini uraia wao hauna thamani au maana kama vile ulivyo kwa Wakenya wengine. Kuna tofauti nne kati ya uraia wa Wanubi na uraia wa Wakenya wengine:

- Haki za Wanubi ziko tahadharini kuliko za Wakenya wengine
- Wanubi hawana haki sawa na Wakenya wengine (kwa mfano haki za kumiliki Ardhi)
- Wanubi hawatambuliwi kikamilifu kama jamii la Wakenya

Wanubi hawawezi kushiriki katika siasa rasmi au siasa duni kwa njia sawa na Wakenya wengine. Hii ni kwa sababu hawana uhakika na wakati mwengine hawapewi heshima kama Wakenya.

- Ili kuzielewa shida hizi, Tasinifu hii inapeleleza shida tatu zinazowaadhiri Wanubi:
- Kubaguliwa katika kupata Vitambulisho
- Kutotambuliwa kwa Wanubi kama kabila la Kenya
- Kutokuwa na Ardhi.

Tasinifu hii inatumia mafikira ya kimasomo ya ufumbuvi ili kueleza mambo matatu yanayozusha shida kwa Wanubi. Mafikia haya yanajadili kwamba siasa za Kenya humilikiwa na makabila ya wazawa. Isitoshe, fikira la ‘Uenyeji’ – kwamba watu Fulani wamemiliki nchi toka zana za kale, lina ongoza sana kwenye siasa.. Mwishoni, Tasinifu hii inajadili kuhusu uhusiano kati ya ‘Kabila’ na ‘Uraia’. Inajadili kwamba nchini Kenya, Kitambulisho sio muhimu kuliko kabila. Ni kwa kuwa mwanakabila la ‘wenye siasa’ ndivyo watu wanaweza kufurahia ‘matunda ya uhuru’

Tasinifu hii inaeleza vile Wanubi wanakabiliana na kuadhirika kwao kwa kuuliza maswali kuhusu kutambuliwa kama kabila la Kenya na haki zao za Ardhi katika eneo la Kibera. Njia hii ya kujaribu kupata usawa na Wakenya wengine inazingatia uhusiano kati ya Uraia na Kabila. Hii ni kwa sababu, nchini Kenya, Uraia na Kabila zinalinganishwa, na si rahisi kufikiria njia zingine za kupata usawa.

Lakini, Tasinifu hii inajadili kwamba uhusiano kati ya Kabila na Uraia nchini Kenya unaweza kuanzisha shida nyingi, kama vile ukabila. Hususan, Watu wengi wanasema ukabila inafaa usiunganishwe na Uraia. Mimi ninajadili kwamba ukabila na Uraia zilinganishwe. Kwa mfano, Kwa sababu ni muhimu, Wanubi wawe yote mawili, Wanubi na Wakenya, lakini ukabila na uraia zinalinganishwa tu katika demokrasia kama watu wa makabila tofauti wanaheshimiana na hawashiriki katika ubaguzi wa kikabila.

Mukhtasar

Kinubi

Bahth de garaya ta jinsiya asli ta mujtama'a ta Nubi fi Kenya, u hadaf to aina tofauti ma qabila wadin ta Kenya. Nubi ta Kenya awal abidu min gabaail ketir ta Sudan al kan min askeria mamluk fi qarni ta tisa tashar. Englisia ta British ya jib askeria mamluk dolin de fi Kenya. Englisia jib askeria dolin de fi Kenya, u mon nadi umon nas al ma endis qabila, yaani, anas al gi ishi maisha ta madina u mon gata umon min qabila to umon ta asli.

Bahth gi nakish au jadal za gal Nubi ma endis haki ta jinsiya za anas ta Kenya wadin. Walakin, mon raia nuksan, maana to umon muwatinin, lakin jinsiya to umon ma endis thaman ma maana za fi na anas wadin ta Kenya. Fi fajwa muhim arba bain ta jinsiya ta Nubi, ma jinsiya ta anas wadin:

- Haki ta Nubi fi khatar zaid.
- Nubi ma endis haki sawa za anas wadin fi Kenya, (mathal haki ta ardhi)
- Nubi ma gi itirafu za anas ta mujtama'a ta Kenya.

Nubi ma agder sharik fi siasa rasmi u ab ma rasmi sawa ma jinsiya wadin ta kenya ashan saa taan mon meendis haiba, u saa tan ma gi hishma umon za nas ta kenya.

- Ashan kede ta fahim taab dolin de, bahth de gi fetish taab talata al gi qabil Nubi:
- Gishiri fi ligo Butaka shaksiya (ID cards)
- Ma gi itirafu Nubi za qabila ta Kenya
- Faqada ardhi

Bahth de gi istamil taaluma ta garaya ta taaraf, weri namna al ajana talata de gi taban Nubi. Bahth gi nakish au jadal za fi Kenya, fikra ta 'qabila asliya' ya Wakenya chapi baraa ya gi saitar fi siasa. Ma de baraa, lakin fikra ta 'autochthony' yaani nas flan ya amsuku badu ma ardhi min zaman – Kaman gi saitar fi siasa. De maana to qabila barau al fi ma belee ya gi aina umon za asiliya ta Kenya. Akhir, bahth de gi wonus fi alaka bain ta 'Qabila' ma 'Ujinsia.' Gi jadal za gal fi Kenya itiraf ta Jumuiya ma muhim za gal itiraf ta qabila. Kun fi qabila 'al sahih fi siasa' ya azol bi farih zaid fi akul 'fawaakiha ta Istiklal.'

Bahth gi jarib wadih namna al Nubi jawab fi asuru to umon. fi asadu itiraf za qabila ta Kenya, ma asadu haki ta ardhi ta Kibra. Sika de, ta jarib kun sawa fi jumuiya ta Kenya gi kutu wasila bain ta jinsiya ma qabila. De shor fi Kenya, jinsiya ma qabila mara zaid gi amsuku badu, u ma rakhis feker sika wadin ta ligo usawa.

Walakin, bahth de gi jadal au nakish za gal alaka bain ta uqabila ma jinsiya fi Kenya agder jib taab Milan za uqabila. Anas wadin gi kelem za uqabila kede ma kun ma suhba ma jinsiya. Ana gi jadal za gal uqabila ma ujinsiya agder yunga, mathal ashan muhim na Nubi kede kun Nubi u Wakenya, lakin jinsiya ma qabila agder yunga fi democracy kan anas min qabila mukhtalif agder hishma badu, u kede mon ma dakal umon fi uqabila.

Acknowledgements

First and foremost my utmost gratitude goes to the many people who participated in my research in Kenya. I am humbled by the generosity of time, information and spirit which I encountered with the Nubian community in Kibera, Eldama Ravine, Nakuru, Kericho, Kibos and Kisii. In particular I owe a great debt to Rajab Bilale Osman and Hassan S. Abdallah for their friendship and guidance. My most profound and sincere hope for this thesis is that it meets your expectations. Special thanks to Yusuf Ibrahim Diab, Issa Abdul Faraj, Ibrahim Athman and the Kenyan Nubian Council of Elders; to Jamaldin Yahya and the Kibra Land Committee; to Ismail Ramadhan and Community Rights Forum of Kibera; and to Zidu Guwa, Youth Reform Self Help Group, Beledia Nubi, the Haiba foundation and the Nubian Youth Consortium for receiving me into your community and guiding my way. Very special thanks to Adam Hussein Adam at the Open Society Initiative in Eastern Africa, without whom I could never have got this project off the ground; and to Korir Sing'Oei of CEMIRIDE, without whom this thesis would contain many more errors.

I owe sincere and earnest thankfulness to my supervisors Paul Muldoon and Michael Janover, who were wonderful intellectual interlocutors throughout this process, who tolerated my incessant gallivanting and extra-curricular activity, and without whom writing this thesis would not have been nearly as satisfying or rewarding.

I am obliged to many of my colleagues who supported me in various ways throughout the course of this research, including Terry Macdonald, Matt Tomlinson, Denise Cuthbert, Brad Blitz, Greg Constantine, Graeme Counsel, Tanya Lyons, Geoffrey Hawker, Maureen Lynch, Bronwen Manby, Douglas Johnson, Simon Adams and Johan de Smedt. I am particularly indebted to David Anderson at the Oxford African Studies Centre for hosting me as a Visiting Student for the 2011 Trinity term. In Kenya, my thanks goes to Ambreena Manji and the British Institute in Eastern Africa for guiding me through the challenges of obtaining research permission in Kenya; and to Antoinette Kankindi and Wambui Kariuki for the helpful and fruitful affiliation with the Strathmore Governance Centre.

This thesis would not have been possible without the financial support of the Layne Beachley Aim for the Stars Foundation, for which I am extremely grateful. Similarly, I am appreciative of the invaluable administrative support of Sue Stevenson, Gayle Whyte, Anna Davis, the Document Delivery team at the Matheson library, the staff at the Kenya National Archives and David Bell and Colin Rose at the Monash Research Graduate School. Many thanks also to Muchiri for the Kiswahili lessons.

For their extraordinary friendship, personal and intellectual support, and their tolerance of my constant distraction, thanks to Michelle Osborn, Kiran Pienaar, James Clinch, Kudzai Matereke, Kate Macdonald, Scott Brenton, Cameron Nolan, Caitlin Wilks, Kate McGannon and my family.

And finally, thanks to Debra Smith and Andrew Stapleton, for whom even returning the favour will always be an insufficient demonstration of my gratitude.

This rather long list is testament to the extent to which this work is not mine alone, though I take full responsibility for any of its flaws.

List of Acronyms and Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
Carter Commission	1933 Kenya Land Commission
CEMIRIDE	Centre for Minority Rights and Development
CLT	Community Land Trust
DC	District Commissioner
DRC	Democratic Republic of the Congo
IBEAC	Imperial British East Africa Company
IHRDA	Institute for Human Rights and Development in Africa
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KAR	King's African Rifles
KENSUP	Kenya Slum Upgrading Program
KHRC	Kenya Human Rights Commission
KLC	Kibra Land Committee
KNBS	Kenya National Bureau of Statistics
KNCE	Kenya Nubian Council of Elders
KNCHR	Kenya National Commission of Human Rights
MP	Member of Parliament
NARC	National Rainbow Coalition
NCC	Nairobi City Council
NCIC	National Cohesion and Integration Commission
NGO	Non-Governmental Organisation
ODM	Orange Democratic Movement
OSIEA	Open Society Initiative for Eastern Africa
OSJI	Open Society Justice Initiative
PCP	People's Convention Party
PNU	Party of National Unity
SAEA	Sudanese Association of East Africa
TJRC	Truth, Justice and Reconciliation Commission
UNHCR	United Nations Refugee Agency

Glossary

<i>askari</i>	Swahili for ‘soldier’, ‘guard’ or ‘police officer’
<i>dholuka</i>	Nubian traditional dance, accompanied by music
<i>gombororo</i>	A council of elders in the Nubian community until the 1970s
<i>gurbaba</i>	Traditional Nubian dress for women, involving an elaborate and bulky embroidered skirt worn under a dress tied in a particular fashion
<i>gurusa</i>	A Nubian bread
<i>ivoirité</i>	An autochthonous ideology of belonging in Ivory Coast
<i>jenga yangu, jenga yako</i>	Swahili for ‘build mine, build yours’, referring to an informal system of land sharing in Kibera
<i>kekwe</i>	Swahili for ‘blemishes’
<i>kisra</i>	A Nubian bread
<i>kitu kidogo</i>	Swahili for ‘something small’, meaning a bribe
<i>Kituo cha Sheria</i>	Swahili for ‘The Centre for Legal Empowerment’, a Kenyan legal aid NGO
<i>labi</i>	Derogatory Kinubi term for ‘outsiders’ or non-Nubians
<i>larbein</i>	Kinubi word for a celebration held 40 days after a burial
<i>liwali</i>	A state-sanctioned but largely informal kind of ‘sub-chief’
<i>madoadoa</i>	Swahili for ‘spots’ or ‘stains’
<i>madrasah</i>	Islamic school
<i>majimboism</i>	<i>Jimbo</i> is the Swahili word for ‘state’ or ‘region’. <i>Majimboism</i> is a political position in favour of increased decentralisation so that ethnic groups can dominate their own areas.
<i>majlish shu’uba or majlish shauri</i>	Kinubi for ‘council of elders’
<i>matatu</i>	Mini-buses, a key part of Kenya’s public transport system
<i>mwananchi</i>	Swahili for ‘ordinary citizen’
<i>nyumba kubwa</i>	Swahili for ‘big house’

<i>shags</i>	Sheng (see below) for ‘rural home’
<i>shamba</i>	Swahili for ‘garden’ or ‘farm’
<i>sheng</i>	An extremely localised form of Swahili spoken in Nairobi
<i>soko mjinga</i>	Swahili for ‘fool’s market’
<i>uhuru</i>	Swahili for ‘freedom’ or ‘independence’
<i>wananchi</i>	Swahili for ‘ordinary citizens’, or ‘the people’
<i>wazee wa Kijiji</i>	Swahili for ‘council of elders’
<i>wazungu</i>	Swahili for ‘foreigners’, used to refer to white people
<i>zara’ib (singular - zariba)</i>	Arabic for ‘garrison’

Introduction

Today's Kenyan Nubians trace their origins to the Egyptian slave armies of the nineteenth century, and more particularly to the forces abandoned in Equatoria and subsequently recruited into the Imperial British East Africa Company (IBEAC) forces. These approximately 10 000 Arabised (linguistically) and Islamised Soudanese, as they were called then, later became the King's African Rifles (KAR), Britain's East African colonial force (Wanji 1971; Hansen 1991; Nasseem & Marjan 1992; Johnson 2009). Upon completing their military service they were settled in various parts of Uganda and Kenya, the largest settlement in Kenya being Kibera in Nairobi, or Kibra as it is known to the Nubians, which means 'forest' in Nubian, an area which is now one of Africa's most notorious slums.¹

In the few decades after World War II and particularly as the Mau Mau rebellion took hold of Kenya in the 1950s and independence loomed, the Nubians became a thorn in the side of the Colonial Kenyan government. The Nubians (at least in Kibera) were considered detribalised 'natives'² by virtue of the severance of their connection with their communities in Sudan, and the semi-urban lifestyle they developed in the fast growing capital. Furthermore, though there was reasonably wide agreement that they had a moral claim to the land they were settled on due to their military service and extended occupation of the area, the legal nature of this claim was always ambiguous. The Nubians thought they were given the land to own, the British still considered it Crown Land, and increasingly valuable land at that, and the Nubians 'tenants at will'. In short, the Nubians were not like the other African ethnic groups the British had subjugated in Kenya, and the colonial government was generally unsure what to do with them, or their land claims. Originally loyal servants of the Crown, as the need for their military service decreased they came to

¹ In Kenya there are settlements of Nubians outside Nairobi in Kibigori, Kisii, Kibos, Eldama Ravine, Kisumu town, Mumias, Bungoma, Isiolo, Meru, Nyanyuki, Nakuru, Mogotio, Kericho, Kapsabit, Nandi, Kitale, Mombasa, Mazaras and Migori, and a few in Eldoret, Muheroni and Ahero.

² I use the term 'native' here to refer to the racial, political and legal categorisations of the colonial era. Insofar as this entails pejorative connotations relating to Africans, it is to convey the racist nature of these colonial categories rather than to endorse them. Henceforth I cease to use scare quotes around this term, trusting the reader to understand the intention.

occupy a curious status in the country: neither part of the British colonial administration, nor fully native (Parsons 1997:113-114).

In post-colonial Kenya, the Nubians' peculiar status has persisted. This thesis examines the nature of the deprivation of full citizenship the Nubians have suffered since independence. Far from being liminal in an inconsequential sense, the various ways in which the Nubians have occupied anomalous social, political and legal categories since they arrived in Kenya have been symptomatic of the hierarchical and exclusionary tendencies of the colonial and post-colonial citizenship regimes. Focussing on the period since Kenya's return to multi-party democracy in 1992, this thesis explores the Nubians' marginalisation as ethnic strangers. Discrimination in relation to access to ID cards is commonly recognised as a critical problem for this community, and is explored here. However, the extent to which such discrimination is embedded in less formal recognition regimes has received less attention. This thesis therefore also explores, in depth, the deprivation of collective recognition as a tribe of Kenya, and the most fundamental deprivation of recognition (and distribution): the Nubians' landlessness.

The thesis argues that the functioning of Kenya's recognition regimes renders the Nubians lacking in parity of participation as a result of the ambiguous and insecure nature of their membership in the national community, and subsequent difficulties claiming rights. To describe this condition, I use the term citizens minus. In making this argument, the thesis addresses a number of critical questions about the nature of citizenship in Kenya, arguing that national citizenship in Kenya is subordinate to and defined by ethnicity. Though the thesis goes into some historical depth at points, particularly in chapter 1, the emphasis is not on the consequences of colonial governance for the Nubians' condition, but on the ways in which their status as ethnic strangers, and the concomitant exclusion from full citizenship, is reconstituted in contemporary ways.

This research aims primarily to understand the Nubians' *experience* of mechanisms of exclusion and deprivation, and the norms and practices that are associated with them. While the analysis necessarily entails discussion of institutional structures, the emphasis is on how these structures affect the everyday lives and experiences of Nubians. In taking this bottom up methodological approach, the thesis seeks to better understand the ways in which meta-norms and practices are appropriated or rejected at the level of the ordinary citizen (full or citizen minus), thereby contributing to the literature a more socially

embedded understanding of the meaning of citizenship in people's lives and in their experience of politics (cf. Ndegwa 1997:600). As such, this analysis goes further to explain how structural problems persist in political organisation and political culture, relating to ethnicity, indigeneity and autochthony. The concern is to understand the 'emotional appeal' of norms that tend towards exclusion and discrimination, in order to understand how and why they get reappropriated at the local level (Geschiere 2009:169-211).³

Is statelessness really the problem?

The anomalous citizenship status of the Nubians in the colonial period, described above, has never been fully resolved. In today's terms it is often reframed as being neither citizen nor foreigner, but rather stateless.⁴ Refugees International (Lynch & Frelick 2005), the Open Society Justice Initiative (OSJI), the Open Society Initiative for Eastern Africa (OSIEA) (OSJI 2005), and the United Nations Refugee Agency (UNHCR) (UNHCR 2008) recognize that as long as people are without citizenship, they remain vulnerable to rights violations. As a result, these organisations pursue documented legal citizenship on behalf of stateless people, predominantly through legal struggles which appeal to customary international law prohibiting discrimination, attempting to overturn domestic laws that discriminate in terms of access to citizenship (OSJI 2005).

From the early 1990s until recently, Nubians faced severe discrimination in the acquisition of national identity cards (ID cards), which in Kenya are the most important identity documents for affirming citizenship. They were required to go through an additional

³ While Geschiere (2009) takes an anthropologically rich approach, analysing how emotional appeal is literally embodied, the emphasis in this thesis focuses more on political incentives, disincentives and compulsions to reappropriate or reject exclusionary norms. 'Political' here refers not purely to instrumental gain, but rather also to the affective aspects of political life, such as respect, confidence and sentiments of belonging.

⁴ Although the problems of refugees and stateless people often overlap, legally speaking the two conditions are quite different. The *1954 Convention Relating to the Status of Stateless Persons* (Article 1.1) defines a stateless person as "a person who is not considered as a national by any State under the operation of its law," whereas a refugee is someone who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country" (*1951 Convention Relating to the Status of Refugees*, Article 1 A(2)). A refugee is a person whose state either cannot or will not protect them, or willfully harms them, whereas a stateless person is, quite simply, a person who has no state whose obligation it is to protect them. For some political studies of statelessness see Bernstein 2005; Blitz 2006; Blitz and Otero-Iglesias 2009; Krause 2008; Belton 2011; Blitz and Lynch 2011; Blitz et al 2011. Margaret Somers (2008) has also written a very interesting book applying the concept of 'internal statelessness' to people who have citizenship, but are socially excluded within their nations. This is in some ways similar to the argument put forward in this thesis for the concept of citizens minus, though my focus is on political mechanisms, while Somers focusses her attention on market mechanisms of exclusion.

vetting process to acquire the cards (Kenya National Commission of Human Rights (KNCHR) 2007; Adam 2009; Manby 2009b). As the Nubians were vetted on the basis of their non-indigenous ethnicity, rather than facts of parentage or birth, which are more relevant to legal nationality entitlements, they have been considered stateless. In recent years, there has been an ambiguous improvement to this situation. An ad-hoc arrangement was made between Nubians and the Minister for Immigration and Registration of Persons whereby Nubian elders are now involved in the vetting. This has dramatically improved Nubians' access to citizenship, and a recent study found that 87% of Nubians now have ID cards (OSJI 2011c). However, as long as this arrangement is *ad hoc* and more importantly, as long as the Nubians continue to be vetted on the basis of their ethnicity, discrimination remains and statelessness is still a risk.

Insofar as studies of statelessness focus their attention on ethnic, racial or other bases of discrimination, they point to the underlying political cause of the marginalisation of communities like the Nubians. Exemplary in this regard are studies by Herbst (1999), Whitaker (2005) and Manby (2009a, 2009b) of mass citizenship manipulation and statelessness. The most dramatic contemporary instance of mass citizenship denial along ethnic lines in Africa is in Ivory Coast, where *Ivoirité* has been the government ideology dictating citizenship policy since the late 1990s. *Ivoirité* can be understood as the ideology that determines who is who in Ivory Coast, placing a strong emphasis on autochthony in determining citizenship, in contrast to the more cosmopolitan ideology that dominated sentiments of belonging in the country under former president Houphouët-Boigny.⁵ It has also been claimed that citizenship manipulation played a role in the Rwandan genocide. Hutus and Tutsis were given different citizenship status under the colonial authority (Tutsis were given second-class civil citizenship, whereas Hutus remained colonial subjects), and when power relations were reversed, Tutsis were denied their full citizenship rights under the Hutu after independence in 1959, to the point where “they were not perceived as citizens” (Nzongola-Ntalaja 2004:405). The juridical statelessness of Tutsis in exile, and the *de facto* statelessness of Tutsis remaining in Rwanda created a political climate which, to some extent, contributed to the genocide in 1994 (Adejumobi 2001; Mamdani 2001b:159; Nzongola-Ntalaja 2004:80). The Democratic Republic of the

⁵ Under Houphouët migration from neighbouring countries was strongly encouraged, making Ivory Coast one of the most diverse countries in Africa, with 14.8% of the population being migrants (Whitaker 2005:121). The conflict that followed the disputed 2011 election has its roots in this ideology and the policies that followed (Meehan 2011).

Congo (DRC) has also suffered from competing claims over citizenship rooted in ethnicity. The Banyarwanda, a vast heterogeneous group with roots in Rwanda and Burundi, have had their citizenship granted and removed repeatedly since independence (Jackson 2007:481-500). Studies such as these, which offer an analysis of deprivation of legal status on discriminatory bases, and advocate the extension of legal citizenship status to people who have a genuine and effective connection to the country in which they live (Batchelor 1995), address the limited but important aspect of *legal* citizenship deprivation faced by communities like the Nubians’.

One way of understanding the extant literature on statelessness is to see it as adopting a liberal conception of citizenship. The first feature of the liberal tradition relevant to this discussion is that liberalism holds a ‘thin’ conception of citizenship. The liberal tradition holds citizenship as primarily a status; one must possess it in order to have access to individual rights (Stewart 1995). According to this tradition, a citizen is entitled to the protection of their rights while being otherwise free to pursue their personal notion of the good life, provided they do not inhibit the freedom of others to do the same (Isin & Turner 2007:6; Heater 1999:4-43). The second feature of the liberal tradition relevant to this discussion is that liberalism is purposefully blind to differences such as ethnicity, race or gender, and tries to ensure that all people are treated equally regardless of their particular identity. The liberal tradition holds that restricting difference to private affairs ensures equality through universalism (Young 1989:253). Difference, it could be argued, is only relevant to an ideal conception of liberalism to the extent that it is associated with practices of discrimination. The ultimate objective of the liberal project is to reach a point where there ceases to be discrimination in *individual rights*; that is, the point where difference has ceased to have any bearing upon legal status. This is certainly an important normative goal, however, any other aspects of citizenship relating more generally to political life are not taken into account.

In keeping with the liberal tradition on citizenship, studies of statelessness have so far predominantly focussed on eliminating ethnic or other forms of discrimination and guaranteeing universal access to citizenship-as-status, and therefore the protection of individual rights. Where they have succeeded, these efforts have been crucial to starting to guarantee basic rights for many formerly stateless communities, such as the Urdu-speaking minority in Bangladesh (UNHCR 2009), or the Hill Tamils in Sri Lanka (Blitz et al

2011:97). Chapter 2 of this thesis examines the extent to which the acquisition of citizenship status in the form of an ID card resolves the Nubians' citizenship problems.

Nevertheless, as long as statelessness is viewed from within the liberal tradition, with attention fixed firmly on the legal status of individuals as rights holders, something remains obscured about the more general problems of political exclusion and effective rights deprivation faced by stateless people, why these issues persist disproportionately for formerly stateless people after the acquisition of legal citizenship status (Blitz et al 2011), and how these are applied to other groups for whom *de jure* statelessness is not a problem.

The liberal approach to the Nubians' citizenship problems would take the form of a critique of the Kenyan state to the effect that it is not sufficiently blind to difference, continuing as it does to maintain hierarchical distinctions between ethnic groups. Such a critique is valid but it falls short of a full understanding of the Nubians' citizenship problems. The liberal critique of discrimination is premised on individualism, the view that societies and states are or should be collectivities of *individual* persons possessed of equal legal rights. Such a critique is valid to the extent that it exposes the distance between the Kenyan state and the liberal ideal. However, it is not well tailored to improving our understanding of the Nubians' citizenship problems because political relations in Kenya are not currently structured on the liberal model. Its multi-party parliamentary system aside, the Kenyan political system can be distinguished from the liberal democratic model to the extent that it continues to coordinate important aspects of political relations through the concept of ethnicity. The liberal critique of discrimination is thus likely to either misconstrue the nature of the problem facing the Nubians (which extends beyond access to ID cards) or carry an implicit commitment to fundamental political reform for all Kenyans (towards a system in which possession of an ID card would be all that mattered from a political point of view).

To understand the deficit of political capacities and powers the Nubians in Kenya experience, this thesis therefore looks beyond the liberal focus and seeks to analyse the structure of Kenyan political relations, political culture and political economy. While chapter 2 testifies to the importance of ID cards for certain aspects of citizenship, it also identifies some significant remaining deficits. This study of the Nubians of Kenya suggests that even when legal citizenship status becomes accessible, other mechanisms of exclusion from the political community persist, mechanisms which have consequences not only for

rights, but also for recognition and participation. In other words, a Nubian with an ID card is not necessarily all that much better off than a Nubian without one. In the absence of a transformation of political structures, away from ones based on ethnicity and towards difference-blind liberal structures, this seems unlikely to change.

Full citizenship and citizens minus

The relevant question then becomes whether or not citizenship as legal status and possession of individual rights is an adequate conception of citizenship. I propose that though it addresses some fundamental aspects of citizenship, this conceptualisation does not go far enough to capture the full experience of citizenship in Kenya. Such a concept must take account of the difference between *formal* equality in citizenship status, rights and opportunities to participate; and the variable qualities of citizenship *in practice*. Full citizenship depends not only on *formal* rights and membership, but also on informal norms, practices and dynamics that affect these dimensions of citizenship in real life. This thesis demonstrates that these informal dynamics can have more bearing on the day-to-day enjoyment of citizenship than formal entitlements and status. Full citizenship therefore refers not only to a status, but to the practice of citizenship, the “routines, rituals, customs, norms and habits of the everyday through which subjects become citizens” (Isin & Nielsen 2008:17). The understanding of citizenship in this thesis is informed not only by the liberal tradition and its emphasis on the importance of equal, legal status, and the protection of individual rights, but also the traditions of civic-republicanism and recognition theory, which emphasise the relationship between rights and participation, and rights and recognition respectively. Full citizenship on my account is therefore constituted not only by rights, but also membership, and is measured in terms of participatory parity.

Citizens must possess rights: this is a central aspect of citizenship. There must be no discrimination in access to *all* the rights that are considered normal rights of a citizen in a given political community.⁶ This includes not only individual rights, but also collective rights and benefits, and individual rights and benefits that are distributed and/or accessed collectively (which the liberal tradition cannot account for). Citizens’ rights cannot be subject to discretionary powers of either revocation or violation. In the event that the rights are violated, the act must be recognised as a violation. The principle of the right is, in this way, respected. However simple *possession* of rights is not sufficient for full citizenship.

⁶ I intend ‘normal rights’ here as distinct from certain affirmative action rights, for example native title rights of Aboriginal Australian citizens.

In practice, and increasingly recognised in theory, rights are a meaningless notion without the means with which to make them effective. The means prescribed by the liberal tradition of citizenship – membership as status and a state capable of protecting its citizens – are not enough in this regard. Rather, to be able to claim rights, the rights-bearer must have the necessary powers, whatever they might be in a given context, to do so. Understanding this aspect of full citizenship requires paying attention to the broad political, institutional, social and economic conditions that are required in order for people to exercise their rights in a particular political community. In this sense, the rights at stake in citizenship are real, actual, *effective* rights, not just theoretical rights-as-possession.

It is in this regard that membership emerges as, in fact, a more important aspect of citizenship than rights. Membership is the precondition for rights, constituting the right to have rights. In her analysis of stateless people in Europe after World War I and World War II, Arendt observes that despite the growing rhetorical power of the concept of ‘human rights’, such rights are in fact (if not in principle) no different from citizens’ rights. Exactly at the moment when the concept of human rights should carry the most salience, that is, when a person loses their rights as a citizen, it becomes apparent that human rights are fundamentally connected to citizens’ rights: it is only as a *member* of a political community that one can actually claim these rights (Arendt 1973:293). While the second ‘right’ in the right to have rights can be understood as referring to juridico-civil rights, which are determined within particular political communities (and constitute the first feature of full citizenship), the first ‘right’ refers to membership in a political community (Benhabib 2004:57). It is “much more fundamental than freedom or justice” because it is the context in which the substance of freedom and justice is determined, and fought for (Arendt 1973:296).

One way to think about membership is to consider it a boundary condition, the crossing over into the circle of membership. In this sense, an individual is either a member or a non-member. In relation to citizenship, this notion of membership would be symbolised by proof of nationality, for example in the form of an ID card or some other legal formality. As important as this formal, legal aspect of membership is, it does not capture the totality of what membership in a political community entails in real life. A different and complementary way of thinking about membership is therefore to see it as the condition of having the social and political standing of an equal and so respected person in the community. This notion of membership draws more on the civic-republican tradition than

the liberal one. The civic-republican tradition emphasises not individualism, but community, and loyal, affective and public-spirited relations between citizens. Public life should be characterised by relations of respect and solidarity, which extend beyond family or other parochial groups. Members of such a community enjoy confidence, respect and personal moral development as a result of their active participation in the political community (Oldfield 1998; Heater 1999:44-79). Such a member has the real life and effective (as opposed to merely formal, legal) powers and capacities to do things a citizen might want to do, such as engage in public debate, or claim rights.

Both kinds of membership – the formal and effective as I shall refer to them respectively – ideally entail a certain degree of security of membership. Formal membership - in this case nationality status - should be safeguarded by law, and should not be subject to revocation under any circumstances. This is a crucial requirement for the prevention of statelessness, and an important aspect of membership in national communities more generally. But it is the second kind of membership – effective membership – that provides the most robust safeguards and the highest degree of security of membership. Generally it is effective membership that, in practice, provides the security of formal membership and acts against any legal loopholes for revocation of formal nationality status. People who, in practise, are undoubtedly considered members of a community are far less likely to be in a position where their formal membership status can be revoked. It is the norms and practices that confer effective membership that place membership beyond doubt in a way that legal proofs cannot accomplish. Full citizens are those who possess both formal and effective membership.

The extent to which full citizenship can be measured is by the extent to which it entails participatory parity (Fraser 2003). Fraser (2003:231) explains that in regards to participatory parity “[t]he basic idea is that equal autonomy, properly understood, entails the real freedom to participate on a par with others in social life.”⁷ In this respect, participatory parity is the result of having both formal and effective membership, and

⁷ Fraser has come under criticism for failing to develop a precise formulation of how participatory parity might be judged in practice (Armstrong and Thompson 2009). However, this does not weaken her theoretical insight as much as suggested. Precise formulations are notoriously difficult to arrive at and, in any event, fail to address the complexity of human society, the very charge that Armstrong and Thompson level at Fraser. Not only that, but potentially worse, precise formulations can constitute a tyrannous prescription of behaviour for diverse societies. Instead, as Fraser (2003:44, 51-52) suggests, what constitutes participatory parity needs to be determined pragmatically and separately for each particular situation. This is one of the primary tasks of this thesis.

therefore both possession of, and opportunities and powers to exercise rights. The prevailing political and institutional (as well as social, cultural and economic) conditions must make it possible for all citizens, should they choose to, to engage in public life as equals. In order for participatory parity to become a reality both immaterial, intersubjective conditions and material, objective conditions must be structured in appropriate ways (Young 1990; Fraser 2003).

Immaterial intersubjective conditions are those institutions and norms which govern our relations with each-other. These institutions and norms must be structured so as to confer equal respect upon all citizens, not to devalue particular categories of people in systemic ways. Fraser (2003:36) explains that intersubjective conditions which enable participatory parity preclude,

institutionalized norms that systematically depreciate some categories of people and the qualities associated with them. Precluded, therefore, are institutionalized value patterns that deny some people the status of full partners in interaction – whether by burdening them with excessive ascribed ‘difference’ or by failing to acknowledge their distinctiveness.

Under such conditions, the equal respect conferred upon all citizens also precludes the possibility of some categories of people having lower levels of confidence to participate in public life *because of* institutionalised disrespect. Of course some people will always be more confident than others. The point here is that these differences in confidence should not be the result of prevailing institutional and normative patterns of disrespect and devaluation.

Material, objective conditions must also be structured in ways that do not systematically disadvantage certain categories of people. Fraser (2003:36) explains that satisfactory objective conditions preclude,

forms and levels of economic dependence and inequality that impede parity of participation. Precluded, therefore, are social arrangements that institutionalize deprivation, exploitation, and gross disparities in wealth, income and leisure time, thereby denying some people the means and opportunities to interact with others as peers.

Here Fraser emphasises economic conditions or what can be understood as developmental capacity. Young makes a similar point when she argues that opportunities for participation require not simply opportunity, but also the provision of means, including distribution of the material goods necessary to develop capacity for participation (Young 1990:26).

Insofar as developmental (rather than political) capacity is inhibited for particular categories of people in institutionalised ways, then systemically sustained economic inequality is a relevant factor in full citizenship.

TH Marshall's (1992) highly influential argument in favour of social and economic rights as necessary for equal citizenship in post-war Britain addresses this issue specifically, arguing for minimum standards of socio-economic development. Marshall (Marshall & Bottomore 1992:21) argues persuasively that,

if you ... explain to a pauper that his property rights are the same as those of a millionaire, he will probably accuse you of quibbling. Similarly, the right to freedom of speech has little real substance if, from lack of education, you have nothing to say that is worth saying, and no means of making yourself heard if you say it.

More recent development studies and political theory literatures have taken up this idea and developed it through accounts of the ways in which poor socio-economic conditions inhibit participation in the political community. Influentially, Sen (2000) promotes the capabilities approach to development, encouraging development economists and practitioners to factor into their decision making and planning an understanding of factors beyond legal entitlement that impact upon an individual's capacity to exercise their rights. Nussbaum (2011) extends the capabilities approach beyond development studies and into political theories of social justice. As she puts it, the capabilities approach asks "[w]hat are people actually able to do and to be? What real opportunities are available to them?" (Nussbaum 2011:x). Nussbaum connects these questions about quality of life to human values dignity and equality. Increasingly, conditions of effective exercise are coming to be seen as intrinsic to the very concept of rights itself.

Nearly 50% of Nubian families reportedly have an income of less than 10 000 shillings per month (OSJI 2011b).⁸ This limits access to even the most basic material needs including shelter, food and water. Though primary education is now free in Kenya, its quality is poor, and secondary and higher education remain out of reach for many Nubian children and adolescents. Only 2% of Nubians have a tertiary education (OSJI 2011b). Consequently, the community relies on only a handful of individuals with higher education

⁸ The Kenyan shilling devalued significantly over the course of this research, and the price of food rose significantly. At the time of the main period of field research in 2009, \$1 USD was worth about 77 Kenyan Shillings, and a bag of flour cost 80 Shillings. In November 2011, \$1 USD is worth about 90 Kenyan Shillings, and a bag of flour costs 150 Shillings.

and/or professional careers and, therefore, the requisite skills and networks to effectively organise community groups and/or pursue Nubian interests through political avenues. Distracted by attending to immediate material needs, and lacking a strong cohort of well-educated and well-connected leaders, Nubians are often unable to engage in formal or informal political action.

However, poor socio-economic conditions such as these are the norm rather than the exception in Kenya. While it is certainly problematic for robust citizenship and democracy that most Kenyans live in unacceptable economic conditions, the widespread nature of this problem means that it is not an issue of identity-based inequality. The Nubians' poverty is not what differentiates them from ordinary Kenyans. As such, this thesis seeks to understand the degree and nature of deprivation of full citizenship for a *particular* group of people based on their identity, rather than widespread and generic deprivations that affect citizenship.

The more relevant material, *objective* conditions necessary for participatory parity are therefore political. Young argues that opportunities entail both the absence of barriers, and the presence of means (Young 1990:26). While Young is referring primarily to the economic means necessary for relief from the burdens of survival and necessary for participation (discussed immediately above), she can also be taken to mean the provision of real life opportunities in formal institutions and informal patterns of interaction. Werbner (2002b:679) explains that a politics of recognition is about appeals to public respect and dignity, which translate to demands for, "actual opportunities for participation in citizenship and public life." In practice, this might require affirmative action, that is, specific mechanisms or institutional design that not only eliminate barriers to participation, but also provide the specific opportunities means for previously marginalised people to develop their capacities as citizens to engage in public life, to claim rights, and to contribute to shaping the political community.

In sum, participatory parity refers to the difference between the formal possibility of public participation entailed in formal, legal citizenship status, and the actual possibility in the form of real life opportunities that require satisfactory objective conditions (opportunities for participation), as well as intersubjective conditions (relations of respect and confidence) in order to be meaningfully taken up by full citizens. Such citizens must consider themselves and be considered by others as equal members, and as such enjoy all

the normal rights – in terms of not only possession but also exercise – which are considered as such within the given political community. It is for these reasons that participatory parity is the measure of full citizenship.

If full citizenship is the normative objective then other qualities of citizenship can be denoted by adding the suffixes ‘plus’, or ‘minus’. The notion of varying qualities of citizenship above or below the equal citizen was first proposed in Canada in the 1960s and 1970s in relation to indigenous people (Cairns 2000:8).⁹ As Cairns (2000:9) explains it,

‘[c]itizens plus’ could serve as the vehicle for a socio-political theory and as a simplifying label for public consumption that recognizes the Aboriginal difference fashioned by history and the continuing desire to resist submergence and also recognizes our need to feel that we belong to each other.

The term has been posited as an alternative to the nation-to-nation model in which negotiations over rights, resources and so on between aboriginal and non-aboriginal populations occur between ‘first nations’ and the dominant (in this case Canadian) nation. Instead of this adversarial form of organising the political community, the notion of citizens plus affirms a common citizenship in both empirical and normative terms. Cairns convincingly argues that the nation-to-nation formula is empirically flawed insofar as it fails to take account of a profound interpenetration and interdependence between aboriginal and non-aboriginal populations, in terms of culture, economy and intermarriage. He argues that, “to exaggerate our solitudes at the expense of a recognition of our moral and factual interdependence is a recipe for poor policy in the short run and profound regrets in the long run” (Cairns 2000:8). The nation-to-nation formula is also normatively flawed because it fails to account for shared visions and goals that do exist and should be nurtured. The nation-to-nation view, “can only reduce our feelings of responsibility for each other and our willingness to share” (Cairns 2000:7). Focussing on a common citizenship instead is more likely to lead to respectful inter-communal negotiations, and an increased sense of responsibility for each-other. The citizenship part of the equation is designed to foster a sense of community.

While affirming this common citizenship, the ‘plus’ part of the equation denotes and affirms the difference of aboriginal populations, based on their historical subordination and disadvantage. This ‘plus’ ideally functions to ensure that the special, extra needs of

⁹ This phrase was coined in the Hawthorn report (1996 and 1967), but its most recent exposition is in Cairns (2000).

aboriginal populations are attended to in order to attain participatory parity. In this regard, the 'plus' is slightly misleading. It does not denote special, *extra* rights for aboriginal populations, but rather is intended to recognise their special needs in order for them to achieve *equal* rights.

In this respect, an alternative term – citizens minus – may more accurately capture the nature of the citizenship of certain groups, though in a more critical than aspirational way; like aboriginal populations in settler dominant polities, and the Nubians in Kenya. The term citizens minus captures the insufficient and unequal nature of citizenship in some cases, most fundamentally constituted by some kind of inadequacy in relation to membership. If membership is considered a boundary condition, then it makes little sense to speak of 'adequacy' in relation to membership, for membership on such a conception is not a matter of degree, but is an all or nothing scenario. One is either a member or not a member. However, if we adopt, as described above, an understanding of membership as not only formal status but also equal and respected social and political standing, then it becomes possible to understand how people can be 'members', but not members: possessing formal status, yet lacking in the social and political standing that other members enjoy. Such people can be understood, in a sense, as dismembers – a formal part of the body politic (and in this sense different from non-members), but dismembered from it insofar as they are treated as inferior persons and disconnected from the polity. In such a position, the degree of insecurity of effective and also formal membership increases significantly, for there are no social or political safeguards for formal membership. In this sense, dismembers sit on the boundary of the circle between members and non-members, at the margins of the political community, constantly at risk of being cast outside. The lack of social and political standing, and insecurity of membership, have significant consequences for the rights of such people. Not only is it more difficult to exercise rights from a position of inferior membership, but even the possession of rights is precarious, subject to the same insecurities as the membership itself.

The distinction between full citizenship and citizenship minus has a two-fold normative application, as applied in this thesis to the case of the Nubians and to the nature of citizenship in Kenya generally. The distinction can be used to obtain a measure of the deficit of citizenship facing particular individuals or groups. In this regard, the normative principle of equality between citizens is central. An appropriate criticism may be to recommend that citizens minus be included in the polity as equals by giving them access to

the same objective and intersubjective conditions as the full citizens. However in other cases (probably most other cases), we can use the concept of citizens minus to critique the very basis on which participatory parity and therefore full citizenship is constructed in particular political communities (such as Kenya). This requires developing a picture of formal and informal regimes of rights, powers and recognition, and teasing out the ways in which they *sustain* citizenship inequalities and are therefore inherently problematic. The critique can also be of ways in which the objective and intersubjective conditions generated by formal and informal regimes of rights, powers and recognition foster *other* political practices we may think are inappropriate for citizenship, such as competition between citizens. In the case of Kenya, for example, the role of ethnicity in the polity stands out as a potential target for criticism. While there is a normative objective here, any such criticism should take into account the varied nature of citizenship in empirical terms in different polities and maintain sensitivity to the potential value of aspects of citizenship practices not usually thought of as appropriate in the liberal or civic-republican citizenship traditions.

In conducting these two levels of analysis, this thesis implicitly, and at times explicitly, draws on political theory literature relating to the politics of recognition. This literature addresses questions regarding when and how recognition and redistribution enhance equal citizenship, and when and how they can endanger it (Kiss 1999:206). In this regard, the literature speaks to both the first and second levels of the analysis – the relations of (in)equality *and* the regimes that sustain them. These debates can help make sense of the Nubian case insofar as they are fundamentally concerned about injustices that are constituted by identity-based harms, either misrecognition or maldistribution. The key contribution of theories about the politics of recognition is that they are not just concerned with the fact of inequality, but with the political, social, economic, cultural and institutional processes that constitute and sustain those inequalities (Kiss 1999:200). In this regard, they are not concerned with, for example, ethnicity as a fundamental social good, but with the role of ethnicity (and other identity markers) in affording access to, or leading to the deprivation of, other social and political goods or, in the terms of this thesis, membership and rights (Kiss 1999:195-196). The thesis therefore draws on recognition theory in order to better understand the role of both formal and informal forms of recognition in conferring both formal and effective membership. I am particularly concerned to establish a clearer picture of the role played by *informal* forms of recognition

in conferring *effective* membership, for in Kenya, they seem to have equally if not more significant effects on sentiments of belonging.

This thesis maintains an understanding of recognition and redistribution as being intricately linked political processes, both of which are usually required for the remediation of identity-based injustice (which is here conceived as exclusion from full citizenship). There are debates about the empirical and normative value of making distinctions between recognition and redistribution. For example, Fraser (1995a, 1995b, 1997) sees a clear distinction between the two, at least for analytical purposes, whereas Young (1990:39-63) sees maldistribution as a consequence of misrecognition or non-recognition.¹⁰ Recognition is fundamentally about the intersubjective conditions for opportunities to engage in political life on a par with other citizens. Redistribution, on the other hand, is fundamentally about the material socio-economic conditions required for the same including economic means as well as concrete opportunities for participation (Young 1990:15-33; Fraser 1995a, 1995b, 1997). Adequate recognition leads to conditions under which people have the self-respect and confidence, and respect from others, necessary to participate in public life in meaningful ways in order to assert their membership and make rights claims. Adequate distribution leads to conditions under which people have the socio-economic stability and concrete opportunities required to develop themselves, and opportunities to participate in public life (though it is only the latter aspect of distribution at stake in this thesis, as explained above). In this sense, although recognition and redistribution can be thought of as distinct processes, they are best thought of as mutually reinforcing, and jointly structuring the objective and intersubjective conditions of political life (Kiss 1999:196-199).

The particular concern of this thesis is how recognition relates to citizenship, rather than its broader relevance for human psychology. Theorists such as Taylor (1994) and Honneth (2003) emphasise recognition as important for self-realisation. Taylor (2004:25) explains that,

our identity is partly shaped by recognition or its absence, often by the misrecognition of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves.

¹⁰ For an eloquent discussion of the differences between Young and Fraser's approaches to distinguishing between recognition and redistribution, see Kiss 1999.

While this is certainly true, following Fraser (2003), the discussion of the harms and benefits relating to recognition in this thesis are abstracted from the phenomenological harm of humiliation and disrespect described by Taylor, to the political harms of exclusion and inequality. The discussion is concerned less with the development of individual identity and self-realisation, and more with the consequences of misrecognition or non-recognition after a political identity is already established. The ethnic identity I am concerned with precedes political recognition. At times this thesis touches on the political processes at play that encourage ethnic identification and guarantee its ongoing salience. However, it is beyond the scope of the thesis to address and assess more psychological accounts of the development of ethnic identity in the first place. This thesis focuses on largely political rather than ontological conceptions of identity and recognition.

As such, the acts of recognition and redistribution of concern are those that pertain to the political domain. One element of this domain is institutional recognition, particularly in relation to the liberal conception of citizenship and the prevailing concern in statelessness studies with status and documentation. However, this thesis seeks to go beyond institutions to examine broader kinds of recognition claims that can be understood to be political, and is concerned with general modes of, and claims for, recognition that pertain to, on D'Entrèves' (1994:147) definition of politics, "sharing a public space and a set of political institutions, and engaging in the practices and activities which are characteristic of that space and those institutions." By focusing on the central characteristic of plurality we are better able to identify modes of, and claims for, political recognition not just in and about institutions, but also in and about spaces, activities, conditions and capacities (Feher 1989:24; Dietz 2002:122-125).¹¹

Being centrally concerned with political recognition, the claims of concern in this thesis are those in which recognition is fundamentally a matter of respect rather than esteem. When recognition claims of citizens or aspiring citizens are morally acceptable they are

¹¹ There is no widely agreed upon definition of public, and I do not intend here to endorse any particular understanding of the term beyond the general notion that public refers to times and spaces in which people gather together (Arendt 1958/1998), or in which people are engaged in practices and activities that are shared (D'Entrèves 1994:147), that is, times and spaces of plurality. Distinctions between public and private have rightly been charged, most notably by feminist scholars, with excluding certain categories of people and the challenges they face from opportunities for political contestation by rendering them 'private' (Dietz 2002:114-118). The only agreement seems to be that the notion of public, particularly as it pertains to the public/private distinction, is as problematic as it is helpful: we cannot live with it or without it. Therefore, following Young (1990:119), I hold that it is worthwhile using the term 'public', but I do so without rendering the distinction between public and private hierarchical or closed, and in doing so avoid the trap of excluding certain people and their concerns from the public arena.

about nothing more demanding than effective equality, based on recognition of the equal moral worth of humans. The objective is not to determine bases on which we should afford *esteem* to particular groups and their conception of the good life or their achievements. Esteem is a positive value judgment out of place in a conception of justice that is based on equality. Rather, the objective is to determine conditions under which people can be afforded equal *respect* (Fraser 2003).

Consistent with the centrality of the principle of equality to the formula of full citizenship described above, this emphasis on respect rather than esteem renders recognition, as outlined here, a relational rather than substantive concept. Fraser (2003:28-29) calls her model a status model of recognition. Along with Young (1990), Fraser does not emphasise any intrinsic good associated with any particular identity (individual or collective), but rather she places the conceptual and practical emphasis on the relations between people as the locus of injustice (misrecognition or non-recognition, maldistribution) but also its remedy (recognition, fair distribution). This locates the harm not in any individual psychology, as must be the result if one fails to abstract from the core harm of the phenomenology of disrespect, but in unequal and unjust relations between different members of, in this case, a political community. The focus when devising remedies then becomes changing relations rather than changing people.

This approach to understanding politics and recognition, with a broad emphasis on public actions and relational inequality, has the advantage of permitting fluid interpretations that enable more effective deployment of theories about the politics of recognition to varied contexts. As D'Entreves (1994:151-152) points out, a broad focus such as this allows us to identify politics as it is engaged in by different people in different societies, as it is neither communitarian nor liberal, neither focused solely on the individual or the collective.

Perhaps the most significant difference between the context of this research, and that which has dominated recognition literature, is that the predominant literature on the politics of recognition is based largely on assumptions that there is one dominant culture and that the state seeks assimilation of minorities of various kinds (Kiss 1999:203). A particularly original contribution of this thesis is to deploy recognition theory in Kenya, a society which is already diverse and which already incorporates recognition of difference into its political, social and institutional culture. The challenge for this thesis is to explore the implications of this pre-existing diversity for broader understandings of the politics of

recognition. In doing so, this thesis follows a nascent Africanist literature engaged with the politics of recognition in attempting to understand what the politics of recognition means for citizenship in an African context (Werbner 2002a, 2002b; Englund & Nyamnjoh 2004).

Full citizenship and citizens minus in Kenya

The objective of this thesis is to apply the formula of full citizenship to the case of the Nubians. In coming to understand the nature of the Nubians' contemporary citizenship in the wake of their recent statelessness, the concept of citizens minus has great utility. Through understanding the Nubian case, the nature of full citizenship in Kenya is also illuminated. This approach, more than statelessness, captures the nature of the Nubians' political condition.

In understanding what it means to be a full citizen in Kenya, and the ways in which the citizenship of Nubians fall short of that, I analyse three particular mechanisms that work to exclude particular categories of people from full citizenship. Chapter 2 examines the discrimination the Nubians have faced in relation to access to ID cards, and links it to a presumption that the Nubians are not citizens of Kenya. Chapter 3 examines the prevailing recognition regime in Kenya, exploring the origin of the idea of the '42 tribes' of Kenya in early censuses, and the rights and benefits associated with collective recognition. Chapter 4 explores the operation of ethnic homelands in Kenya. It will become clear by the end of the thesis that these mechanisms have hierarchical importance. I begin with a discussion of ID cards because that is the predominant concern expressed by outsiders in relation to the Nubians' citizenship. I progress through collective recognition and to land title because that tends to be the order in which remedies are considered. However, it is land that stands out as the most important of these. Communities in Kenya with a recognised homeland do not face problems related to collective recognition as one of the 42 tribes, or problems with individual recognition when applying for ID cards. In this sense land is therefore the basis of all the other elements of citizenship. The more common way of approaching the problem of exclusion, by starting with ID cards, is stood on its head.

None of these mechanisms of exclusion are constitutional or legislative, despite widespread belief to the contrary. Rather, in varying degrees, they are constituted by bureaucratic practice or informal social, political and cultural trends. The marginalisation of certain kinds of citizens occurs in quiet, often unspoken, ways that are difficult to identify and even more difficult to intervene in. These mechanisms continually recreate the

distinction between full Kenyan citizens and citizens minus. My analysis draws on literature relating to ethnicity, indigeneity, autochthony and ethnic strangers to develop an argument to this effect.

Ethnicity lies at the centre of regimes of rights, powers, recognition and participation in Kenya. As such, it is necessary to define ethnicity at the outset. There is no widely agreed upon definition of ethnicity or ethnic groups, however, drawing on some of the key theorists of this concept, it is possible to identify some core characteristics. Historically, primordialist conceptions of ethnicity have adopted essentialist approaches to understanding the various aspects of ethnicity, resulting in an emphasis on the ascriptive nature of ethnic identity. However, this essentialist reading of ethnicity is no longer thought to be appropriate (Hutchinson & Smith 1996; Young 2002). Rather, more recent scholarship has instead emphasised the ways in which ethnicity is actively recreated (Ranger 1983, 1995). Young (2002) draws attention to the ways in which individuals experience and perform their ethnicity, albeit within the constraints of their ethnic group. Berman (1998) and Lynch (2006b) emphasise the negotiability and flexibility of the boundaries, culture and identity of ethnic groups (cf. Barth 1969; Eriksen 1997). Members of an ethnic group may draw on a shared sense of history, mythical or actual origins, and perceive themselves to also share a common fate, thus having intergenerational, past and future oriented ontologies (Glazer & Moynihan 1976; Hutchinson & Smith 1996; Young 2002). Ethnic groups will often also share a culture which may be constituted by elements such as language, religion, rituals, rites of passage, beliefs and kinship systems (Glazer & Moynihan 1976; Ranger 1983 & 1995; Smith 1986; Hutchinson & Smith 1996; Young 2002). The point is that these aspects of ethnicity do not exist independent of their active creation and recreation by ethnic members.

Ethnic groups are therefore primarily defined by sharing the characteristics Young (1990:43) sets up as definitive of social groups, that is, they are developed around *identity*, *affinity* and *differentiation* from others, rather than core, essential characteristics. Members of the group share a consciousness of their membership in, and the existence of, that group partly through naming. It is this self-consciousness that is, on my view, the most important characteristic of an ethnic group (Weber 1922/1996; Hutchinson & Smith 1996; Young 2002). In line with this recent scholarship and its emphasis on self-consciousness and negotiability, I adopt an understanding of ethnicity which appreciates the inherent adaptability of ethnic groups (their identity, culture and boundaries), and I analyse the

Nubians' response to their political condition with this in mind, particularly in relation to shifts and changes in the character of the group, especially as strangers or indigenous.

Before I go on, a brief note is required here about terminology. In academic scholarship and politically correct terms, the word 'tribe' has been overtaken by 'ethnic group', largely because 'tribe' maintains pejorative connotations stemming from its historical use by colonial powers to describe anything and everything that might appear like a group (Young 2002). The word has inherited connotations of primitivism and in contemporary contexts is often associated with nepotism, particularly in countries (such as Kenya) that have high levels of patronage and corruption. Nevertheless, in Kenya both elites and ordinary people are quick to make a distinction between tribe and tribalism, the latter being a source of tension and discrimination, the former being a legitimate source of pride in, and attachment to, one's identity and community (Wamwere 2008:95-97).¹² To defer simply to the term 'ethnic group' over 'tribe' would be to abandon the local political vocabulary that is so central to the issues explored in this thesis. Given these considerations, I use the word in a considered way devoid of negative value to describe what I have just defined as an 'ethnic group', and I use the terms interchangeably.

There is some debate about whether or not the Nubians constitute an ethnic group. This is a claim that is contested more explicitly in the case of Ugandan Nubians than Kenyan ones (Wanji 1971; Southall 1975; Kokole 1985, 1995). Historically, the Nubians descend from a number of Sudanese ethnic groups encountered during their military migration. This puts them in the complex position of having their contemporary identity defined by a historically common nationality (Sudanese), rather than tribe (Johnson 2009). This has led to accusations not only that they are in fact Sudanese rather than Kenyan, but also that they are more of a 'club', a Muslim 'ummah' or a 'community' than a tribe (Wanji 1971:6 Kokole 1985, 1995). In particular, the ease with which one can 'become Nubi' has been held up as proof that the Nubians are not an ethnic group, because Nubian identity can be appropriated and is not wholly ascriptive by birth (Wanji 1971; Southall 1975; Kokole 1985, 1995; cf. Leopold 2006).

There are two responses to this, one particular and the other general. The particular response relates to the difference between Ugandan and Kenyan Nubians. Though no comparative research has thus far been conducted, it seems that the appropriation of

¹² A more extensive discussion of the difference between tribe and tribalism can be found in chapter 6.

Nubian identity for instrumental purposes is both easier and more common in Uganda, where, particularly under Idi Amin, there were great benefits associated with this identity, including access to employment, wealth and land (Wanji 1971:22; Kokole 1995; Leopold 2006; de Smedt 2011:11; Johnson 2011). Being Muslim and being Nubian have at times been almost synonymous in certain parts of Uganda, notably West Nile (Leopold 2006). Even in Southern Sudan, in times of difficulty in rural areas, people have been known to move to towns, adopt a Muslim name and dress and ‘become Nubi’ to ride out the storm, later returning home and readopting their traditional culture (Johnson 2011). In Kenya you do not see this phenomenon. Kenyan Nubians do assimilate outsiders, but primarily those who marry into the community and become permanently Nubian (de Smedt 2011:139). There is no particular strategic benefit to being Nubian, and as this thesis demonstrates, there are significant disadvantages. There is no incentive for Muslims or others to appropriate a Nubian identity in Kenya.

The general response to the suggestion that Nubians are not an ethnic group relates to the understanding of ethnicity outlined above. There are particular elements commonly associated with the constitution of an ethnic group, perhaps the most notable being the flexibility and negotiability of ethnicity in terms of the characteristics (language, culture), character (indigenous, stranger) and boundaries of any particular tribe (Berman 1998; Lynch 2006b). The Nubians of Kenya are a case in point. Through particular negotiations and interpretations that have been heavily shaped by the social, economic and political context in which they have found themselves, the Nubians have come to bear the hallmarks of an ethnic group, and importantly consider themselves as such. Though permeable, the boundaries which govern their interactions with other groups do exist. They have a sense of common history and a common ancestry myth in the story of being ‘brought by the British’ to Kenya. They have a shared culture which is heavily influenced by the Islamic religion, and which is performed regularly at weddings, funerals, *larbein*,¹³ through dress (*gurbaba* for the women), dance (*dholuka*) and culinary traditions (including *kisra* and *gurusa* breads), and importantly through Kinubi language.¹⁴ They have a strong consciousness of themselves as a group and a name they have deployed since before

¹³ A celebration held 40 days after a burial that is particular to Nubian tradition.

¹⁴ The Nubians also practiced female circumcision, but this stopped – almost inexplicably – around the 1980s. For a detailed analysis of this practice, and its cessation, see de Smedt 2011, appendix B.

independence. Finally, even up-country¹⁵ Nubians have a connection to a homeland in Kibera, even though it is not recognised by the state or most other Kenyans. This is not to deny that the Nubians are a unique kind of ethnic group. They do share an ethnic identity with other Nubians throughout East Africa whose social order is much more ambiguous. Rather, it is to take seriously the social bonds they have forged over the century they have spent in Kenya in the particular conditions they have lived through, and the ways in which they have chosen to identify themselves.¹⁶

The construction of the Nubians as an ethnic group in Kenya is best understood as a response to a political culture which has, since the colonial period, maintained a privileged role for ethnicity in public affairs. Though this is often disavowed by leaders and politicians, it is an inescapable fact that ethnicity is heavily implicated in structures of administration, politics and political-economy, and as a result, ethnicity has become the primary route for accessing and exercising rights, participating in politics, and securing a sense of belonging (Berman 1998; Lynch 2006a). As a result, inter-ethnic divisions and competition, and even occasional violence have come to characterise Kenya's politics, and have occupied significant scholarly attention (Lonsdale 1994; Ndegwa 1997; Berman 1998; Posner 2005; Lynch 2006a, 2006b; Steeves 2006; Wamwere 2008; Wekesa 2010). This is particularly so since the post-election violence of 2007-2008.¹⁷ In this thesis, however, I am concerned with exploring a different but related division in Kenyan political culture, that is, the division between perceived indigenous (and autochthonous) ethnic groups, and ethnic strangers. While the divisions between recognised indigenous ethnic groups generate disadvantage and conflict, the division between indigenous and stranger ethnic groups constitutes outright marginalisation and generation of citizens minus.

¹⁵ This term is commonly used in Kenya to describe areas outside Nairobi. I use it instead of 'rural' because Nubian settlements outside Nairobi are all in metropolitan centres, albeit sometimes quite small ones like Eldama Ravine.

¹⁶ For a very detailed description of Nubian ethno-genesis, see de Smedt 2011, especially chapters 1 and 3.

¹⁷ The results of the Presidential election of December 2007 were disputed. After some considerable confusion in the public counting of ballots, Mwai Kibaki was sworn in as President in unusual circumstances, triggering widespread violence across the country which took on a strong ethnic character. To put it perhaps too simply, this ethnic dimension had its roots in historical rivalry between Kikuyu and Luo portions of the community, and the Luo community's perception that it was 'their turn' for a President, and that the Kikuyu Mwai Kibaki had stolen the Presidency from the Luo Raila Odinga. Land also played a critical role, as a considerable portion of the violence can be understood as vengeance for perceived ethnically biased land grabbing in the early post-colonial period, primarily by Kikuyus in the Rift Valley, the traditional homeland of the Kalenjin. The violence was at its worst in the Rift Valley, where land grievances are perhaps the most acute in Kenya, and in Kibera, Nairobi, the largest slum in Raila Odinga's Lang'ata constituency, where there was a high proportion of Luo tenants and Kikuyu landlords. For a more detailed and sophisticated analysis of the post-election violence see Chege 2008; Anderson 2010.

Ethnic strangers are the logical corollary of a dominant population thought about in terms of indigeneity and autochthony. African societies generally have a long history of accommodating strangers in various ways, many of which have been not only advantageous for host societies, but integral to their proper functioning. During the pre-colonial era, strangers in various forms were part and parcel of societies in which they lived, sometimes enjoying high levels of cultural, social and economic, if not political, integration that went beyond mere toleration (Shack 1979:9-10). Upon colonisation, however, Europeans gained the power to control the introduction and incorporation of strangers (not only themselves), disempowering local hosts of that role (Skinner 1979:282; Shack 1979:11-12). At decolonisation this all changed again. When African communities regained their power as hosts, the status of particularly colonially-introduced strangers became precarious (Peil 1971; Shack 1979:5-6; Skinner 1979:284).

As military middlemen during the colonial period, the Nubians fit into the category Mamdani (2001a) calls 'subject races' of the colonial period, today's ethnic strangers (see also Manby 2009b:37-95). Subject races were neither settler nor fully 'native', either non-indigenous or constructed as non-indigenous, and in positions of relative privilege and power compared to other Africans. As soldiers brought by the British to consolidate control over Kenyan territory, and as 'detrified natives', the Nubians occupied a peculiar position in colonial Kenya. Their loyalty and attachment to the British, and their ambiguous role in the struggle for independence are key factors in their ongoing exclusion from full citizenship in Kenya. Secondly, the Nubians are 'native-strangers,' in the same racial category as their hosts, precluded from the possibility of going 'home' available to European strangers, or from the buffer of economic strength enjoyed by Asian strangers (Skinner 1979:285; Berry 2001). They have been left to their own devices to find ways of securing political incorporation into the societies in which they had lived by now for generations. A more detailed narration of the historic role of the Nubian community, culminating in their contemporary ethnic stranger status can be found in chapter 1.

Whether or not a particular ethnic groups count as stranger or indigenous to Kenya is, in practice, an extremely important criterion for accessing full citizenship. This thesis ventures an alternative conception of indigeneity to that usually associated with the term in Africa. Indigenous communities have traditionally been understood as those who had a presence in an area pre-invasion or pre-colonisation, who maintain a distinct lifestyle and culture from the mainstream population, and who are marginalised by the state and society

(Hodgson 2002; Sylvain 2002; Igoe 2006). These kinds of indigenous groups, such as the Aboriginals in Australia, or First Peoples in Canada have sought a special status in their societies. I propose that this special status indigeneity is distinct from the operation of indigeneity in Kenya, where it is not a special status, but is rather the norm.

In Kenya, there is a widespread and very salient belief in government and the general political imagination that the nation is made up 42 indigenous tribes. Though there are no clear mechanisms or criteria for determining what constitutes indigeneity in this sense, the notion of ‘the 42 tribes’¹⁸ nevertheless renders indigeneity the benchmark for full inclusion in Kenyan society, and a characteristic of full citizens in the dominant (yet diverse) population. Chapter 3 of this thesis explores the origins of the 42 tribes in late colonial and early independence census enumeration, and evaluates the impact of this belief on the functioning and practices of government administration, drawing out the ways in which exclusion from this recognition regime limits the quality of citizenship for the Nubians, who historically have not been counted as one of these tribes. The chapter critically evaluates the Nubians’ emerging claim to be indigenous to Nairobi as a response to the inferiority and insecurity of their effective and even formal membership, and subsequent increased difficulties in exercising their rights.

Compared to indigeneity, autochthony is not usually thought of as a widespread discourse for determining or asserting belonging outside francophone Africa, but it is nevertheless salient in Kenya in a similar but even more concerning way than indigeneity.¹⁹ The term literally means to be ‘born of the soil’, and connotes a particularly strong and, importantly, unique connection to an area of land (Loraux 2000; Geschiere 2009). Autochthonous claims are often made as absolute claims, in keeping with the inherently ‘natural’ character of autochthony and its emphasis on purity of blood and soil, even if they are widely known to have little basis in historical fact. In Africa, the term is used increasingly to assert exclusive use, control and access to particular pieces of land (Jackson 2006; Leonhardt 2006; Marshall-Fratani 2006; Médard 2008; Lynch 2011d; Pelican 2009). Autochthony claims are less about the content of a community’s tradition, culture, history and self-identification, features typically associated with indigeneity, and more about their relative

¹⁸ Hereafter referred to without scare quotes.

¹⁹ Lonsdale (2008, endnote no.1) argues that the word ‘autochthony’ is not well suited to studies of Kenya as it is not widely used in English, and certainly not in Kenya. Though this is true, I use the word for its conceptual clarity, which is sufficiently useful here so as to outweigh the lack of resonance the particular term currently has in Kenya.

rights over a piece of territory, in particular the right to exclude (Geschiere 2009). This makes it an ambiguous notion, absolute in theory, yet inherently relational in its application. Not only is it a conceptually unstable term but, in practice, autochthony claims with their emphasis on exclusion also have a propensity to generate political instability.

In Kenya, autochthonous principles (though not usually explicit claims using the term ‘autochthony’) operate through the largely informal but widely accepted notion that each of the recognised tribes of Kenya have a ‘homeland’ (Médard 1996, 2008). These *shags*, as they are colloquially referred to, are not only a right possessed and exercised by full citizens. They are also crucial to the exercise of material rights such as livelihoods, property rights, and physical security, as well as immaterial rights such as the practice of culture, and intergenerational and ontological security. Furthermore, they play a key role in conferring the recognition and respect necessary to build confidence and actively participate in public life on a par with other citizens. More than any other factor, a *shags* acts as a guarantee of effective and formal membership. Chapter 4 of this thesis explores the autochthonous nature of homelands in Kenya, focussing on notions of first-occupation and exclusive access. The chapter critically evaluates the Nubians’ claim for communal land title for Kibera, drawing out the autochthonous meanings the Nubians invest in land, and the dangers of their aspiration for exclusive control over it, while simultaneously conveying an understanding of their claim as being a rational response to the prevailing political culture associated with land in Kenya.

The analysis of the ways these three mechanisms – discrimination with respect to ID cards, failure to extend recognition with respect to ethnic identity, and non-recognition of Nubian land claims – marginalise the Nubians constitutes the empirical analysis of the substance of full citizenship in Kenya. This is the first part of a citizenship analysis, and is grouped into Section II. The concern in this section is to establish the deficit in the Nubians’ citizenship – the shortfall between the quality of their citizenship and that of full Kenyan citizens.

Section III (chapters 6 and 7) moves to a tentative, second level of analysis by establishing a normative critique of certain aspects of full citizenship in Kenya that goes beyond a critique of the marginalization of the Nubians from the prevailing regimes of rights, powers and recognition, to a critique of those regimes themselves. If theoretical accounts of the politics of recognition are centrally concerned with the conditions under which

recognition and redistribution can enhance equal citizenship and those under which they can impair equal citizenship, then one of the ultimate tasks for this thesis is to evaluate the role of (indigenous, autochthonous) ethnic recognition as a precondition for full citizenship in Kenya. Chapter 6 begins this task by engaging with the literature on the subject. Eyoh (1999) points out that ethnicity is in equal parts derided as backward and inappropriate for the political realm, and lauded as an inevitable and central part of identity (cf. Berman et al 2004a). Ethnicity has traditionally been rejected as a suitable criterion for citizenship by both the liberal and the civic-republican traditions. Seen as an ascriptive rather than civic identity, and one which has potential to undermine national cohesion, few democratic theorists are willing to afford it a place in politics. In Kenya the role of ethnicity in politics has been criticised as the source of salient moral inter-personal obligations that compete with obligations towards fellow nationals, reducing the national arena to a realm of inter-ethnic competition. Insofar as ethnicity is an ascriptive precondition for membership, and a competing source of allegiances and obligations, then national citizenship in Kenya can be understood as defined by and subordinate to ethnicity.

In trying to come to terms with the options that the Nubians have available for the achievement of full citizenship and an emergence from marginalisation, this thesis is concerned with understanding the compulsions upon the Nubians to exploit the pre-existing 'places of recognition' that privilege indigenous and autochthonous ethnicity. It is in this regard that the work of Tania Murray Li informs my analysis of the Nubians' claims to recognition and redistribution. Li's (2000, 2001) anthropological research, like that of this thesis, is primarily concerned to understand the ways in which political and institutional conditions impact upon the claims people make for recognition, and the ways in which they make them. Therefore, Li emphasises the importance of prevailing recognition regimes in determining the options that misrecognised or unrecognised groups have available for emerging from positions of marginalisation. Following Li, in this thesis I continually seek to uncover these regimes, the 'spaces for recognition' that they create, and the ways in which the Nubians feel compelled to use these spaces when making their claims for recognition, redistribution and full citizenship.

The remainder of chapter 6 therefore turns to Fraser's (1997) categorisation of affirmative and transformative responses to misrecognition and maldistribution as an analytical tool to understand the Nubians' responses to their marginalisation. The chapter draws together thematic strands from fieldwork and interviews to interpret them in light of Fraser's

categories. In many ways the Nubians reinforce the available ‘spaces for recognition’ (in Li’s terms), affirming (in Fraser’s terms) the prevailing citizenship regime, based as it is on ethnicity, indigeneity and autochthony, and seek inclusion in this regime. However, there is also evidence to suggest that in some ways some Nubians recognise the political problems posed by ethnicity, indigeneity and autochthony as criteria for access to full citizenship, and therefore seek to transform these recognition and distribution regimes. At times some Nubians seek to radically deconstruct ethnicity (as well as indigeneity and autochthony) as politically salient identities. In exploring these two polarised approaches to the Kenyan citizenship regime, chapter 6 concludes by suggesting that neither is particularly helpful in offering a politically feasible and normatively desirable way forward.

Some of the more interesting studies of the role of ethnicity in national politics, rather than endorse the status quo or seek its radical deconstruction, rather recognise the intractability of ethnicity in Kenyan politics, as well as the possibility that there may be some normative reasons to retain a place for ethnicity in public affairs. These studies therefore focus on how to reconcile ethnicity, in theory and practice, with state-based citizenship (Ekeh 1975; Lonsdale 1994; Ndegwa 1997; Mamdani 2001a; Berman et al 2004b; Kivuva 2004; Lonsdale 2004). Chapter 7 attempts to respond to the challenge of the practical infeasibility of eradicating ethnicity, and the political and normative demand that we attempt to better understand the reasons behind the sustained role of ethnicity in public life. After exploring various sources of value in ethnicity, including ontological security and the provision of a forum for fostering public, moral inter-personal relations, the chapter suggests that there is some middle ground between affirmative and radically transformative approaches to addressing inequalities based on ethnicity. Again making tentative interpretations of themes that emerged in fieldwork and interviews, I develop an argument for a moderate (as opposed to radical) transformation of ethnicity. The chapter first clears the ground by arguing for the disassociation of indigeneity and autochthony from citizenship, on the basis that these identities are inherently hierarchical and exclusionary. The chapter then goes on to develop Werbner’s (2002a) notion of moral inter-ethnicity to explore the possibility of the extension of moral norms regarding inter-personal relations that are negotiated *within* ethnic groups to relations between people of different ethnicities.

These final chapters engage with terrain that is particularly difficult for empirical and normative reasons. Understanding and then addressing the intricacies of ethnicity as it relates to citizenship are not tasks that can be accomplished by one study alone, and this thesis is merely one contribution. Nevertheless, it is hoped that whatever understanding is gained through this study is of value in coming to terms with the realities of and possibilities for citizenship and ethnicity in Kenya.

Methodology

Social science constitutes what Anthony Giddens calls a double hermeneutic. The object of study is itself hermeneutical, that is, social science aims to interpret the meanings that are inherent in social practices. At the same time, social science is in itself a hermeneutical practice, amenable to further interpretation (Giddens 1984). That is to say, social science is the interpretation of things that are in themselves interpretations. Social science is not best deployed as the investigation of causal mechanisms and assertion of predictive models, but rather it is best suited to interpreting meaning (George & Bennett 2005:18-19; Stake 2005:449; Gerring 2007:3).

As such, the responsibility of the researcher as both researcher and writer is a serious one. With the capacity for interpretation comes considerable power and authority to produce knowledge through interpretation (Davies 2008:5-6). I undertook this research with a full cognisance of the moral complexity and responsibility associated with the role of the researcher, and a resulting commitment to reflexivity in my research, analysis and writing (Davies 2008). As a young, white, Australian woman working in a politically, socially and economically vulnerable community, it was imperative that I build into my methodology, analysis and writing a constant process of reflection not just on what the data was telling me, but also on my role in the community during the data collection, and the impact and consequences of my analysis, particularly when making it public. Through regularly checking, in informal ways, with key informants, keeping a diary and regular discussions with my supervisors I maintained a constant awareness of the points of difference between myself and my research subjects (including socio-economic status, religion and in many cases different approaches to gender roles) and was continually contemplative of the ways in which these differences impacted upon my research and writing. Nevertheless, as James Clifford (1986:7) puts it, “acute political and epistemological self-consciousness need not lead to ethnographic self-absorption, or to the conclusion that it is impossible to know

anything certain about other people.” It is the hope of this thesis that, despite the many layers of interpretation, and the many points of difference between researcher and research subjects, the analysis here is helpful in developing an understanding of a particular variety of political subordination.

The challenge for this research was to choose methods that would best enable a useful and insightful interpretation of the political life of the Nubians, an interpretation that would add something of value to the way their situation is understood. To be more specific, I required a methodology that would allow me to ascertain and interpret the context, but that allowed me to also gain an understanding of people’s emotions and attitudes towards both their citizenship status, and their communities (ethnic and national). I also sought a method that would provide insight into the practices, activities, functionings, routines, rituals, customs, norms and habits which constitute their quotidian experience of citizenship (Gubrium & Holstein 1997; Stake 2005:452; Isin & Nielsen 2008:17). I was interested in both the official and formal aspects of citizenship related to, for example, documentation and national citizenship and the unofficial and informal related to, for example, local expressions and forms of political participation.

In keeping with the understanding of social science as interpretive, I adopted a qualitative methodology for this research. Denzin and Lincoln (2005:3) define qualitative research as follows:

Qualitative research is a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that make the world visible. These practices transform the world. They turn the world into a series of representations, including field notes, interviews, conversations, photographs, recordings, and memos to the self. At this level, qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them.

This definition points to the reasons why I chose this methodology. A qualitative methodology is better than a quantitative one at explicitly and consistently taking account of the situatedness of research and theorising, of the ways in which both are influenced by and influence the world. Qualitative research, by maintaining a focus on process and the qualities of social life, allows close scrutiny of and an appreciation for subjectivity (of the researcher and the participants) and a tolerance for complexity, characteristics essential to ethical and effective research and theory (Gubrium & Holstein 1997). Certainly

quantitative data can add to our understanding by providing us with background facts and information, and I use quantitative data in obvious places where it is relevant. However, quantitative data cannot adequately capture the core issues at stake in this research, issues associated with political life and recognition.

Specifically, over seven months between March and October 2009, and for another month in March-April 2011, I conducted ethnographic observation, occasional participant observation, and in-depth interviews. While living in Nairobi, I spent most days in Kibera, attending most of the major 'political' community events that occurred while I was there, such as community meetings. I also became involved in the social life of the community, attending weddings and other social functions; and 'hung out' with youth groups, families and individuals. During this time I conducted 75 interviews with over 100 people (some were 'group interviews' by default, when multiple people showed up to pre-arranged interviews) with mostly Nubians, but also some non-Nubians who were raised or live in Kibera, and a number of Non-Governmental Organisation (NGO) staff who have worked with the Nubians, including staff from the OSIEA, and the Centre for Minority Rights and Development (CEMIRIDE). I also travelled for a short time to other Nubian settlements in Kenya in order to gain some perspective on the relative challenges facing urban and rural Nubians. This brief trip was illuminating and I draw on it at times during the thesis. However, it was insufficient to be able to comment in any depth on the situation of rural Nubians, and so this thesis focuses on the Nubians in Kibera. Approximately 50% of the Kenyan Nubian population live in Nairobi, and a large portion of them in Kibera (OSJI 2011c). Further research with rural Nubians would be a valuable way to extend the work of this thesis. A list of interviewees can be found in appendix 1. The interview numbers in the appendix are used as references for interview material cited throughout the thesis, and names in inverted commas are pseudonyms.

The choice of methodology was very successful insofar as the extended period of time (relative to the discipline of politics) spent in Nairobi, and in Kibera with various Nubian families, enabled me to build strong relationships of mutual respect and trust. As a small community all the organised groups, and most of the remaining community, became aware after a few months of whom I was and what I was doing, and this was invaluable in terms of establishing an environment conducive to good research. By the time I started interviewing, I had developed a sufficient understanding of the citizenship challenges facing the community, as well as their concerns about their citizenship and land

difficulties, so I was able to develop a useful interview schedule (see appendix 1). I also had sufficiently strong relationships with most of the interview participants and could therefore make the most of the semi-structured interview method, being sensitive to the different responses and response styles of various participants.

As I was not living in Kibera, and developed only intermediate Kiswahili language skills during my time in Nairobi, this cannot be considered anthropological research and I do not intend it to be. Rather, this methodology was *influenced* by anthropology's commitment to 'thick description', to developing the best possible (but never complete) understanding of the community of study, but situated in the discipline of politics. I do not claim to present an ethnography of the Nubian community, nor to capture every aspect of the life of the community. Rather, my concern is to convey an understanding of their political life with reference to the mechanisms of marginalisation, with an emphasis on their experience of citizenship as individuals and as a community, and their interactions with the state and other non-Nubian citizens.

Upon return to Australia, all interviews were transcribed, and interviews, field notes and other miscellaneous materials collected in the field (for example, submissions to various government reviews, press clippings and so on) were loaded into NVivo qualitative software and iteratively coded and re-coded to organise the data around both anticipated and unanticipated themes. Having already engaged in theoretical inquiry of themes I anticipated would be relevant (most notably citizenship theories and statelessness), the themes that did emerge in the data pushed my theoretical inquiry into new directions, focussing more on recognition theory and ethnicity, and also leading me into the very unexpected areas of indigeneity and autochthony. The result is an attempt to utilise these theories as I believe they were intended – as tools to help us understand human realities – but also to adapt them, to make them “groan and protest” until they better explain the empirical subject of the thesis (Foucault 1980:53-54). The ultimate goal of this theoretical pursuit is to generate an understanding that can contribute to positive change in the world. As Taylor (1985:92) puts it, “part of what is involved in having a better theory is being able more effectively to cope with the world. We are able to intervene successfully to effect our purposes in a way that we were not before”

Further methodological information, including interview schedules, a summary of interview data, further details about observation, and a discussion of ethics in my research can be found in appendix 1

Section I, constituted by chapter 1, explores the history of the Nubians in Kenya. Given that the Nubians' contemporary stranger status is a central underlying cause of many of their citizenship problems, this chapter provides important background necessary to understand the ambiguous incorporation of the Nubians into Kenyan society. Section II, consisting of chapters 2, 3, 4 and 5, present the Nubians' citizenship problems in detail, focusing on the discrimination they face in relation to accessing ID cards, the deprivation of collective recognition as a tribe of Kenya, and the deprivation of recognition of Kibera as their homeland. The final chapter of this section draws these chapters together to clearly articulate what it means to be citizens minus. Section III shifts to a different level of analysis. Chapters 6 and 7 explore the role of ethnicity in Kenyan citizenship, articulating the ways in which it is problematic, and tentatively exploring ways of mitigating these problems in the future. The problems regarding the marginalisation the Nubians experience as a stranger minority in Kenya are serious. It is hoped the analysis that follows will provide some insight into these problems, and their potential remedies.

~Section I~

past

The Nubians of Kenya: From Subject Race to Ethnic Strangers

The Nubians' story is more than anything else the story of a search for a home, and like all human stories, it is one of contradictions. It is a story of displacement and uneasy settlement, of shifting and divided loyalties, and of sometimes conflicting strategies aimed at inclusion. Perhaps the only consistency in the Nubians' story is their status as in-between or outside the mainstream categories that dictate belonging in the communities in which they found themselves. This chapter explores the origins of the Nubians as an ethnic group in the slave armies of nineteenth century Egypt and Sudan, and their subsequent incorporation into the colonial East African armed forces. It goes on to explore their role and position in colonial, independence and post-colonial Kenya. The way in which today's Nubians are marginalised and rendered citizens minus by prevailing regimes of rights, powers, recognition and participation can only be understood with a full appreciation of this story. This chapter extends Mamdani's category of the 'subject race', above the native but below the settler, to capture the nature and form of the Nubians' exclusion from the Kenyan political community, culminating in an argument that the Nubians are best considered 'ethnic strangers' in Kenya. The various and often paradoxical ways in which the Nubians have successfully or unsuccessfully negotiated their status – as *askaris*²⁰, detribalised natives (a subject race), and ultimately ethnic strangers – are introduced here and explored in more depth throughout the thesis.

Subject race and ethnic strangers

The distinction between settler and 'native', citizen and subject, is often talked about as the paradigmatic distinction of colonial African history. White settlers were governed by civil law as civic citizens, natives were governed by customary authorities, differentiated horizontally on the basis of ethnicity. Natives were ethnic citizens, but in the civic sphere

²⁰ *Askari* is Swahili for 'soldier', or sometimes 'guard' or 'police officer'.

only subjects (Mamdani 1996). However, this is a binary order in which the Nubians had no place. In his study of the Tutsi in Rwanda, Mamdani felt himself compelled to come up with a new category to capture groups of people who were not white colonisers or settlers, but were neither straight forward ‘natives’, subjugated where they were found. He calls them subject races.

Subject races were those who were, at least in colonial law, hierarchically inferior to white settlers, but superior to natives. They were colonised, not coloniser. In this category, Mamdani (2001a:656-657) includes Indians of East, Central and Southern Africa; Arabs of Zanzibar; Tutsi of Rwanda and Burundi; and the ‘Coloureds’ of Southern Africa. Critically, they were either non-indigenous immigrants, or were constructed as non-indigenous by the colonial powers through racial theories of superiority (the ‘Hamitic’ Tutsis). Though they were (second-class) *citizens* in the sense that they were governed by civil rather than customary law, they were still oppressed peoples, the difference being in the nature of that oppression. While natives in reserves were subject to despotic customary authorities, subject races were homeless, rootless and, though governed by civil laws, lacking in both civil *and* ethnic rights, notably to land (Mamdani 1998:5-6). In the postcolonial era, with their legal superiority over other Africans lost, they became mere ethnic strangers, with a victim consciousness like that of the native, but without the newfound civil rights and sense of rightful place in the postcolony (Mamdani 1998:5).

Nubians can be considered something like a subject race turned ethnic stranger.²¹ A proper extension of the category of subject race to the Nubians requires some further explanation. Mamdani (2001a:657) explains that, “subject races usually performed a middleman function, in either the state or the market, and their position was marked by petty privilege economically and preferential treatment legally.” In the case of the Nubians, the nature of their middle-man involvement was military - they were the force behind the British colonisation of East Africa - and this particularly offensive role exacerbated the contradictions of their status, especially around independence. As such they are a more unique kind of stranger than the economic migrants that have occupied more attention in studies of the incorporation of strangers in African societies (Shack & Skinner 1979). There was some degree of preferential legal and economic treatment, but they were not subject to civil law exclusively – first they were subject to military regulation, and only

²¹ de Smedt (2011:12-14) argues that the Nubians were ‘strangers’ during their migration and the colonial period, but says little about their stranger status in the postcolonial period.

came under civil rule in 1928. Even then, they were categorised as ‘detrribalised natives’, subject to *ad hoc* locality specific native by-laws. In this sense, the use of the term ‘subject race’ to describe the Nubians is an important conceptual and historical extension of this category.

Like other subject races, upon independence, the Nubians were forced to negotiate a new social and political order in which not only was their privilege lost, but they were a minority in a community they had helped pacify, and had considered themselves superior to. They were ethnic strangers. In post-colonial societies, equal citizenship became the marker of integration and meaningful inclusion, demanding strangers take on *political* and not only social, cultural and economic identities that would facilitate harmonious relations with the ‘host’ political community (Shack 1979:9-15; Kraxberger 2005). Furthermore, being native-strangers, rather than racially distinct, put the Nubians in a particularly difficult category (Berry 2001). While Europeans could recast themselves as mere expatriates, and the economic security of Asians, the other significant strangers in Kenya, acted as something of a buffer from the host community, African strangers were in the peculiar position of being different enough to be strangers, but similar enough to their hosts to preclude any of the other strategies by which other, racially different kinds of strangers got by (cf. Skinner 1979b:285).²² An understanding of the background of the Nubians in Kenya is therefore essential for an understanding of their contemporary situation.

Slave soldiers to military middlemen

The very term ‘Nubian’ has generated a great deal of misunderstanding over the origins of the community, being often uncritically associated simply with ‘the Nuba mountains’, or with the ancient Nubian Kingdoms dating around 2000 BC to 1500 AD, the area which is now known as Nubia in Northern Sudan and Southern Egypt. In fact the terms ‘Nubi’ and ‘Sudanese’ have been used at different times for different purposes. As Johnson (2009:113) explains, the terms, “denoted at different times geographical origin, racial stratification, ethnic identity, and social status. As such they are shifting categories, into

²² These other stranger groups often clearly consider Africa their home, and as the expulsion of Asians from Uganda under Idi Amin demonstrated, these stranger groups are also vulnerable and face considerable challenges securing full citizenship in their African homes. The point I am trying to make here, and which will become clear through the thesis, is that the racial sameness of native-strangers generates a qualitative difference in the experiences of these stranger groups related to ambiguous opportunities to position themselves as indigenous.

and out of which individuals and whole groups of people often moved” (see also Leopold 2006:195-196).²³ The terms ‘Nubi’ or ‘Nubian’ in particular often referred to slaves, as Nubia was one of the major sources of slaves for the region during the centuries prior to European imperialism (Johnson 1989:73). In particular, it is in the slave armies of nineteenth century North Africa in which today’s Kenyan Nubians have their origins (Johnson 1988, 1989, see also Figure 1.1).²⁴

The ancestors of today’s East African Nubians came not only from Nubia, but also from various tribes throughout Sudan. The migration and expansion of slave armies southward entailed complex and ambiguous forms of coercion and compulsion of many community communities encountered throughout Sudan.²⁵ The category of ‘slave’ was so complex, in fact, that contemporary Nubians strongly resist the identification of their ancestors as slaves. Johnson (1992:163) explains that in slave armies, there was the ‘slave’ and the ‘not-so-slave’; the ‘free’ and the ‘not-so-free’, that the slave armies included “immigrant soldiers, and merchants (both free and slave), indigenous cultivators and labourers, free men bound by indebtedness, slaves elevated to positions of power and authority, [and] children and women incorporated into families against their will.” As such, the migration of those communities was not so much forced, as ‘guided’ (Hansen 1991:561).

Between Nubia and today’s Southern Sudan, the soldiers lived in *zara’ib* (singular - *zariba*), or garrisons, which were not only military, but also social and economic communities of great complexity (Johnson 1992). It was in these *zara’ib* that a Nubian community first began to coalesce as such, eclipsing pre-existing ethnic identities (Parsons 1999a:226; Ramadhan 2004). Soldiers took wives, concubines, domestic servants and gun-boys, often as slaves, from the communities surrounding the garrisons, who were also required to provide food and labour (Johnson 2000; de Smedt 2011:38). Civilians were therefore by far the biggest and most stable contingent of the *zara’ib* (Johnson 1989:78).

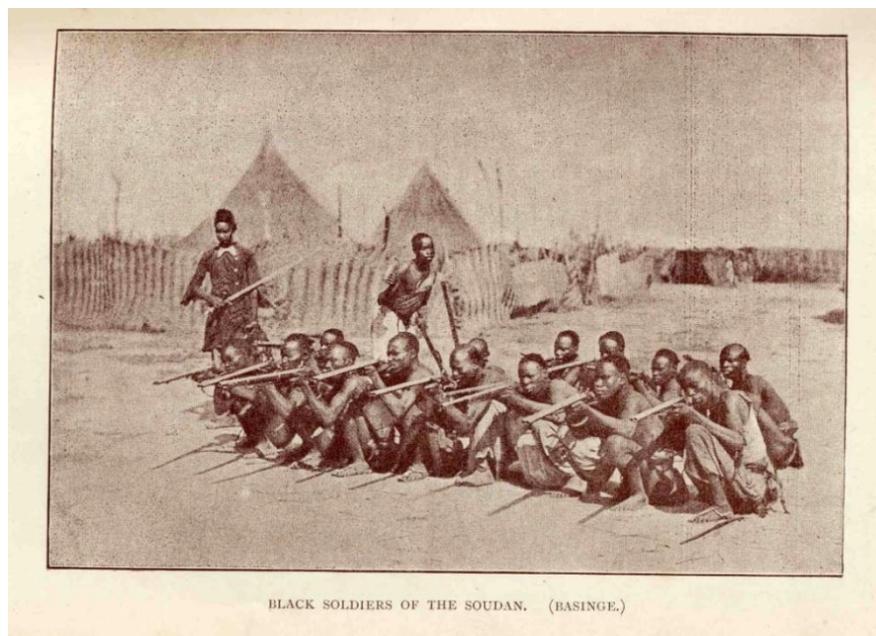
²³ I use the terms interchangeably in this chapter, up until the discussion of the post-independence era, in which I refer to the community exclusively as ‘Nubian’. ‘Nubian’ is the English version of ‘Nubi’. As this thesis is written in English, I use the term ‘Nubian’, but note that ‘Nubi’ is the Nubian language word that Nubians use to describe themselves.

²⁴ Many slaves in this era, particularly from Southern Sudan, were used in slave armies, a practice common from pre-Islamic Arabia to the early colonial period and crucial to Egypt’s imperial expansion, as well as for private ivory and slave traders (Johnson 1988:143).

²⁵ This included members of the Nuba, Baqara, Fur and Danaqla and Ja’aliyiin from Northern Sudan, as well as Dinka, Madi, Boru, Shefalu, Niam-Niam, Bongo, Makaraka, Monbuttu, or Muru, Maru Maru, Bari, Fojulu, Baka, Abukaya (or Avukaya), Mundu, Alur, Lendu, Lughbara, Kakwa, Kuku, Shilluk, Azande, Nuer and Acholi tribes (Mounteney-Jephson 1890:51-52; Casati 1891:62; Lugard 1893:205; Wild 1954:2; Wanji 1971:20; Soghayroun 1981:29; Nasseem & Marjan 1992:197-198; Ramadhan 2004; Ng’ang’a 2006:431-432; de Smedt 2011:35).

As the higher ranks of soldiers were populated with slaves captured in Muslim and Arabic speaking areas of Egypt and Northern Sudan, the command of these officers over the Southern Sudanese in the context of their living together in *zara'ib* accelerated their Arabisation (at least in terms of language) and Islamisation (Wanji 1971:46-50; Nasseem & Marjan 1992:199). The Nubians of today continue to speak Kinubi in Kenya and Uganda, however it is Islam that remains the most fundamental aspect of Nubian identity across East Africa (Wanji 1971; Soghayroun 1981; Kokole 1985; Nasseem & Marjan 1992; Kokole 1995; Parsons 1999a:226).²⁶

Figure 1.1: 'Black Soldiers of the Soudan',²⁷



It is one particular group of soldiers and their dependents that is of significance for today's Kenyan Nubians: that which was stationed in Equatoria, a province of the Sudan cut off from the Egyptian administration in 1883 during the Mahdist revolt.²⁸ When the European governor of Equatoria, Emin Pasha, was evacuated by Henry Stanley in 1888, the

²⁶ There is some debate about the exact nature of Kinubi language but most believe it to be a pidgin or a creole Arabic (Atieno-Odhiambo 1977:8; Heine 1982; Kokole 1985; Owens 1985; Nasseem & Marjan 1992:199). Although the Nubians have been Muslim since this period, in Kenya it was only in the 1970s, when more Nubians began to be formally educated and read the Quran, that Islam was followed strictly. This explains the prevalence of gin distilling in the colonial era, as discussed further below (de Smedt 2011:185).

²⁷ Image from Casati 1891:62-63, located with the kind assistance of the Monash University Matheson Library Rare Books Collection.

²⁸ de Smedt (2011:53-60) explains there were also two other 'roads to Kibera'. Sudanese soldiers directly recruited in Egypt (usually Cairo or Alexandria) were also deployed by the British in their territory in Somalia, and by the Germans in their territory in East Africa (now Tanzania). Some of these soldiers and some of their dependents found their way to Kibera and other Nubian settlements in Kenya after they were demobilised, but these seem to be a small proportion of the Nubian community in Kibera.

Sudanese soldiers remained behind, living off the land until they were found in 1890, by Captain Frederick Lugard of the IBEAC.²⁹ These troops became the core of the IBEAC troops, and later colonial East Africa's military, and were therefore the most crucial of all African groups to Britain's early grip in the region. Lugard (1940) himself wrote that, "...it was largely owing to assistance given by the Nubian soldiers of that date that we were able to retain Uganda at a critical moment in its history." Figures differ, but it is likely that there were between eight and ten thousand Sudanese all together at the time of their initial recruitment into the IBEAC, approximately ten per cent of whom were actually soldiers, the rest dependents (Lugard 1893:203-205; Wild 1954:2; Moyses-Bartlett 1956:51; Furley 1959:316; Johnson 2000:1; de Smedt 2011:44). Throughout the process of colonisation, the Sudanese soldiers continued to constitute the backbone of the colonial military force. In Kenya this culminated in their dominance of the East African contingent – the 3rd Battalion of the KAR (Lugard 1893; Lloyd-Jones 1926; Moyses-Bartlett 1956; Furley 1959:312-313; Wanji 1971:50-51; Parsons 1997:88; Leopold 2009; de Smedt 2011:40-43).³⁰

The activities the Sudanese soldiers were involved in during this period of commercial (under the IBEAC) and then Protectorate rule make clear the Nubians' middleman role in Kenya (Mamdani 2001a:657).³¹ The contemporary stranger status of the Nubians must be understood in this context. The Sudanese soldiers were introduced and their role determined by Europeans, themselves strangers, precluding to a large degree the possibility of hospitable incorporation into local African communities and upsetting indigenous power structures (Shack 1979:15; Skinner 1979:282). The British began to consider the Sudanese a martial race, not only deploying their military force against local populations, but also elevating the Sudanese soldiers and their families above other

²⁹ For further details of factions within the community during this period, see Mounteney-Jephson 1890:51-52; Soghayroun 1981:26-27; Nasseem & Marjan 1992:204-205; Johnson 2009:114; de Smedt 2011:40-43. Notably, the descendents of one faction of this community form the core of the Nubian community of contemporary West Nile in Uganda (Leopold 2006).

³⁰ Their importance to the East African imperial project was no more evident than in the Uganda mutiny of 1897, when the Sudanese of the Uganda Rifles had the power to undermine the entire East African imperial exercise. For a detailed description of the mutiny see Lloyd-Jones 1926:48 – 67; Wild 1954 and Moyses-Bartlett 1956:69-86, and for the most comprehensive account of the Sudanese mutiny, and the wider Muslim uprising in Uganda see Soghayroun 1981.

³¹ The Sudanese soldiers fought for the British in both World Wars, but their primary function was to protect the railway and put down any local uprisings. In particular they were involved in serious offensives against the Kikuyu and the Nandi, and relatively minor expeditions against the Embu, Meru, Tharaka, Mutejwa, Sotik, Kisii, Turkana and Marakwet. They also played a role in protecting the Samburu against raids from the Turkana and the Abyssinians. As well as acting as a military force, the KAR were able to collect intelligence on the other tribes, their way of life, and their land (Lloyd-Jones 1926:226; Moyses-Bartlett 1956:195-227; Macphee 1968:57-8, 92, Miller & Yeager 1994:15-17, Parsons 1997:104; de Smedt 2011:49-52).

Africans (Lloyd-Jones 1926:229; Killingray 1999; Parsons 1999a, 1999b; Leopold 2006:183).³² Particularly in the early KAR, groups such as Nubians, but also Swahilis, and Somalis, constituted the bulk of the force because they were believed to be best suited to military service. Muslim foreigners were often recruited into the military for this purpose because, "...they had no emotional ties to the East African population" (Parsons 1999a:61). The military actively promoted the isolation and therefore 'breeding' of this race. As Parsons (1999b:174) explains, "[t]he regiment's family policies created a distinct culture which isolated African soldiers, reproduced successive generations of trustworthy *askaris*, and shaped and codified martial stereotypes..." One older Nubian (Interview 55a) explained to me that, "[a]s a boy, during PE, we were paraded around Kibera, military style. Our grandparents would sit outside and enjoy watching us pass, they were producing more soldiers!" The thoroughly racist nature of these beliefs means that they are now widely discredited, however their influence on shaping the early and persistent identity of the Nubian community cannot be underestimated. Although, "[i]n reality, the military orientation of these southern Sudanese communities was a vestige of military slavery and not some innate cultural characteristic," (Parsons 1999a:62) their treatment by the British as a superior homogenous race served to promote a self-consciousness, the forming of external group boundaries, and the internalisation of beliefs in their superiority to other Africans (Wanji 1971:23; de Smedt 2011:40).

This contributed to a long-lasting and deep ambivalence in the relationship between the Sudanese and surrounding communities. On the one hand, there was this chauvinism in relation to local populations. Even in the early days in Uganda the soldiers demonstrated this by wreaking havoc on the local communities, taking wives, slaves and resources at will, as they had done during their period of isolation (Lugard 1893:236,264; Lloyd-Jones 1926:37-41; Furley 1959; Wanji 1971:58-63).³³ Later this attitude extended to other 'outsiders', called *labi*, a derogatory Kinubi term meaning 'slave' or 'uncultured person', and with whom social interaction was largely avoided (Wanji 1971:52; de Smedt

³² Through their military careers, even from the slave era, the Nubians consolidated their reputation for military prowess, strength, bravery and loyalty. There are numerous testaments to this throughout the military history of the Sudanese soldiers (Casati 1891:62; Lugard 1893:219; Edwards 1936; Moyses-Bartlett 1956:86).

³³ This was exacerbated by their conditions: given very little pay in theory, and next to none in practice, and left to their own devices in order to survive in a land they could not consider their home. In fact part of their appeal to Lugard was that they were significantly cheaper than other available military labour such as Indians, Zanzibaris, Swahilis or Somalis (Lugard 1893:134, 233; Wild 1954:16; Furley 1959:314).

2011:78).³⁴ However, though there was a degree of contempt for the communities the soldiers pacified in their time in East Africa, there was also a trend of intermarriage with local communities, and assimilation of outsiders, including in the early days not only wives but also concubines, ‘house girls’ and ‘gun boys’ recruited or captured throughout their migration (de Smedt 2011:59). As long as a person was willing to become a Muslim, then they would be welcomed into the Nubian community and could claim a Nubian identity, and access the privileges and superior status of the soldiers (Atieno-Odhiambo 1977:8; Soghyaroun 1981; Leopold 2006; Johnson 2009:116-117; de Smedt 2011:ch.3). This was more common in Uganda, where the Sudanese soldiers went on to become the much larger and better accepted Nubian community of modern Uganda, but it was also true of the Kenyan community.³⁵ Though intermarriage is sometimes remembered and relayed today as an example of harmonious and positive inter-ethnic relations (Interviews 14, 27, 30, 35, 37a, 40, 41b), it is notable that outsiders were incorporated wholly on the terms of the Nubians, and the reverse rarely if ever occurred. It is also notable that, until recently, the Nubians publicly maintained a myth of endogamy, further emphasising the often insular nature of the group (de Smedt 2011:131-135). The problematic early incorporation of the Sudanese *askaris* and their families into East Africa was to have long lasting consequences for the community, who for more than a century after this initial migration sustained, though often in far less voluntary ways, this uneasy isolation from the communities that surround them.

Kibra: The first stable home?³⁶

The issue of settlement has consistently illuminated, more than any other factor, the anomalous status of the Nubians. After some time, the Protectorate Government needed a place to settle the Sudanese soldiers, who were reaching retirement age or were sick and

³⁴ This is not a term I heard frequently during my research, but it is likely that it would not have been used around me, as an outsider and someone on whom people often tried to make a good impression of the Nubian community.

³⁵ The Nubians in Uganda have not had the same problems with ID cards, collective recognition or landlessness as the Nubians in Kenya, and are in fact recognised as a tribe of Uganda (Wanji 1971:6). Like Kenya’s Nubian community, they “resent the use of terms such as “Sudanese”” (Wanji 1971:12) and identify strongly with their new home. Nevertheless, their association with Idi Amin caused them to be persecuted after Amin’s downfall, particularly in the West Nile. The exact nature of Amin’s relationship to Uganda Nubians remains vague, but it seems they benefitted economically and from military employment and promotion during his time (Wanji 1971; Kokole 1995; Hansen 1991; Leopold 2006). A comparison of the Kenyan and Ugandan Nubian cases would be very illuminating in terms of understanding the marginalisation of Kenya’s Nubians.

³⁶ For very comprehensive histories of Kibera, see Parsons 1997; Osborn 2006; de Smedt 2011:ch.2. I am heavily indebted to these works for much of what follows.

injured, and their many dependents. Unlike the locally recruited soldiers, who were subject to ‘retribalisation’ upon retirement the Sudanese soldiers no longer had anywhere they thought of as home to return to (Parsons 1999a:226). With land being of such paramount importance to African livelihoods and identities, and the great majority of the Nubian community being dependents rather than *askaris*, their plea for some land to settle on was both urgent and important.

By 1912 it was decided that the soldiers and their dependents would be allowed to settle at Kibra, a forested area of 4197.9 acres on the edge of Nairobi.³⁷ Dependents of *askaris* had informally settled there since 1904, each clan tending to congregate in a particular village.³⁸ It was a suitable place because of its proximity to the KAR barracks and its use as a military training ground (Parsons 1997:90). The area was surveyed in 1917 and gazetted as a military reserve in 1918, supported by the Protectorate Government’s thinking that the ex-soldiers needed somewhere to live, that families were a good moral influence on the soldiers, and that the descendants of the original soldiers could be called upon as reserves in the event of any future need, and particularly for World War I (Kenya Land Commission 1934:1153; Parsons 1997:90, 1999a, 1999b:69). Ex-*askaris* of more than 12 years’ service, and their dependents, were given permission to live on a plot in the area, graze a limited amount of cattle, and grow food, as long as they had a *shamba*³⁹ pass issued by the military. 291 such passes were issued, though many families settled without one (Parsons 1997:90; de Smedt 2011:65).

The soldiers and their descendants maintained their ambivalent attitude towards other Africans, and a sort of voluntary isolation in terms of religion, language, and as we shall

³⁷ The 4197.9 acres was bounded to the north by the present Ngong road, Langata Road to the South, King George VI Hospital (now Kenyatta National Hospital) to the East and Jamhuri Park (former Royal Agricultural Society of Kenya grounds) to the West (Ramadhan 2004). The area was originally inhabited by the Maasai who handed it over to the British in the 1904 Maasai Agreements (Carter 1933: Appendix VIII The Masai Agreements). This aspect of the land issue is discussed in more depth in chapter 4. Beyond this initial discussion, I refer to the area as Kibera, in-keeping with the more commonly used term in contemporary Kenya.

³⁸ These were originally named Makina (Bari, Bakah, Kuku and Mundu clans), Lomle (Nuba, Fur, Shilluk and Dinka clan), Toi (Mundu clan), Kambi Lendu (Lendu clan), Kambi Aluru (Aluru clan), Kambi Kuku (Kuku clan), Galalima (Tagalau clan), Saran’gombe (Nuba, Fur, Shilluk, Dinka, Lugbara, and Makaraka clans), Kambi Muru (Muru clan), Gala (Jawama and Bari clans), Makongeni (Kakwa clan), Lindi (Nuba, Fur, Bari, Tagalawi, Shilluk and Barnau clans), Gumberedu (Aluru clan) and Laini Shaba (Tagalawi clan) (Clark 1978-9:37; Ramadhan 2004, 2011; de Smedt 2011:119). There is some discrepancy between these sources about which clan settled in which areas. I have listed all the possible options here. These original clan groupings caused some division and tension over the years in the Nubian community, but have largely (though not totally) faded away today (de Smedt 2011:121- 125).

³⁹ *Shamba* is Swahili for farm or garden.

see, urbanisation, but most tangibly through their legal and institutional separation in the military. While Kibera was a military reserve and its occupants under military rule, the Nubians enjoyed a relatively privileged status which they valued and fought for as long as the British were there to listen. Most notably, they were exempt from native tribunals and taxes, and enjoyed a relatively higher rate of pay than civilians, as well as preferential recruitment into government jobs after retirement from the military (Johnson 2009:118). They maintained their claim to this privileged treatment mainly on the basis of their military service, but also their social system and religion, which further internalised the idea that they were superior to other Africans, an idea which, as we have seen, the British encouraged (cf. Parsons 1999a:227; Johnson 2009:123). This early period of settlement (and even up until the early days of independence) is remembered with great nostalgia as a 'golden age' by the oldest living generation of Nubians (cf. Smith 1986). It is seen as a time of prosperity and security where there was always enough space and food for the Sudanese to carry on with the way of life they valued, communally, according to the dictates of Islam, and with the utmost dignity afforded by the lack of need, sufficient privacy, and a place to call their own. Mama 'Jonuba' (Interview 1) explained,

[I]f life was very good at that time. Food was plenty, yet very cheap ... We had no problems. We grew up in a very wonderful place, and a good life. We used to eat meat, meat was cheap, about some cents. That used to feed the whole family until we were satisfied... During the white man's reign we could even buy clothes as cheap as 2 shillings. Enough for the elders, enough for the children. Very cheap. Even though their salary was somehow low, but life was at its best.

However, before long conflicting interpretations of the ownership of the land emerged. It was normal practice in the Anglo-Egyptian and colonial East African militaries to give land in lieu of a pension (Parsons 1997:95; Johnson 2009:119; de Smedt 2011:64).⁴⁰ The Sudanese therefore understood that the land was given to them in perpetuity (Union of Sudanese 1938; ex-KAR soldiers 1938; Sudanese Association of East Africa (SAEA) 1948; Union of Sudanese 1946; SAEA 1949, 1952, 1954, 1959; Sudanese Village Kibera 1960; Sudanese Community 1960). The colonial (and independence) governments, however, continued to claim in all official correspondence with the Sudanese that they were only allowed to live on the land until the death of the immediate dependents of *ex-askaris* (District Commissioner (DC) Nairobi 1931a, 1931b; Acting Commissioner for

⁴⁰ The lack of pension for *ex-askaris* and their dependents was a source of great discontent until the government agreed to take responsibility for it after World War II, too late for the Sudanese *askaris* (Lloyd-Jones 1926:249; Killingray 1999:24)

Local Government, Lands and Settlement 1931; Usher 1928; DC 1936; Chief Native Commissioner 1948; Nairobi City Council 1959; Permanent Secretary for Housing, 1960). This was also the conclusion of the 1933 Kenya Land Commission (the Carter Commission, after the Commissioner Morris Carter), which declared that the Sudanese had no claim to ownership of the land, however the government did have an obligation to settle them in a decent manner, and because they had become urbanised, it should be within a good distance of Nairobi (Carter 1933:171). There was reasonably widespread (though not total) agreement that there was some basis for a claim in equity, but the willingness to give Kibera categorically to the Nubians was non-existent.

This was in large part because the presence of Kibera had upset town planning and social order based on principles of racial segregation. African locations in urban areas were only to house Africans who had to be in towns for work purposes, and in Nairobi Pumwani location was developed for this purpose in Nairobi. All other African had to live in the reserves. Kibera was the only African settlement to escape demolition in the 1920s and 1930s while the Nairobi City Council pursued its racially segregated plan for the city, primarily because it was protected by military patrons who admired the Sudanese soldiers (Edwards 1936; HQ Northern Brigade KAR 1936; Cowrie 1948; Parsons 1997:91; Osborn 2006:11; Johnson 2009:118-120; de Smedt 2011:63). During the 1920s and 1930s, facing reduced military income and with a high number of widow-headed households, Nubians began, initially just on a small scale, renting out their structures or occasionally building new structures to rent out to the increasing African urban population in order to increase their income (Parsons 1997:110-112).⁴¹ This further riled the British, who could barely tolerate the *ex-askaris* out of a sense of obligation, and certainly could not stand the idea of other – less desirable – Africans living there (cf. Ocobock 2006:46). In 1933, there were 251 Sudanese and 320 non-Sudanese living in Kibera (Kenya Land Commission 1934:1154). A number of attempts were made to evict the Sudanese and reclaim Kibera, beginning in the late 1920s, but no agreement could be reached on what to do with them, and the most widely desired plan – to move them to an ‘extra-mural’ agricultural settlement on the outskirts of Nairobi – failed because no suitable land could be found (Kenya Land Commission 1934:1137-1162; Parsons 1997:94-95).

⁴¹ Africans were moving from rural areas to Nairobi as a result of a combination of both push and pull factors. The poll and hut taxes introduced by the colonial authorities, as well as the degradation and overcrowding of reserves pushed people out of the reserves, into the labour market, and into the city, where the allure of better and higher paid jobs in government or domestic service, and the opportunity of social mobility were strong (Ocobock 2006:42-43).

By 1939, with all other options exhausted, the Sudanese were told they were allowed to stay, however this decision did not improve their living standards or security of tenure, as, “[t]he administration began a policy of what can only be considered malicious neglect in an attempt to force the Sudanese out by rendering Kibera unliveable” (Parsons 1997:103). No social services were added to the area. Most notably, for many years the authorities refused to provide adequate water, the town clerk writing in 1937 that, “[t]he Municipal Council have consistently refused applications which have been made for a supply of water to Natives residing in Kibira [sic], as, in their opinion, it is highly desirable the Natives should be removed from there to a suitable location” (Eckersley 1937). Without waiting for that to occur, the authorities began to encroach upon the land in other ways, particularly the realignment of the railway to pass right through Sudanese homesteads, and also European sporting clubs and a golf course. The appropriated land was used for both government and private interests, and by 1947 there were only 1700 acres remaining (Parsons 1997:110; de Smedt 2011:74).⁴² Though the Europeans could not get rid of the Sudanese, they did everything else they could to get their hands on Kibera. Throughout the 1950s the lack of development only worsened as the Nairobi City Council and Nairobi County Council argued irreconcilably over who was responsible for service provision in Kibera. Once it became clear that independence was looming, funds and energy from both sides dwindled (Osborn 2006:21).

Throughout this protracted land battle, the economic value of the land overshadowed a far more important problem. The Sudanese soldiers were an anomalous category in the colonial system of governance and land allocation. While the colonial authorities bickered over administrative issues, the Sudanese were faced with a battle for what by now they believed more firmly than ever was their home. As the SAEA put it in a petition to the Chief Secretary in 1959, “[w]hen former military Officers gave us land in Kibera we were made to understand that we will not be disturbed at all. Under passes issued to us we have been allowed to reside build houses and cultivate our land” (SAEA 1959).

⁴² Between 1946 and 1948 Nubian homesteads were destroyed with limited compensation for the realignment of the Kenya-Uganda railway. This was followed between then and the departure of the colonial government with appropriations of land for the Caledonian football stadium, the Harlequin Rugby and Football Ground, the Italian (Juventus) football ground, Woodley Estate (for European residences), the Impala European Club Area, Langata Prison quarry, Nairobi European yacht club, the Royal Nairobi Golf Club, and the Ministry of Works Housing Estate, Karanja (or Salama) estate, and other small plots for private European residences (Particularly interviews 1, 2b, 7a, 31, 35, 38a, 38c, 44, 51; de Smedt 2011:74-78).

Natives and detribalised natives

During this period, a land tenure and administrative system was evolving that would have long-term consequences for the relationship between land and citizenship in Kenya, and in which the Nubians, and all detribalised natives, were an anomaly. While the white settlers were more or less forcibly taking over the fertile Central Highlands for agricultural purposes, the traditional homeland of the Kikuyu population, other areas of the protectorate less valuable to the Europeans were declared 'native reserves', ostensibly to protect Africans' 'undisturbed and exclusive' access to land forever (Sorrenson 1968:210).⁴³ The native reserves had the effect of freezing claims of different tribes to particular pieces of land which they could call home, and calling an externally induced halt to the dynamic interactions that various tribes had with each other and with their land before European colonisation.⁴⁴ As Berry (1992:340) puts it, "the reserves were organised on tribal lines, thus linking land rights firmly with social identity," a social phenomenon that continues to a large extent in Kenya today. The social and political formations that developed in close connection to land during this period would have long term consequences for determining belonging in Kenya on the basis of indigeneity or autochthony, itself defined, explicitly or implicitly, in reference to colonial native reserves.

The 'problem' of where and how to settle the Sudanese *ex-askaris* and their dependents, and how to govern them in a context where all Africans lived in native reserves made it apparent in the most tangible way that they were anomalous in the colonial social order (Parsons 1999a:226-227). The Nubians (Officers of the Union of Sudanese 1940) pleaded,

[w]e repeat that we find it difficult to appreciate how we can be classed as natives of Kenya. To us it seems elementary that we can only be classed as 'natives' in the place where we have native rights, where we have our tribal lands, or at any rate, certain land rights.

⁴³ The decades following the 1915 Crown Lands Ordinance on this point saw slow progress in actually establishing the reserves. By 1938 when these reserves were finalised under the Native Lands Trust Ordinance (1938) and the Kenya (Native Areas) Order in Council (1939), the effective lack of protection for the supposedly inalienable lands, combined with strong pressure from settlers to limit the reserves meant that in the end they covered an area of land significantly less than that available to settlers on 999 year leases (Sorrenson 1965:683-9, 1968:222, Dilley 1966:249). Furthermore, the tenure in the reserves was effectively insecure: the Africans living in the reserves had become 'tenants at will of the Crown', for they lived there without title deeds (Sorrenson 1968:224). Aside from this land Africans were permitted to lease land in Native Leasehold Areas, and in Crown land outside the European Highlands and the native reserves, which were available to all races, however this was rendered difficult by the exclusion of Africans from equal involvement in the capitalist economy (Sorrenson 1965:683-9).

⁴⁴ For an example of this, see Kenyatta's (1938:20-52) ethnographic description of land relations between the Kikuyu and the Maasai.

In making this claim, the Union of Sudanese revealed an ambiguity, and indeed ambivalence on their part, about their place in Kenya. This quote can be simultaneously interpreted as an appeal to be recognised as superior to natives, *and* an appeal for the same land rights *as natives*, a position that could only be contradictory under the colonial legal structure, distinguishing as it did between settler and native, and providing little clarification of the legal rights of ‘subject races’ (Mamdani 2001a). Although the Sudanese had the esteem of the military and were thought to be the best kind of African, they were still African, and as such not entitled to the same access to land as a white settler, or even an Asian (Sorrenson 1965). Without any ‘tribal land’, or the land rights of white settlers, the Sudanese were effectively squatters in Kibera.

Despite the lack of clarification regarding land ownership, in 1928 the military reserve was handed over with very little transparency to civilian rule under the DC for Nairobi (Kenya Land Commission 1934:1153).⁴⁵ This marked a significant change in the special relationship between the Sudanese and the colonial government. Though they had always been classified ‘detrribalised natives’, the government were spared the difficulty of figuring out how to govern them while they were under military jurisdiction. Once they came under civilian rule, it became obvious that the British were generally quite unsure what to do with this category of African.

Just as Africans were territorially segregated by ethnicity in native reserves, so they were segregated by ethnicity administratively, each supposedly homogenous reserve and its inhabitants governed by a ‘customary’ native administration. The reserves acted as administrative units and ethnic communities were governed through the characteristic indirect rule of the British empire, that is, through ‘chiefs’, either appropriated, manipulated or plain invented, who were under orders from the Protectorate and later Colonial Government.⁴⁶ Though the administration of Africans was not as tightly

⁴⁵ Following World War I the military were running low on funds, and it was believed they would be able to move the Nubians to Meru the following year, when the KAR headquarters was to be moved there, though this never happened (Parsons 1997:91-92).

⁴⁶ Ordinances in 1902 and 1912 dictated the powers and responsibilities of chiefs. Their responsibilities were primarily to maintain public order, keep roads clear and hear petty cases, and they had power to instigate rules relating to liquor, poisonous plants, arms and to force labour for public works. Fines and prison sentences of up to two months were applied to those who disobeyed the chief (Tignor 1976:42-43). Having so many powers invested in a single person was not a custom common to many communities in the pre-colonial era (Mamdani 1996:53). The colonial administration established native councils and native tribunals in an attempt to better reflect the councils that indigenous communities were accustomed to as a source of authority, however individual Chiefs continued to be disproportionately influential in these. This was

organised as it was made out to be, no problem was greater than that presented by those who could not be made to fit into the structure of Native Authorities (cf. Lynch 2006b:54). Kibera not being a native reserve and with the Nubians not being considered an indigenous tribe in Kenya, the departure of the military as the authoritative body in the area left an authority vacuum and Kibera became an, “administrative grey area” (Parsons 1997:92, 1999b:157).

There is no particularly clear definition of ‘detribalised natives’. It was rather a category that absorbed a range of anomalous Africans, who, “...cannot be sent home as they either do not know to what reserve they belong or have lost all desire, and even the means, to live in the reserve to which their fathers belonged” (DC Nairobi 1931c). In practice the category included,

(a) the retired ex-King’s African Rifles or police askari; (b) Ex-employees of Europeans; (c) Natives who really have no reserve which they can call their own. These are almost invariably the offspring of town natives and the result of mixed marriages.; (d) the old and destitute who have spent most of their lives in towns. (Kenya Land Commission 1934:1125-1126)

In short, ‘detribalised natives’ were mostly Africans displaced with various degrees of force by the British in order to serve them, and who had developed urban lifestyles disconnected from those of their former ethnic communities. In their dealings with this category of native, the British focussed infinitely more on the former trait – their disconnection from their ethnic community – than the latter – their service for the colonial order. There prevailed a desire to provide such Africans with the means to serve the British in the ‘modern’ ways they required (in this case militarily), while maintaining ‘traditional’ forms of social order. While content to benefit from their exposure to it, the colonial authorities did not believe Africans were morally, “equipped to deal with the vicissitudes of town life” (Burton 2001:216), and did not yet deserve urban citizenship (Burton 2003).

Whatever else the British thought of this category of people, it was agreed that, “we should keep tribal life as long as we can. A detribalized native is at present a menace to himself and to other people” (Kenya Land Commission 1934:1152). The overwhelming conviction that natives in reserves were subject to, “tribal discipline and public opinion” that would keep them of the right kind of character (Kenya Land Commission 1934:1123) sustained this paranoid fear and distrust of detribalised natives, and numerous efforts to control them

particularly important because native tribunals came to have “almost exclusive jurisdiction” over land cases (Tignor 1976:45).

(Ocobock 2006). Both colonial authorities and African elders in the reserves were greatly concerned by the threat that urbanisation posed to ‘regulatory mores and social customs’, as well as traditional authority (Burton 2001:216). By way of justifying their position, the colonial government argued that,

[t]he natives in this country with the exception of the Nubians and Swahilis and a few others have good reserves, and there should always be a home under natural and reasonable conditions for them there. Their land is a priceless asset to the natives of this country and they should not be allowed to deprive themselves of it. (Kenya Land Commission 1934:1147).

What should be done with these select few groups without the ‘priceless asset’ of a Native reserve was a difficult problem for the authorities, to say the least.

The handover to civilian rule in 1928 marked the beginning of a period of great disorder in Kibera, doing nothing to improve the colonial authority’s opinion of detribalised natives. The Nubians themselves did not cause as much disturbance as other residents and visitors to Kibera, and the authorities recognised this (de Smedt 2011:159, 167; Department of Lands, Settlement and Local Government, Nairobi, 1945). However they did facilitate a number of problems, mostly by allowing others into Kibera. A late 1940s census of the area pegged the population at 3085, nearly half of whom were non-Sudanese, and almost all the non-Sudanese (often landless Kikuyus) were tenants of the Sudanese, or worked for them in an agricultural capacity (Kitching 1948; Parsons 1997:106, de Smedt 2011,:82-83; Interview 55a). This expanding population brought with it problems of prostitution by tenants, and a market for Nubian gin, especially for the large number of Africans who visited Kibera by day but left before nightfall (Parsons 1997:104-105; de Smedt 2009a; Johnson 2009:118; de Smedt 2011:89). These activities – most of all the gin brewing - sustained a superior economic status for the Sudanese compared to other Africans, with the income from gin raising the average income of a Sudanese family to up to 5 times that of a particularly good salary for a Nubian, and nearly 20 times the average salary for other Africans (de Smedt 2009a:214).⁴⁷

In this context of a fragile superiority, and throughout the remainder of the colonial period, the Nubians tried but failed to shore up their formerly special relationship with the

⁴⁷ de Smedt argues that in fact it is the gin that was the most crucial factor in the shaping of Kibera. Without the combination of the space in the forest and *shambas* to hide the equipment, and the urban market, the Nubians may have been more willing to move elsewhere, and Kibera would have been developed for European housing (de Smedt 2011:146). The more substantial attachments the Nubians now have to Kibera are discussed in chapter 4.

government as a means of securing a place and privilege in Kenya. As Britain's military needs were reduced after the cessation of hostilities, and as their budget was similarly reduced, the sons of the Sudanese KAR soldiers were not needed as much as had been anticipated, and the period between World War II and independence was one of adjusting to a less military, more urban lifestyle for the community. During the 1930s the Sudanese marketed themselves to the government as a source of future military recruits because their special relationship with the government depended on it (Parsons 1997:95; Johnson 2009:120). However, another generation of *askaris* never materialised. Partly this was because the British considered the upcoming generation to be undesirable degenerates, based largely on their perception of the disorder in Kibera (DC Nairobi 1931c). However, there were also other reasons. Even earlier, around the beginning of World War I, the British thought it wise to ethnically diversify their colonial armed forces and the Sudanese had begun to face competition in this regard. Younger Nubians also declined to join the military because the rates of pay in the military had dropped and other occupations were being taken up by young Sudanese instead. They increasingly earned their income as clerks, merchants, supervisors of Kikuyu sharecroppers, traders, butchers, bus-drivers for the nascent Kenya Bus Service, Police, and of course landlords, while others didn't see the need to work at all given the excellent income that women were making from gin (Parsons 1999a:69; Johnson 2009:101, 118-119; de Smedt 2011:67). Though many took government jobs, they were nevertheless a small minority within those occupations, and did not have the strategic effect that their cousins had in West Nile or Sudan in terms of creating the basis for the new colonial order by working in other coercive and administrative jobs (cf. Johnson 2000). Furthermore, while some families were still able to do well from rental properties, gin or salaried employment, other families began to fall through the cracks from around the 1930s (de Smedt 2011:72). The reluctance of the Sudanese to educate their children in government or Christian mission schools, preferring to educate their children in *madrasahs*,⁴⁸ contributed to longer term economic challenges (Ng'ang'a 2006:435).

It was, then, not only land and settlement, but issues related to day-to-day governance that illuminated the anomalous stranger status of the Nubians, and underscored the peculiar quality of their place in Kenya. During this period, as detribalized natives, the Nubians were not subject to either settler law or any Native Authority. Instead, they were governed

⁴⁸ *Madrasahs* are Islamic schools.

by an ambiguous and inconsistent constellation of *ad hoc* rules and authorities, both state and non-state, and were subject to a number of general pieces of legislation governing natives, such as the Native Registration Ordinance of 1915, which ordered that all male Africans over the age of 15 carry registration papers called Kipande (Berman & Lonsdale 1980; KNCHR 2007:3).⁴⁹ Only in 1949 was a specific set of by-laws established to govern Kibera, the “African Settlement (Kibera Settlement Area) Rules, 1949”, and for technical reasons they only became enforceable in 1957 by a European Superintendent (Ag. Secretary African Affairs 1957; Crown Lands Ordinance 1957; Parsons 1997:116).⁵⁰

Scholars of the Nubians, notably Parsons (1997) and Johnson (2009) make a significant point of the petty privileges and the superior status the Nubians had access to as a ‘martial race’, and the Nubians’ attempts to hold on to it. For example Parsons (1997:113-114) argues that the preceding 80 years or so of shared military experience and life in Kibera had resulted in a sense that they, “were entitled to the same official ‘non-Native’ status enjoyed by Asians, Ethiopians, Comorrians and certain Somali clans, even though their position in Kibera granted them roughly the same privileges while sparing them a higher rate of taxation.” This aspect of the Nubians’ colonial self-identification is important. However, it is also important to note that their exceptional status carried with it a number of serious disadvantages. As Osborn (2006:22) explains,

[i]n some ways, the exceptional detribalized status of the Sudanese had left them with more privileges, not having to answer directly to traditional or European authority; however, in other ways, there were few people within the government to advocate for the basic provisional needs of Kibera residents. Kibera had been left to fend for itself.

It is evident, then, that the British hoped such people, including the Sudanese, would simply fade away. As Parsons (1997:88) himself admits, “[w]hile conventional histories of the KAR and personal accounts of officers are full of praise for the loyalty and service of the Sudanese, the civil administration of Kenya would have preferred them to simply

⁴⁹ Non-state, self-developed forms of authority in Kibera included unofficial *Wazee wa Kijiji* (Swahili) or *majlish shu’uba* or *majlish shauri* (Kinubi for council of elders). There may have been one or more of these, and they included representatives from each clan, who dealt with relations between the community and the government. Another council also existed, made up of the same representatives, called *gombororo*, which dealt with internal community and family disputes. State sanctioned authorities included a *liwali* from 1919 until the death of the last *liwali* in the late 1960s, who was also likely the chief of the *wazee wa kijiji* and the *gombororo* however the *liwali* had no legislative or coercive authority (Clark 1978-9; Parsons 1997:92; de Smedt 2011:69; Interviews 55a, 56).

⁵⁰ Both the 1949 and 1957 rules to govern Kibera refer to it as a Native Settlement Area, though it is important to note that while this separated the Sudanese and other residents from the Europeans, it did not establish them under a Native Authority. Their administrative status was still liminal.

disappear when discharged from the army.” Given the failure of the British to find a place for them, how they might resettle themselves independently and govern themselves in a manner satisfactory to the Colonial government as strangers in an environment of host communities they helped to subordinate, one can only imagine.

Uhuru⁵¹ and split loyalties

If these contradictions had not already put the Nubians in a tenuous position, then independence did. Decolonisation presented a particular set of challenges for the Sudanese, pulling their loyalties in two directions as they navigated the difficult task of establishing themselves as Kenyans in political and not just military terms, and after more than six decades of identifying themselves as distinct from (and superior to) African Kenyans (Atieno-Odhiambo 1977:7). The British saw them as a potential ally in a sea of African unrest, and in some ways continued to offer them special treatment. For example, although the 1957 version of the Kibera Rules allowed for evictions, the government resisted enforcing them systematically out of fear that the Sudanese would be driven into the hands of the increasingly popular African politicians and the nationalist movement more generally (Parsons 1997:118-119). Some government voices argued that the British government should seriously consider making moves to appease the various Sudanese grievances in order to maintain this loyalty in the face of the resistance being built amongst the African community to colonial rule. For example Colonel La Fontaine (1947), the welfare officer appointed to Kibera, argued that,

[i]t would be a fine gesture for Government in its search for a settlement area, acceptable to them, to override all obstacles in the way. It would strengthen, if that were possible, a loyalty unshaken by the attempts of seditious Africans of other tribes to undermine it. It would deepen a love for the British connection, that stands out like an island in a sea of native unrest.

However on balance, the 1950s was really the twilight of the era of special treatment for the Sudanese. Rather than take La Fontaine’s advice, the government simply allowed the Sudanese to move even further into the background of their concern.

A complex and seemingly paradoxical position emerged amongst the community in response, as it did in many ethnic communities in Kenya at the time, where some sustained a loyalty to the British, while others sided with the African nationalists. The older generation clung to the now tenuous relationship they had with the British as a matter of

⁵¹ *Uhuru* is Swahili for ‘freedom’ or ‘independence’.

pride in their military history, but also to preserve their privilege, and even their very right to a place in Kenya, which they likely perceived the African nationalists may be reluctant to grant.⁵² This generation made efforts to distance themselves from Mau Mau and the emerging nationalists in order to prove their loyalty to the British. Worried about the government's concern that Kibera would harbour Mau Mau, they requested that the school that was built for them be restricted to Sudanese to avoid 'contamination' of the students by nationalists (Parsons 1997:118). Even earlier, the lifting of the exemption from paying hut tax in 1940, even though it was not collected until 1946, prompted dramatic efforts on the part of this generation to try and secure their privileged position (Parsons 1997:92; Johnson 2009:120). The older Sudanese felt strongly that they should not be treated like other Africans because of their special relationship to the Colonial government, pleading to Lugard in London (in a likely bluff) that, "...we would rather pay non-native poll tax than be included category indigenous natives" (Secretary Sudanese Union 1940).

The older generation perceived the threat of a loss of their special as an injustice and responded by seeking repatriation to the Sudan. Their application for repatriation was rejected in part because of costs, but also because they were deemed insufficiently Sudanese, having lost all connection with the rural Sudanese way of life (DC Nairobi 1931a; Civil Secretary to the Sudan, 1949; La Fontaine 1949; Officer in Charge, Nairobi extra-provincial district, 1955, Parsons 1997:116; Johnson 2009:121).⁵³ The repatriation attempt and the deliberate distancing from African nationalists must therefore be understood not simply as expressions of attitudes of superiority and attempts to retain privilege, but also attempts to compel the government to recognise the intractability of their belonging to Kibera, and Kenya (Johnson 2009:122). Their attachment to the British (and associated privilege) must have appeared to these old soldiers as the only option they had for guaranteeing somewhere they could stay and continue to live with their families. It was at this point in history that the Nubians experienced a subtle but crucial shift in the quality of their stranger status. Where under the colonial authorities they could continue to think of themselves as sojourners, maintaining (however vaguely) the possibility of leaving Kenya, with the departure of the British, it became imperative that they seek not only residence, but membership, and not only socially, but politically (Skinner 1979:41; cf. Levine 1979:31).

⁵² Wanji (1971:22-25) suggests that a similar generational split in loyalties occurred amongst Nubians in Uganda.

⁵³ The same applies to requests for repatriation by older Nubians in Uganda (Wanji 1971:22).

A strong sense of belonging in Kenya (albeit in a peculiar category), and aspirations therefore for full membership, were taken up much less ambiguously by the younger generation (de Smedt 2011:85, 124). While the older generation sought either repatriation or the sustenance of their privilege as a strategy to maintain their close connection to the British administration, the younger generation were beginning to identify with the African cause and rebuffed the idea of returning to the Sudan (Parsons 1997:105). This generation were beginning to see that mere tolerance or social acceptance would not be enough. Instead the post-colonial era required political integration as citizens (cf. Shack 1979:9-15). Furthermore, they started referring to themselves as Nubians, detecting the need to adopt an identity that would be more conducive to harmonious relations with other Kenyans after independence (Parsons 1997; Johnson 2009; de Smedt 2011:124). It is this generation who take pride today in the fact that during the Mau Mau rebellion they were sympathetic to the cause of independence, and even hid Jomo Kenyatta and other wanted Kikuyus in their houses, including ‘*Nyumba Kubwa*’,⁵⁴ located near the boundary of Makina and Kambi Muru villages in Kibera (Secretary for Defence, 1954; de Smedt 2011:85; Interviews 12, 32, 34, 37a, 40, 41b, 45b, 46, 49a).⁵⁵ Ramadhan (2004), himself a Nubian, explains in a newspaper article seeking to improve the public perception of the Nubians, that, “[a]fter the ... Second World War, the Nubians gradually reduced ties with the British and moved towards sharing a common vision and goals with fellow Kenyans. As the struggle for independence gathered momentum in the 1950s and peaked in the early 60s, they readily associated with themselves with the nationalist political parties – Mr James Gichuru’s KANU [Kenya African Democratic Union], Mr Tom Mboya’s People’s Convention Party (PCP) and Mr Ronald Ngala’s Kenyan African Democratic Union (KADU).” Indeed, Mboya’s Nairobi People’s Convention Party in particular had taken an interest in Kibera and attempted to exploit the lack of service delivery to convert the local population to the nationalist cause (Parsons 1997:119).

We can see in this generational struggle, and the contradictory interpretations of history, the much deeper struggle for a place in Kenya. Ambiguous as the older generation’s claims about Sudan may have been, the overwhelming point of the repatriation attempt was that the Sudanese really did, by this time, have nowhere else to go to. Kibera was the only

⁵⁴ *Nyumba kubwa* is Swahili for ‘big house’.

⁵⁵ This is discussed in more depth and within the framework of moral inter-ethnicity in chapter 7.

home they knew, and they had deep and affective ties to Kenya whether they liked it or not. For example, some Sudanese wrote at the time that,

[i]t is also common knowledge that owing to such long and continuous service we have entirely lost touch with our country of origin and have owing to such service embraced Kenya Colony as our country of adoption; We wish respectfully to emphasize that if we are forced to return to our country of origin we and our wives and children could be absolute strangers in the Sudan ... (ex-KAR soldiers 1938).

At the moment of independence in 1963, despite the fact that Kenya had effectively become their home, the Nubians remained in an ambiguous position in the country. The British left in too much of a rush to resolve the status of the Sudanese community. Neither the tenure of the land in Kibera or the other Nubian settlements, or their status as Kenyans was ever clarified, and the political sensitivity of ownership of land in Kibera has perpetuated the neglect and marginalization that began after the transfer to civil rule in 1928, if not earlier. As Osborn (2006:23-24) puts it, “[s]omewhere between being Kenyan and non-Kenyan, nationalist and British supporter, privileged and impoverished, legal and illegal, owner and squatter, the status of the Nubian community has remained tenuous.”

Ethnic strangers

The decades after independence marked a rapid decline in the status and lifestyle of the Nubians in Kibera. The political landscape in Kenya changed in ways the Nubians were neither well positioned nor well equipped to handle. Kenya’s first President Jomo Kenyatta established a highly centralised patrimonial state, which his successor Daniel arap Moi sustained. Both Presidents stacked the upper echelons of power with their ethnic kinsmen, promoting the idea that to access resources or have any decision making influence in Kenya, you must have ‘one of your own’ in government or the civil service. Ethnic patrimonialism became the hallmark of Kenyan political culture, and even smaller recognised ethnic groups found it difficult to advance their interests at the national level. The Nubians felt lost without their former military patrons, and unsure of how to proceed with claiming their rights and establishing themselves as rightful members of the Kenyan community. Not only were they too small in number to have much electoral influence, but their colonial loyalties and activities worked against them, reinforcing their stranger status. The Nubians only became more marginalised socially, economically, politically, and on the land they perceived as their own. The period between independence and the return to

multi-partyism in 1992 was one during which they Nubians were largely invisible and neglected.

Losing the land

A survey of landlords and tenants in Kibera in the late 1960s attests to the Nubians' special attachment to the area. The survey reports that landlords (almost all Nubian) had been on the land much longer than the tenants, having been born there, and the character of the area, evident for example in social, sporting and political associations, could be mostly attributed to the Nubians (Clark 1970). However, the post-independence period was the time in which this special attachment began to be overshadowed by immigrants to Kibera. The Nubian population was by this time around 3000 out of about 9000 Kiberans, a very small number in the face of what was about to be a major influx of outsiders, through both formal and informal means (Amis 1983:115; Clark 1978-9:36). By independence in 1963, only 1150 acres was remaining to absorb this influx (Kibra Land Committee (KLC) 2001).

Despite being outnumbered by the other ethnic groups, apart from a small proportion of tenant traders the Nubians were the only community, when Clark conducted his research from 1969 – 1971, who depended wholly on Kibera for their livelihood, as landlords, gin distillers, shopkeepers, or through subsistence agriculture and other trades. When applying for jobs in which they had previously been preferentially recruited, such as night watchmen, messengers and office boys, they found they had to compete now on an equal basis with other Kenyans, forcing them to retreat to Kibera, while the other tenants in Kibera tended to work elsewhere in Nairobi (Clark 1978-9). In only a very short time Nubians thoroughly lost any dominance they still held over Kibera.

From 1960 and in the first decades after independence, land was primarily appropriated for improvements in existing housing by the National Housing Corporation, and the development of more housing for the rapidly increasing urban population (KLC 2001).⁵⁶ Though they were offered houses in the first estate, Karanja, on condition of the

⁵⁶ These changes were facilitated by the redrawing of the municipal boundary so that all of Kibera became part of Nairobi City Council in 1964, and the declaration of that area as State Land by the Ministry of Land in 1969 (Clark 1970:2; Parsons 1997:121). Between 1950 and 1963, Jamhuri estate was built on the site of a destroyed Saran'gombe. In the mid-1960s Langata was replaced with housing estates known as Ngei, Rubia, Onyonka and Otiende. Olympic housing estate was developed in 1972, replacing Toi's periphery and Galalima. Toi was destroyed to create Soko Mjinga (Toi market) and Fort Jesus housing estate in 1971. Lomle was demolished to make way for Ayany housing estate in 1977. Laini Shaba was partly destroyed in 1988 to create space for High Rise housing estate. Around 1980 a number of families were evicted from Kambi Lendu to make way for Nairobi Girls' High School (KLC 2001; Ramadhan 2004; Kenya Nubian Council of Elders (KNCE) 2005; de Smedt 2011:91-92).

demolition of their old mud and wattle houses, and most of the houses in this estate are therefore owned by Nubians today (Clark 1978-9:40), some Nubian families did not take this option because they felt the houses were not suited to their needs. They were too small for their large families, and there was insufficient space for renting rooms (by now a crucial source of income), or distilling gin, and on top of that loss of income, they would have to pay back a loan that covered the cost of the house (Parsons 1997:121; de Smedt 2011:86). In short, these houses represented the, “end to the Sudanese way of life” because they did not allow the kind of spread out, dignified but communal living they were used to, and they had no legal right to the land, only to the structure on it (Parsons 1997:120; de Smedt 2011:87). In the later ‘upgrades’ after Karanja, only a handful of Nubian families benefitted, not only because they didn’t like the houses, but because they were priced out of their range, and other groups were by now getting preference in an increasingly corrupt and nepotistic administration (Clark 1978-9; de Smedt 2011:92). These upgrades caused a great deal of suffering. Sometimes families were evicted in the middle of the night with no warning, and they were almost never compensated for their own homes or the rental properties on which they had become financially dependent (de Smedt 2011; Interview 51).

The middle class planned estates were not the only source of displacement. There was also a huge surge in the informal and illegal construction of small rooms as low-cost rental properties for the rapidly increasing numbers of rural Kenyans who had migrated to the city in search of economic opportunity. At first, under the only Nubian Member of Parliament (MP) (for Lang’ata from 1969 – 1974), Yunus Ali, the Nubians welcomed a large influx of Luos who were fleeing persecution in Kikuyu dominated areas of Nairobi after the assassination of Tom Mboya and the ethnic violence that followed in 1969 (de Smedt 2011:94, Interviews 4, 7a, 12, 32, 49a, 51). It was at this time that Clark (1970:3), researching in Kibera, wrote that, “the gradual introduction of outsiders as owners of houses in Kibera is drastically changing the hold of the Sudanese community on the area.”

The most radical increase in informal housing occurred under Mwangi Maathai, a Kikuyu who was MP for Lang’ata from 1974 to 1979. Maathai permitted a major, mostly illegal and informal influx of other Kenyans, especially Kikuyu investors, into Kibera, treating it as a, “patrimonial cash cow” (Osborn 2006:30). The local administrators during this period allocated land in a manner that was, at a minimum, legally questionable as a means of solidifying their status as a local patron, mostly to friends or members of the same ethnic

group (Amis 1984:90). The informal rental sector is extremely lucrative (and Kibera the most lucrative of all locations), with returns on investment within one year, and ongoing tax-free income (Syagga et al 2002:15). This occurred on almost any patch of ‘empty’ land, which included land being used by Nubians for farming or grazing. Construction was often begun forcibly, employing intimidating tactics by police and authorities, and against the wishes of the Nubians whose land it happened on (de Smedt 2011:92). These mostly Kikuyus built a large number of semi-permanent structures which many still own today, and which they rented out to people of all ethnic groups (de Smedt 2011:97).⁵⁷ Some Nubians were complicit in this construction, receiving a share of the ‘fee’ that was often paid to the Chief in exchange for permission to build, and these Nubians are widely accused of ‘selling’ Nubian land (de Smedt 2011:99).

In many other instances, construction was through the informal ‘*jenga yangu jenga yako*’⁵⁸ system, whereby a person or cooperative of people would offer to build for example 5 rooms for a Nubian family and 10 rooms for him or herself on that Nubian’s land. Nubian families in financially vulnerable positions often took up these offers, however short-sighted and ill-defined they may have been, because they could see that the area was developing that way whether they liked it or not, and this was often the only manner in which they could guarantee themselves some future financial security in a context of increasing urban poverty, and with the decline of opportunities to make money from gin (de Smedt 2011:99).⁵⁹ During this period, the population of Kibera increased from 20 000 in 1975 to 60-65 000 in 1980 (de Smedt 2011:97). During the 1980s under the European-Kenyan Philip Leakey as MP, the influx and construction continued though at a slower rate. Congestion increased until the point where there was practically no space left on which to build. The size of the land decreased from 800 acres in the mid-1970s, to 700 acres by 1980, and only 550 acres by 1990 (de Smedt 2011:92, 100, 104).

By the late 1980s Kibera had become a slum, and only the core Nubian villages remained as such (de Smedt 2011:100, 105). The underdevelopment that had plagued the area during the colonial era persisted. Though Nairobi City Council was technically responsible for service delivery, like its colonial predecessor, it argued over and avoided this

⁵⁷ At least until many were burnt or occupied during the post-election violence of 2007-08 (de Smedt 2011:225).

⁵⁸ *Jenga yangu, jenga yako* is Swahili for ‘build mine, build yours’

⁵⁹ Gin production had declined because there was less space in which to hide the equipment, which was commonly hid in the forest, and because of increasing competition from other non-Nubian brewers and distillers (de Smedt 2011:182-184).

responsibility as much as possible. This was particularly so during the 1970s and 1980s when Kenya's general economic decline was accelerating, and the City Council was facing a shortage of funds (cf. Osborn 2006:27; de Smedt 2011:91). Furthermore, ethnic divisions began to emerge, not only between tenants (primarily from Western Kenya, mostly Luos but also Luhyas), and landlords (primarily absentee Kikuyus, but also Nubians), but also between villages, which took on an ethnic character and continue to be recognised as such today, for example Kisumu Ndogo is known to be a Luo stronghold, and Makina a Nubian one (de Smedt 2011:104).⁶⁰ Under Raila Odinga, MP for the area since 1992, the immigration, particularly of his fellow Luos, continued to breaking point (Ramadhan 2004), slum conditions continued to worsen, and so did ethnic tensions, setting the scene for major violent clashes in 1992, 1995 and 2001. These clashes are often described as being between tenants and landlords, with a strong ethnic dimension, but they were also connected to high level political stakes and the big men of Kenyan. In this context, as de Smedt (2011:99) explains, within a few decades of independence, "[i]t was clear that the Nubis did not have any special position anymore in Kenya, no leverage with the Kenyan government, and no one to stand up for them."

Economic decline and political invisibility

The Nubians' dependence on rental income for their survival was by now entrenched. There was no longer any space available for food production or gin brewing, and unemployment amongst Nubians sky-rocketed as they became outnumbered by people from other tribes who shared the very limited jobs amongst themselves, both locally and nationally, but also because of their comparative lack of education (de Smedt 2011:88). Clark (1970:9) reported that Nubians (the landlords) were significantly less educated, had much lower incomes and were much more likely to be unemployed than other residents of Kibera.

Sustaining the already noted tendency towards isolation, the Nubians also failed to integrate with the newcomers to their area, maintaining what Clark (1970) described as two separate populations in Kibera, a population of young, heterogeneous, migrant labourers, and a population of homogenous landlords depending primarily on rental income. He (Clark 1970:14) describes the homogeneity of the Nubian population as

⁶⁰ Amis (1983:211-217) calculated that in the early 1980s tenants were 40% Luo, 30% Luhya, and only 10% Kikuyu. Nubians constituted only 22% of large landlords, compared to 66% who were Kikuyus (Amis 1984:202-208).

having, “enabled them to build up a very strong sense of community; thus continuous residence in the area coupled with common interest strengthened the ties created by common service in the army, common language and customs carried over from the Sudan and common religion.” This sense of community, maintained through a large number of associations and the exclusion of non-Nubians, prompted Clark (1970:16) and Atieno-Odhiambo (1977:8) to label the Nubians “urban villagers”.⁶¹ The linguistic, religious and institutional isolation of the colonial era translated in the post-independence era, to isolation as culturally distinct landlords.

The post-independence period was largely characterised by political invisibility and a lack of influence even when the Nubians were able to obtain a political position. In his one term the Nubian MP Yunus Ali was unable to secure any of the Nubians’ goals, despite raising the land issue in Parliament (de Smedt 2011:94). A number of Nubians were involved in local chapters of KANU (Johnson 2009:127), Kenya’s only political party for most of the post-independence period, but none other than Yunus Ali in any significant capacity nationally (Interviews 19, 35). There were occasional Nubian chiefs in the local administration who, while helpful with small administrative issues, had similarly negligible effects on the long term security of the Nubians’ place in Kenya. They were able to get ID cards when they were made universally compulsory in 1978, and were generally left largely unbothered, but also neglected. In these early years it seems the Nubians managed to get by keeping a low profile.

Nubians since multi-party democracy

Around the time of the return to multi-partyism in 1992, this invisibility began to evolve, and the Nubians began experiencing overt discrimination beyond their land problem, most notably in access to identity cards. This shift in their situation can be seen as the culmination of nearly a century of being ethnic strangers in Kenya. As the time during which the Nubians’ citizenship began to be explicitly questioned, and also the time in which the Nubians began to identify themselves as marginalised, it is this period, from 1992 to my fieldwork in 2009, which constitutes the period of study for this thesis.

The first multi-party elections in Kenya in 1992 marked a significant change in the Kenyan political landscape. While Moi’s repressive tendencies were still a factor, and he was not

⁶¹ This idea is addressed in more detail in chapter 4.

displaced from the Presidency until 2002, the political space opened up progressively during this period to competitive politics, and a nascent civil society and human rights discourse developed. In many ways these political freedoms are not as meaningful as they could be. At least until the 2010 constitution, Kenya still had a strong executive, deliberately weakened political and administrative institutions beyond that, diffuse violence (state sponsored and autonomous), extremely high levels of corruption, a lack of programmatic political parties, and electoral design that make elections high stakes zero-sum games in which the object appears to be access to state resources ostensibly to benefit one's community, but also for personal gain. Democratic consolidation and institutional reform still have a long way to go (Steeves 2006; Branch & Cheeseman 2008; Mueller 2008).

Nevertheless, after decades of repression from the Kenyatta and Moi regimes (especially after the attempted coup of 1982), the return to multi-partyism was a significant period for civil society, newly animated by the hope of genuine democracy, and boosted by significant financial support from an array of international donors. A number of democracy and governance organisations sprung up around this time, advocating for, "democracy and good governance, promotion of human rights [and] civil awareness" (Nasong'o 2007:35). The most prominent of these organisations included the KNCHR, the independent Kenya Human Rights Commission (KHRC), the Kenya Law Society, and the National Council of Churches of Kenya. These groups mobilised around the push for constitutional change, under the umbrella organisation the National Convention Executive Council, culminating eventually in Kenya's new constitution of 2010 (Peters 2001; Nasong'o 2007:39-40; Anderson 2010:44). Though Kenyan civil society continues to face challenges, including the tendency for key figures to cross over into national politics, and a tendency for the general population to act as 'passive sympathisers' rather than actively engage in reforms, the opening up of political space in this way contributed to significant changes in the status of the Nubians in Kenya, as well as political culture more generally (Nasong'o 2007:50; Peters 2001). In particular, a highly relevant national conversation has emerged over this period, and especially since the 2007-08 post-election violence (in which ethnicity and land played central roles), about the place of ethnicity in national politics and resource distribution, elevating issues of discrimination and minority rights, among other human rights problems, to the national agenda.

On the one hand, this has allowed the Nubians to begin to identify themselves as a marginalised minority and tackle their problems head-on. Yusuf Diab, the Secretary of the KNCE (Interview 2a) explained that, “we are very grateful that the present political atmosphere is actually much more inductive [sic] to people coming out in the open and presenting their cases.” However, on the other hand, conversations regarding minority rights have become necessary because of increasing inter-ethnic tensions, especially between indigenous and stranger groups. Up until the last few years, the Nubian community has been to a large degree socially invisible, or when they are visible they are often still perceived as foreigners, not Kenyan but Sudanese (Makoloo 2005:19). Johnson puts it dramatically but accurately when he says that, “[t]he final irony is that the Nubis’ earlier arguments [about their exceptional status] have at last been accepted by the post-independence Kenyan government, but as a way of disenfranchising them” (Johnson 2009:127). Nubians report feeling like ‘refugees’, and being told by other Kenyans to ‘go back to Sudan’, a land most of today’s Nubians have never known (Interviews 1, 3, 31, 37a, 41b, 43). Few Kenyans think of the Nubians as part and parcel of Kenya’s ethnic makeup.

As discussed in more detail in coming chapters, the Nubians have found it more difficult than usual to acquire ID cards, and to prove or affirm their Kenyan citizenship, a problem related to the widespread perception that they are foreigners rather than Kenyan nationals (KNCHR 2007; KHRC 2009). This has had serious consequences for the Nubians’ social and political standing and powers to exercise their rights. This predicament is connected to the lack of recognition of the Nubians as an indigenous tribe of Kenya. Not counted in the ‘42 tribes’ commonly believed to constitute Kenya’s ethnic makeup, the Nubians are disadvantaged by not having an electoral or administrative district considered their home, and in which they can dominate decision making and access benefits such as quotas for government employment, educational bursaries and secondary school places.

Most crucially from the Nubian perspective, their ethnic stranger status is most manifest in their landlessness. The precariousness of their land tenure in Kenya and their inability to control the area they consider their homeland has resulted in not only a sense of insecurity, but physical squeezing to the margins of the area. The Nubians constitute only about 10 000 to 15 000 people in Kibera, out of a total population of between 200 000 and 300 000 on only 550 acres remaining of the original 4197.9 acres (Kenya Ministry of Housing 2007; Kenya National Bureau of Statistics (KNBS) 2010; OSJI 2011c; de Smedt

2011:107).⁶² Any economic superiority they had during the colonial period is now thoroughly lost. No more than a few Nubians have an ‘empire’ of rental structures, and more than 50% of Nubian families get by on only 10 000 Kenyan Shillings per month (Amis 1983; OSJI 2011c).

Kibera’s residents, not only Nubians, suffer from deprivation of basic services. Only 46% of residents have access to sanitation (Research International 2005:8), and though accessibility is not bad, the quality of healthcare is extremely poor (Research International 2005:38-40). Subsequently, there is a high prevalence of preventable and treatable illnesses and deaths. Poverty levels are extremely high, with almost one third of Kibera residents earning less than 5000 Kenyan Shillings, and nearly half earning 5000 to 10000 Kenyan Shillings per month, and 47% frequently having only one meal in a day (Research International 2005:5-6). Housing conditions are also very poor, with most houses made of mud and wattle, many (though Nubians houses tend to be slightly better than most) having earthen floors, and corrugated tin roofs, and when it rains the mud and leaky roofs bring about a different set of problems. There is a general lack of privacy, and few open spaces for public gathering or for children to play. Water and electricity are often illegal and so generally more expensive in Kibera than for the middle class in Nairobi (Katumanga 2005; Research International 2005; Huchzermeyer 2008). Nubians’ descriptions of Kibera’s ‘golden age’ seem impossible to imagine now.

It is only since the early 2000s that the Nubians have come to articulate their status as one of marginalisation and exclusion. Various groups in the community, most notably KNCE and the KLC have established partnerships with local NGOs like CEMIRIDE, or international NGOs like OSJI that have contributed to raising awareness in the community of the peculiarity of their condition, and helped strategise ways of emerging from their marginalisation, primarily by focussing on discrimination in access to ID cards. These partnerships have been helpful for the Nubians to a certain extent, however there is still a

⁶² The 2009 National census counted 15463 Nubians (KNBS 2010), however given that it was possible to answer ‘Kenyan’ for one’s tribe, and given the census methodology was problematic (Kerrow 2010), this cannot be taken as the final figure. A 2009 research survey by OSJI gathered data on 18862 individuals, however methodological challenges prevented them visiting every Nubian household (OSJI 2011c). The OSJI research established that approximately 50% of Kenya’s Nubians live in Kibera (OSJI 2011b). If we take this proportion, and slightly inflate the figures from the National Census, we can estimate approximately 20 000 – 30 000 Nubians in Kenya, so 10 000 – 15 000 in Kibera. There is a great deal of discrepancy over the size of the population in Kibera. For a full and up to date review of the potential figures, ranging from 200 000 to 700 000, see de Smedt 2011:107.

great deal of progress to be made before the Nubians can be considered full citizens in Kenya.

Figure 1.2: Darajani with view to Makina Mosque (the multi-storey building in the background), Kibera (photo by author, May 2009)



The following chapters aim to understand the political dynamics of the Nubians' marginalisation, and their attempts to change their status from ethnic strangers to ethnically indigenous and autochthonous. As various scholars of East Africa's Nubians have noted, a Nubian identity has always been a manipulable and strategic phenomenon (Parsons 1997; Leopold 2006:181; Johnson 2009:113; de Smedt 2011). The continued evolution of their identity in this way – towards indigeneity and even autochthony – can be understood as a response to the prevailing social and political norms governing belonging in Kenya. Just as they adapted to slave soldiering and the colonial forces, so they adapt to the postcolonial polity. Mamdani highlights a critical point about the hierarchical and exclusionary distinctions that affect exercise of and access to rights, and membership. Mamdani (2001a: 659) asks,

is not the shift from a homeward flight to a tendency to fight it out where one is resident proof enough that the definition of home has changed? That immigrants of yesterday have now become indigenous? That were it not for the form of the state and its definition of indigeneity, yesterday's immigrants would be today's citizens?

The contemporary predicament of the Nubians, as well as their interpretation of it, and the responses they develop – strategically redefining themselves as indigenous and autochthonous – speak directly to these questions. Insofar as the last century or so of

Nubian history has constructed the community as strangers in a polity of *indigenes* and *autochthons*, their story illuminates some significant characteristics of citizenship in Kenya.

Conclusion

It is evident from the historical path described here that the Nubians occupy a unique and precarious place in Kenya. The trajectory from their recruitment into the IBEAC forces in 1890, followed by a period of revered service for the British Crown and Colonial Government, a complex and ambivalent passage through Kenyan independence, up to today's marginal status as ethnic strangers has been characterized by either outright exclusion, or confusion and neglect on the part of governmental authorities. The resulting vulnerability the Nubians in Kenya suffer is interpreted by them as a betrayal by the British, and a great injustice perpetrated by the post-independence governments. The repercussions of this history and these perceptions for the Nubians' contemporary sense of belonging in Kenya are complex. Whether and why the Nubians should be considered Kenyan, and in what ways, is an important question that bears down on their future stability and security in the country. The following chapters take up this question, focusing on individual recognition in the form of ID cards, collective recognition in the form of a census code, and the petitions for land title as the ultimate claim for recognition in Kenya.

~Section II~

present

ID Cards and Citizenship as Status

Prevailing attention to the Nubians in Kenya has been from local and international NGOs concerned with the discrimination Nubians face in accessing ID cards and their subsequent statelessness. The notion that citizenship consists primarily of status and possession of individual rights underpins the prevailing focus on the Nubians' condition. This chapter examines the identification regime which documents Kenyan citizens, and the Nubians' period of exclusion from it (from the mid-1990s), and in doing so establishes what exactly has made the Nubians of Kenya stateless until recently. The chapter goes on to explore the extent to which ID cards confer full citizenship by according individual recognition and access to rights for Nubians, and connects this significance to a liberal conception of citizenship. The chapter argues that the liberal perspective on citizenship rightly points to the importance of individual rights and formal recognition of individual status for resolving the Nubians' statelessness; however it falls short of fully accounting for how and why the Nubians have experienced denial of and, more recently, contingent access to ID cards. The chapter concludes with a discussion of the way in which the experience of exclusion from and inclusion in the Kenyan identification regime has been made sense of by the Nubians in relation to their collective identity, and the implications this has for the constitution and attainment of full citizenship in Kenya.

The Kenyan identification regime

In order to understand the operation and significance of the identification regime in Kenya, and its impact on the Nubians, it is necessary to comprehend both its emancipatory and repressive potentials (Caplan & Torpey 2001:5). On the one hand, modern mass societies which entail the regular interaction of total strangers require tokens of identity in order to function smoothly (Caplan 2001; Gates 2008). Tokens, such as ID cards, which recognise and represent a person's identity, operate as passes which state and other agents can use to verify not only an individual's identity, but also their right to access various aspects of modern society and citizenship (Caplan 2001:50). Individuals who possess these tokens of

recognition find themselves able to access social, political and economic goods that they are entitled to by right (such as education, healthcare or the ballot box), and also full and deep participation in the private sector (for example, engagement in commerce) (Lyon & Bennett 2008b:10-11).

However, on the other hand, insofar as they perform an important act of recognition, identification regimes that involve identity cards also carry the potential for repression. The driving concern behind establishing identification regimes has been security and the perceived need to control the population (Piazza & Laniel 2008). Often identification regimes have their origins in times of war or other threat, where the state deems it necessary to differentiate between certain categories of desirable and undesirable people, often citizens and strangers. As a result of these powerful functions, ID cards have been a mechanism for determining membership and excluding unwanted others. By establishing a regime of readily legible individuals, social sorting becomes possible in a way it never was before (Lyon 2001). Often this is achieved either through information that is visible on a uniform ID card, or even visibly different ID cards, for example of different colours for different ethnicities, or alien cards (Mehmood 2008:122). Through categorising or sorting individuals the state is able to simultaneously consolidate and fortify both its own population of nationals, and a community of others (cf. Noiriel 2001). Mechanisms such as these constitute a symbiotic process of stabilisation of the insider (national, citizen) and the outsider (foreigner, stranger, deviant) (Mehmood 2008:122).⁶³

The Kenyan identification regime entails both these emancipatory and repressive potentials. Inherited from the Afrikaners in South Africa, British colonies adopted a system of identifying male 'natives' in Africa as early as the beginning of the nineteenth century (Longman 2001, p.347). In Kenya, the 1915 Native Registration Ordinance created the first identification system in the country, mandating what was called a 'Kipande', a loathed copper tin worn around the neck with registration papers inside (Berman & Lonsdale 1980; KNCHR 2007:3). In 1947 the Registration of Persons Ordinance made

⁶³ Studies of the sociological and political implications of identification regimes that are based on compulsory ID cards have tended to focus on cases in Europe, the United Kingdom, North America, and Australia, with a few studies available on Asia and the Middle East. Foucauldian theories of discipline, normalization and governmentality, and exploration of the ways in which identification regimes make the population 'legible' have dominated studies in this field especially in relation to biometric identity cards, and especially post September 11 2001, as surveillance for security purposes has increased to the point where it threatens democratic principles of autonomy and privacy (Scott 1998; Lyon 2001; Lyon & Bennet 2008a; Lyon 2009). However, the various problems associated with identity cards in Kenya are of a qualitatively different nature, not related to the intrusiveness of identity cards.

registration compulsory for men of all ages, in 1978 this was extended to women, and in 1980 the compulsory age was raised from 16 to 18 (KNHCR 2007:3). While its original purpose was to control the labour force, particularly in mines and plantations, the system lent itself to identification in other ways. Controlling labour meant also controlling movement, and controlling movement meant identifying 'home'. Kipandes were one of the most important mechanisms for identifying particular individuals with their native reserves, and keeping them there, under control of their Native Authority. This served to fortify ethnic identity amongst those communities recognised as tribes at the time.

Today, all Kenyan citizens are required by law to acquire an ID card within 90 days of turning 18. In order to do this they must complete an application form at the local chief's office for submission to the local branch of the National Bureau of Registration, and provide supporting documents that prove both their age and their entitlement to citizenship on the basis of having a parent who is a Kenyan citizen. However, the ID card is not in itself proof of citizenship. In fact, there is no single document that can stand as proof of Kenyan citizenship (KNCHR & UNHCR 2010:14). In practice, the ID card is simply the most important of many identity documents, including birth certificates (which include an explicit statement to the effect that they are not proof of nationality), passports, school leaving certificates and other similar documents (Interview 57). Although tribe no longer appears on second generation ID cards, introduced in 1995, it is part of the application form, and district of origin, largely synonymous with tribe, does appear on ID cards.

An ID card is a necessary condition of full citizenship in Kenya. Though the ID card is not legally proof of nationality, this is not well understood amongst the general population. Rather, because of its importance, people generally believe it is *the* Kenyan citizenship document. It is required to get a passport, obtain formal employment, enrol in any form of tertiary education, purchase property (including land), engage in any commerce (including opening a bank account), and in many cases it is even required to obtain casual, informal work, or participate in micro-finance schemes. Despite the clearly important role of an ID card in an individual's day to day life, the understanding of the law and administrative procedures relating to acquisition of ID cards is confused within the general population (for an example, see Mwaura 2009; KNHCR & UNHCR 2010). This is in large part because the issuance of ID cards has been fraught with problems. The Minister for Immigration and Registration of Persons has himself acknowledged a range of problems related to the registration offices (access, resourcing, delays, inefficiency), the information

collected (the sensitivity of tribe and place of birth), the behaviour of registration officers (discrimination in relation to gender and ethnicity, and corruption for material and political gain, for example through mass registration before an election), and the system itself (its colonial roots, the redundancy of having a separate voting card) (Waitere & Kirwa 2008). However, the most controversial issues associated with ID cards tend to be related to ethnicity. The requirement to state and then have the registrar code one's tribe on the application form, and the inclusion of 'district of origin' on the card itself have led to abuse of the cards, amounting to ethnic discrimination, most notably in violent incidents after the 2007 election when people were targeted if their ID card showed they were from the 'wrong' district. However, not only can ID cards in Kenya facilitate inter-ethnic divisions, they also serve to distinguish between which individuals are outsiders, and which are 'rightly' Kenyan. In this sense, the divisive and repressive potential of ID cards is two-fold.

The Nubians as de facto stateless

In Kenya, security concerns have been behind not only the establishment of the identification regime, but also significant changes that have occurred in its administration since the late 1980s. Throughout the 1990s there was a heightened sense of security threat amongst Kenyan officials and decision makers. The early 1990s marked the beginning of a major influx of Somalis into Kenya as refugees, escaping the collapse of the Barre regime in Somalia and living in either the UNHCR refugee settlement Dadaab, or with extended family in various parts of Kenya, especially North-Eastern Province (which borders Somalia), and Nairobi. Given the memory of the Shifta war of the 1970s, the growth of extremist Islamic groups and terrorism in Somalia, and later the bombing of the American embassy in Nairobi in 1998, as well as the perceived threat to borders posed by the regional presence of various Somali clans, the supposed Somali threat has been a significant influence on Kenya's immigration and registration of persons policies.

In 1998 these combined threats prompted the government to introduce vetting for certain categories of people applying for ID cards. Most dramatically, a screening of all Kenyan Somalis took place from 1989 to 1991, during which many Kenyan Somalis had their ID cards confiscated (Lochery 2008; Manby 2009b:121). Following on from that exercise vetting became policy not only for Somalis, but also for individuals from all other ethnic groups with a presence across borders, and individuals applying for ID cards in

cosmopolitan, urban centres (KNCHR & UNHCR 2010:15). In 1992, when multi-party democracy returned to Kenya, the makeup of constituencies mattered in a significant way for the first time since independence. This may also have been a motivating factor insofar as vetting enabled ‘cleaning up’ of voter registries by denying ID and therefore voters’ cards to certain segments of the population. The introduction of second generation ID cards in 1995 and the requirement for all citizens to renew their ID card at that time represented a significant opportunity for the government to vet potential non-Kenyans and confiscate their ID cards.

In a presentation by the Ministry of Immigration and Registration of Persons (2005) to the Nairobi Province Vetting Committee Members, a justification for vetting was provided with reference to the prevalence of cases in which non-Kenyans have been able to acquire Kenyan ID cards through various forms of corruption. These included monetary bribes, clan loyalties, forged documents and crash registration programmes before elections, when rules and regulations are relaxed in order to boost voter registries in particular ways.⁶⁴ All of these administrative problems were exacerbated by the influx of refugees from Somalia and Ethiopia. Evidently, the problem of non-Kenyans acquiring ID cards is as much a result of the government being unable to control its administration as it is of opportunistic individuals acting illegally.⁶⁵

The process of vetting is largely administrative, rather than statutory. It is provided for by legislation, which understandably permits further investigation into ID card applications if there is doubt over a person’s nationality. However, there is no legislation providing procedural rules about how this should happen, or which people should be subjected to it. As such it is an informal, sometimes arbitrary, and certainly discriminatory process (KNCHR 2007:14; Sing’Oei 2008; KHRC 2009; Manby 2009b; Sing’Oei 2011). Generally, when applying at the local branch of a National Registration Bureau, if a person is to be vetted they have to present themselves to a committee for which the Provincial Administration is responsible. Formerly, these were central, at Nyayo house in Nairobi,

⁶⁴ On corruption in general in relation to registration of persons, see also KNCHR 2007; KNCHR & UNHCR 2010:16-17. For examples of reports of forged documents, see Daily Nation 2009c; Jubat & Ongeru 2009.

⁶⁵ To further demonstrate this point, 56% of Nubians who have passports were vetted for a second time with their passport application, after already satisfying the ID card vetting committee, demonstrating the state’s mistrust in its own procedures (OSJI 2011c).

however now they are handled at the district level.⁶⁶ The committee will interview the applicant and if necessary the parents of the applicant, and ensure the authenticity of documents by doing background checks. Often the committee requires people to produce impossible to acquire documents, such as grandparents' birth certificates, affidavits (which can be costly), or members of the committee may make demands for bribes. When these demands cannot be met, or the documents cannot be acquired, the applicant will face endless delays and often give up. There is no clear understanding of the basis for decisions made to grant or deny an ID card, and the committees are not required to give one. It is also not clear whether vetted individuals who do receive ID cards after this process are then considered citizens by birth or by registration. Citizenship by registration is an inferior citizenship because it can be revoked and under the 2010 constitution, citizens by registration are prohibited from running for President or acquiring dual nationality (Interviews 54 and 57).⁶⁷

Among Nubians, 44% reported having been vetted when applying for an ID card (OSJI 2011c). The following account from Mohamed (Interview 34), a youth from Kibera, serves to demonstrate the process. Mohamed first applied for his ID card in 1997, and acquired it in 2001:

Okay before I take my ID it was the bomb blast in Nairobi in 1998, so by then I've already applied so I was just like keeping waiting for two to three months. When I went there they start telling me 'No, you need to go and be vetted.' 'Why?' 'Because you are a Nubian, you are a Muslim'. So I had to be taken to vetting in Nyayo House, 44th floor, the officer who was in charge there write for me so many things. My great grandparents birth certificate so I was very annoyed with him. But he just took . . . I didn't show him that I was very annoyed, but deep in my heart I was very annoyed because, like, my father was born in Kenya, my grandfather was born in Kenya, my great grandfather . . . was not born in Kenya. So I was very annoyed, writing for me to bring all these documents. I didn't bring. I just left and just come home Yeah. So it took me two years. A friend of mine, she was a lady, a good friend of mine, she was the one who helped me until I get my ID. In 2001.

Insofar as any international attention has been directed at the Nubians, it has been to narratives like this, and associated complaints of rights deprivation (Makoloo 2005; Lynch

⁶⁶ Vetting committees are composed of the DC or Officer as chairman, the district registrar as technical adviser and secretary, an immigration officer (where applicable), a civil registrar, National Security Intelligence Service, chiefs and assistant chiefs, and appointed elders.

⁶⁷ Nobody I spoke to in my research was able to verify whether the Nubians, or any other group, are being registered as citizens by birth or citizens by registration. Jill Cottrell Ghai, a constitutional expert, suggested it may make the Nubians more vulnerable if they began trying to resolve this question, as if the government were reminded of the possibility of revoking their citizenship problems could ensue (Interview 54).

2008; KNCHR & UNHCR 2010; OSJI 2011a, 2011b, 2011c, 2011d). Organisations such as OSJI, the Minority Rights Group and Refugees International, as well as UNHCR, have therefore considered the Nubians stateless.

Influenced primarily by international law, statelessness is most commonly conceived as a condition characterised by lack of protection directly resulting from lack of nationality, either in law (*de jure*) or practice (*de facto*). The Nubians cannot be considered *de jure* stateless, because under the operation of Kenyan law, they should be entitled to citizenship. According to the 1963 constitution (in effect during the main period of field research), at independence citizenship should have been granted to all British Protected Persons residing in Kenya.⁶⁸ Failing, this, Article 87(1) of the 1963 constitution says that Kenyan citizenship should be automatically granted to all those who were born in Kenya and who have one parent also born in Kenya. As the Nubians arrived in Kenya from as early as 1897, and today 99% of Nubians report that their parents are Kenyan (OSJI 2011b), either or both of these provisions should mean that Nubians are automatically considered Kenyan citizens (cf. Manby 2009b:30). The 2010 constitution contains similar provisions.⁶⁹ However the Nubians' citizenship has been continually cast into doubt (Sing' Oei 2011:50).

Constitutional right alone is not enough to guarantee access to citizenship, but rather constitutional provisions need to be made effective through appropriate administrative

⁶⁸ All residents of British colonies were British Protected Persons, a lesser status than British subject, a category which was equivalent to a full citizen and was only available to people born in the British Isles and their descendants (Manby 2009b:27).

⁶⁹ The 2010 constitution contains some important changes in relation to citizenship. These include, as stated earlier, citizens by registration are not entitled to dual citizenship (which was not available to anyone in the previous constitution), nor are they entitled to serve as President; gender discrimination has been eliminated so that now women are able to pass their nationality onto their children, and to foreign husbands; and, importantly, documentation is guaranteed for all individuals who are entitled to citizenship. The 2010 constitutional provisions relating to citizenship were given effect in the Kenya Citizenship and Immigration Act 2011, and the Citizens and Foreign Nationals Management Service Act 2011. The former Act allows the possibility of granting citizenship-by-registration to stateless people: "15 (1) A person who does not have an enforceable claim to the citizenship of any recognized state and has been living in Kenya for a continuous period since 12th December, 1963, shall be deemed to have been lawfully resident and may, on application, in the prescribed manner be eligible to be registered as a citizen of Kenya if that person-(a) has adequate knowledge of Kiswahili or a local dialect; (b) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer; (c) intends upon registration as a citizen to continue to permanently reside in Kenya or to maintain a close and continuing association with Kenya; and (d) the person understands the rights and duties of a citizen. (2) Applications under this section shall be made within a period of five years from the date of commencement of this Act and may by notice in the gazette be extended by the Cabinet Secretary for an additional period of three years." Aside from the vague wording of some of these conditions, the retainment of the category of citizens by registration is problematic insofar as it is a second class citizenship – revocable, and not entailing all the rights of citizens, including to dual nationality, and to run for President.

procedures (Batchelor 1995:112). As long as people who identify as Nubian are *routinely* denied a Kenyan ID card prior to vetting, they can be considered *de facto* stateless (Manby 2009b:122-126; Sing’Oei 2011). Groups like the Nubians are not considered nationals until they have passed successfully through the vetting process, meaning that before that stage they effectively have no citizenship. This is in contrast to the many other Kenyans who are assumed to be Kenyan on the basis of their ethnicity and for whom getting an ID card is just a formality. Many Kenyans lack birth certificates, and most lack their grandparents’ birth certificates, yet still manage to acquire an ID card without difficulty.⁷⁰ Even if certain Kenyans do not actually possess an ID card, for example if they haven’t been able to access a registration office, they are not likely to be stateless because, given the opportunity to apply, they would not be assumed to be foreign.⁷¹

In practice, the determination of who is entitled to an ID card therefore entails significant ethnic discrimination. The KNCHR argues that, “[t]he Nubians are not classified among the recognized ethnic groups in Kenya. For this reason, all Nubians are vetted. The underlying assumption of vetting the Nubians, is that they [are] foreigners, unless proven otherwise” (KNHCR 2007:10). This general approach is part of a wider pattern of ethnic discrimination in many post-colonial African states, which favours ‘indigenous’ groups at the expense of those perceived to be non-indigenous, turning the colonial order on its head by privileging natives over settlers (Lochery 2008; Manby 2009b:38). Categories of people such as detribalised natives, who were neither fully settler nor native, have found themselves left in the post-colonial regime with neither the still-privileged status of the settler (the option of British citizenship), nor the regular status of a full citizen. Instead, they are ethnic strangers. Research with vetting committees and district registrars conducted by OSJI in 2010 exposed the outright discriminatory application of the vetting, with a Mombasa registrar explaining that,

⁷⁰ In February 2010 the Kenyan government made it mandatory for all children to have birth certificates to attend school. As primary education is free in Kenya, this should have a positive effect on ensuring the requisite documentation to get an ID card later in life. There are still major administrative difficulties to overcome, however, including the capacity of the Ministry of Immigration and Registration of Persons to handle the backlog (Opiyo 2010).

⁷¹ Many Nubians acknowledge that there is an illegal demand for Kenyan ID cards from people not entitled to them, for example some Ugandan Nubians, or Somali Somalis, and as such some, including the KNCE, have no in principle problem with the vetting process as a measure to ensure national security. However, they do and should maintain that it is ethnically discriminatory to vet someone *purely* on the basis of their nationality, especially if they are able to provide the requisite evidence to prove, with the standard documents, that a parent was Kenyan, and that they are therefore entitled to citizenship.

You know, cases of indigenous Kenyans, like Mijikenda or Giriama, there is no way you will subject him or her to vetting...When you talk of Asians or Arabs, they are not indigenous Kenyans and that is why we ask them for extra birth certificates, like for their parents and grandparents (OSJI 2011b)

Early in 2011 a case was brought to the High Court in Mombasa brought by Arab and Asian Kenyans against the Registrar of Persons about discriminatory vetting (Muslims for Human Rights, et al. v. The Registrar of Persons 2011). The judge has preliminarily deemed a confidential circular from the Immigration department to be unconstitutional, as it requests the vetting committees to target these specific communities (OSJI 2011b). The case has, at the time of writing, been suspended pending the establishment of the Kenya Citizens and Foreign Nationals Management Service (provided for in the Citizens and Foreign Nationals Management Service Act 2011), which should standardise the process for acquiring an ID card. If this Service succeeds in making the Mombasa High Court case redundant, and eliminates vetting on the basis of race or ethnicity, this will clearly have important and very positive consequences for the Nubians, as well as other groups like Arabs, Asians and Somalis.

In the meantime, Nubians will have to continue dealing with discrimination in access to ID cards in the *ad hoc* and precarious (though relatively effective) way they have done for the past few years. Since vetting committees have become more decentralised in some places (Nairobi, Eldama Ravine, Kericho, Kibos and Kisii) the Nubians have succeeded in getting 'their own people' onto the district committees to vouch for the identity and Kenyan nationality of applicants.⁷² Currently 87% of Nubians aged over 18 hold an ID card; 8% a passport, leaving 13% still stateless (OSJI 2011c). These gains for the Nubians were achieved largely through lobbying on the part of the KNCE, in association with CEMIRIDE and OSIEA. In 2009 the Minister for Immigration and Registration of Persons, Otieno Kajwang', admitted that the vetting of members of the community is discriminatory and needed to be revised as, "all Kenyans are equal" when it came to registration as citizens (Daily Nation 2009b). Of all the Nubians' effort to pursue their rights (discussed further in chapters 3 and 4), the gains brought about by the KNCE with Minister Kajwang' have been the most successful.

⁷² In Kibos the Nubians on the vetting committee are reported to have limited influence and problems usually arise again when people are referred to Nairobi, which happens if that is where they were born, or sometimes if that is where their parents were born. Problems were also reported to arise in Kibos when people apply for passports, which they said must also be done in Nairobi. In Kisii it was reported that vetting has stopped since the electioneering prior to the 2007 election, and now the elders can sign an affidavit and the ID card will be issued, a process believed to be easier and more straightforward than vetting.

The KNCE's lobbying efforts have been boosted by a number of legal cases. In 2003 Yunus Ali, the former Nubian MP, with CEMIRIDE, brought a case to the Kenyan High Court about discrimination in access to ID cards, and in June 2004 a large crowd of Nubians marched through the streets of Nairobi to the High Court in support of the case, though in the end it was inexplicably stalled and subsequently abandoned. More successful have been two cases in international courts. In March 2011 the African Committee of Experts on the Rights and Welfare of the Child, in a case brought by OSJI and the Institute for Human Rights and Development in Africa (IHRDA) on behalf of the Nubians, ruled that the Kenyan state has violated the rights of Nubian children to a nationality, though it is too early to comment on the implementation of this decision (OSJI 2011d). Late in 2011 a decision is expected on a case at the African Commission of Human and People's Rights (ACHPR) in the Gambia, also brought by OSJI, IHRDA and CEMIRIDE, which addresses the citizenship issue as well as a range of other related rights violations (OSJI 2011a). These cases are too recent to be able to comment on their impact on vetting of the Nubians. However, it is worth noting that the engagement of these major local and international NGOs in the plight of the Nubians has significantly increased the Nubians' capacity to effect change in relation to this issue, going beyond the *ad hoc* arrangement of having elders on vetting committees to begin to address the issue through higher level regional court cases (Interviews 24, 32).

Nevertheless, despite the presence of Nubian elders on district vetting committees, and international pressure, the majority of Nubians (56%) got around the vetting in different ways, by bribing, lying about their name and/or their tribe, or purchasing counterfeit IDs (OSJI 2011c). Many Nubians I spoke to, indeed many non-Nubians, recognise that paying '*kitu kidogo*' – something small – is ordinary procedure when dealing with the provincial and district administration, as it is with traffic police and various other state agents. However, lying about one's name and tribe in order to be automatically considered Kenyan, or resorting to a counterfeit ID as a result of being denied the authentic ID that they are entitled to, are not ordinary measures. The prevalence of these measures in the community attests to the breadth of discrimination faced when pursuing the normal, legal channels to documented citizenship, the fragility of the Nubians' citizenship status. This figure also points to the fragility of the arrangement that the KNCE negotiated with Minister Kajwang'. Anecdotal evidence from a brief second field trip to Nairobi in 2011 suggested that Nubians are again being referred to central vetting committees at National

Social Security Fund building without Nubian elders who can vouch for their identity. Until the underlying reasons for the vetting are addressed, *ad hoc* negotiated arrangements, and even legal reform that appears to be an improvement (namely the 2010 constitution's guarantee of documentation for all citizens) will remain weak and meaningless.

ID cards, rights and recognition of membership

Prevailing studies of statelessness by NGOs like Refugees International, OSJI and agencies like UNHCR, though not satisfied with the *ad hoc* and precarious arrangement, have their goals largely fulfilled by the now high rate (87%) of ID card acquisition amongst the Nubians. However, the extent to which ID cards confer full citizenship requires further interrogation. I suggest here that ID cards go only some way in this regard, conferring possession of individual rights, and recognition of formal individual membership, but leaving other aspects of full citizenship still lacking.

The ID card goes *some* way towards conferring recognised membership in the polity. The ID card constitutes *formal* recognition of equal citizenship status and therefore membership in the polity. A number of participants expressed that being *denied* an ID card felt like being denied recognition as a bona fide citizen of Kenya. Experiences of being refused an ID card were often interpreted as experiences of misrecognition-recognition as non-Kenyan. When asked why he thought he had been refused an ID card Abdulkadir' (Interview 29) said he felt that, "though I was born in Kenya... the country doesn't recognise me." Most people made a very direct link between being granted an ID card and being recognised as a Kenyan citizen. Zaid (Interview 37a) further explained the effect of denial of an ID card:

So it's very unfair, it's actually telling you that you don't deserve this document. And whoever is being told to give out this document has been, he's been brought here. He's been here in this country, he was born here in this country. So it's very unfair to tell that person to go, you're not going to get this. It is a vital document, it's something that they should It's your right, you know? It's not a privilege.

In particular, many people reported that being denied an ID card made them feel like the state and other Kenyans think of them as not only somehow foreigners, but particularly inferior or dangerous foreigners. 'Fatuma' (Interview 45a) felt that systematic denial of ID cards on the basis of ethnicity implied that, "[p]eople from this community are not to be trusted. They are non-citizens until proven otherwise" In saying this 'Fatuma'

articulated quite clearly what many other respondents insinuated. Hassan (Interview 43) responded to the same question with, “I feel bad because I never took myself to be a Kenyan ... I took myself to be a refugee.” Being *granted* an ID card was often talked about, therefore, as recognition of membership in the Kenyan citizenry. Jamia (Interview 31) said of her ID card that it means, “I am a Kenyan! That shows I am a Kenyan! And I am proud to be a Kenyan.” People frequently spoke of the experience of having an ID card as being able to access all the same rights as other Kenyans, *because* you are also considered a Kenyan, as Issa Abdul Faraj (Interview 32) described the ID card, “... it shows that you are known to the authorities, it also shows that you are provided for.” These comments suggest that ID cards do play an important role in conferring recognition of formal membership.

In doing so, the ID cards also confers *possession* of particular rights. Issa Abdul Faraj (Interview 32) explained again that, “[y]ou know that without an ID there is nothing you can do. ... Basically ID is your lifeline.” Most commonly people talked about the impossibility of getting a job, even casual labouring jobs, without an ID card (Interviews 2b, 12, 21, 29, 39, 41b, 43, 45a, 46, 48). A number of people reported that they were only able to purchase land (outside Kibera of course) (Interviews 30, 32, 40, 41b), or open bank accounts (Interviews 2b, 12, 30, 33, 46, 48) after they eventually acquired an ID card. Even membership in small women’s self-help groups required ID cards (Interview 33). Though not many people raised it in interviews, an ID card is required to get a voting card, and so people without one cannot exercise this important political right (Interviews 21, 48).⁷³ Some people also complained that without an ID card they felt vulnerable walking around in public, fearing they could be arrested, or at least extorted by the police for not carrying one, even though it is not a legal requirement (Interviews 2b, 29, 32). It is also not possible to enrol in tertiary education without an ID card, and only 2% of Nubians have been able to reach this level of education (OSJI ‘2011b).⁷⁴

⁷³ The ID card and voting card will be combined with the third generation ID card (Daily Nation 2009a) During my fieldwork in 2009 it was reported that third generation ID cards including biometric information, and which would also function as voters’ cards, would be issued from January 2010. However, this same article also noted that the company commissioned for the job is still owed money for the previous two years’ worth of ID cards. Unsurprisingly, the third generation cards have therefore not yet been introduced. In fact, currently even second generation cards have run out and all Kenyans are finding it difficult to acquire one.

⁷⁴ Though it is common to talk about stateless people being denied education, in Kenya this really only applies to tertiary education because ID cards are only acquired at age 18.

Though many Nubians lack the means to travel, international travel was an option for some people, and one they often missed out on because of difficulties getting an ID card, or even after obtaining an ID card, further difficulties getting a passport. For example one young woman missed out on a Masters scholarship at a top American university (Interview 45a), and another missed out on a volunteer exchange opportunity with another American university (Interview 41a). Young people without ID cards are unable to travel to Saudi Arabia in search of work (Interviews 41b, 51). A year working there as a driver or domestic employee could result in sizeable remittances to families at home, and enough savings to buy a small piece of land and construct a small house for a new family (though outside Kibera). Difficulty accessing passports also makes it more difficult to undertake Hajj and visit Mecca, one of the five pillars of Islam for those with the means (Interviews 24, 44).⁷⁵ Even local travel within East Africa, for example to Uganda or Tanzania to visit extended family for weddings and funerals, or to study (Interview 26, 35, 43, 46) was made more difficult for some without a passport. The prohibition on travel that results from being denied a passport has clear ramifications for educational attainment, employment opportunities and practice of religion, not to mention freedom of movement.

These comments demonstrate why the liberal citizenship tradition treats ID cards as the central expression of citizenship. They are (in theory) tangible symbols of equality and universality of membership, one of whose primary functions is to ensure possession of individual rights. ID cards, through their uniformity, in many ways operate as great equalisers, ostensibly entitling the bearer, regardless of the various aspects of his or her identity, to the rights of a citizen. Insofar as this occurs, the ID card is an absolutely necessary condition of full citizenship, for it is proof that a person has crossed the boundary between outsiders and members. It is for this reason that studies of the Nubians who hold statelessness as the primary challenge facing the community tend to place such a significant focus on the acquisition of ID cards as the solution to the Nubians' marginalisation (Makoloo 2005; Lynch 2008; KNCHR & UNHCR 2010; OSJI 2011b, 2011c).

However, the liberal tradition is limited in the ways in which it can help us understand the problems Nubians face with citizenship. The liberal critique may be successful in the extent to which it condemns discrimination in access to ID cards (citizenship as status) and

⁷⁵ During my research I heard rumours that temporary passports were sometimes issued for this purpose, but I was unable to verify this.

the possession of individual rights, but it stops there. By understanding the ID card as the panacea of equality, the liberal critique is unable to illuminate other ways in which the Nubians' membership and ability to exercise rights is inferior and insecure. Many participants in this research expressed some very significant doubts about the extent to which status as a form of citizenship conferral results in equality. For example, when asked what the ID card meant to her, 'Fatuma' (Interview 46) responded, "to me it means nothing, apart ... from some important issues. That is banking, you need an ID to be employed, you need an ID to be registered anywhere, yeahapart from that I don't see anything else". The limitations lie in what other Kenyans with ID cards have that Nubians, even with ID cards, still do not.

The limits of ID cards: individual versus collective

The liberal tradition of citizenship has dominated modern Western political theory for the past two centuries. This tradition has its historical roots in the English Civil war, after which the notion that individuals need protection from the state and from each other, to be provided by the rule of law, became popular (Isin & Turner 2007:6). Though it is not ideal to essentialise it in this way, we can say that liberalism holds a 'thin' notion of citizenship. Liberalism is a doctrine of negative duties on citizens to refrain from inhibiting each other's pursuit of the good life, and positive duties on the state to protect citizens. The state should be neutral on what constitutes the good life and instead guarantee the liberty of its citizens to pursue their needs and interests as they define them, in their private lives, and so the liberal tradition is in favour of a minimalist state (Heater 1999:4-43). The liberal conception of citizenship is characterized by an emphasis on individualism and rights over community and duties, which are kept to minimal requirements for taxation, military service and parenting (Oldfield 1990; Young 1989:253; Isin & Turner 2007). As a result of these conceptual preferences, liberal citizenship is manifest and operationalised in formal legal status. It is state-centred citizenship (cf. Stewart 1995).

The most relevant aspect of the liberal citizenship tradition for this discussion is its approach to difference in the polity. In the public realm, the liberal tradition is intentionally blind to difference and instead emphasizes equality in the form of universalism (Young 1989:253). The liberal tradition tolerates diversity, as long as it remains within certain limits, as long as it remains confined to people's private lives and does not impinge upon the freedoms or equality of others. From this perspective the only

aspects of identity that are relevant to citizenship are facts about the identity of the individual that pertain to their legal entitlement to a nationality, facts such as place of birth and nationality of parents. Other aspects of identity, including ethnicity, ought not to be relevant to citizenship, lest they corrupt the principle of equality of individual rights and status. From the liberal perspective, difference is only relevant if it is associated with discrimination, of which the liberal tradition would be heavily critical.

As such, the liberal tradition is able to offer a strong critique of the problems Nubians face in access to ID cards. The criticism here is that the Kenyan state is not sufficiently difference blind in its approach to identifying citizens. Instead, it makes hierarchical distinctions between citizens based on ethnicity. The remedy is to approach the issuing of ID cards with no such discrimination, and instead make relevant only facts of birth and parentage that pertain to legal nationality entitlement. If this were to be accomplished, then Kenyan Nubians would have universal access to ID cards and possess the associated rights, and equal *formal* status with other Kenyans.

The liberal critique of discrimination faced by the Nubians in access to ID cards highlights the gap between the practice of politics in Kenya, and the liberal ideal: political relations and citizenship in Kenya are organised in many important ways around ethnicity, rather than an abstract universalism. In practice ethnicity can impact very significantly on the very principle of equality the liberal tradition is concerned to preserve. To accept the liberal critique of the Nubians' ID cards problem would be to endorse a radical transformation of Kenyan politics to move towards the liberal model, whereby individual status and individual possession of rights were all that mattered in terms of politics, and they were guaranteed by the difference-blind state and the principle of equality through universalism.

However, to simply highlight the gap between Kenyan politics and the liberal ideal and advocate a radical transformation is not a particularly helpful way of addressing the problem. Rather, what is required is a more open minded interrogation of the current political environment, and an attempt to understand why it has developed with ethnicity as such a central organising principle. Only with a more genuine attempt at this kind of understanding is it possible to fully come to terms with the Nubians' experience of citizenship, and work towards a remedy for their lack of equal membership and rights.

A full understanding of the Nubians' citizenship deficit therefore requires something more than a straightforward liberal critique. The denial and the eventual granting of ID cards has been experienced and made sense of by many Nubians primarily in relation to their collective ethnic identity, and the recognition (or non-recognition) of that identity, and of the Nubians' collective rightful place as a tribe of Kenya. When trying to explain to me why they thought they had been discriminated against in their personal pursuit of their own ID card, people frequently switched rapidly from the singular to the plural, and launched into a discussion of the perception that the Nubians are non-Kenyans. In doing so, these narratives of denial ceased to be personal and individual and instead became narratives of collective denial *based on* collective identity, and specifically the notion that this identity is a foreign one. When asked what he thought was the basis of discrimination when he applied for his ID card, Mohamed (Interview 39) said, “[b]asically I will think because I am Nubian, because people maybe think these are not Kenyans, they may think these are Sudanese.” Zaid (Interview 37c) put it very neatly,

So a lot of people still feel that if the individual is recognized then that is it. You forget about the other people who are behind, you see? So they, a lot of people don't understand that. At the same time, you see, it's not about the individual. When you are recognizing a community, a community is not about the individual, you know, it's more than that. You know, you need to go beyond that, you know. Because an individual would fade away, an individual would die, but a community would not die. You see a community would still exist, because the existence of a community is not pegged on an individual you see. But the existence of an individual is pegged on the community, because the community would survive. You can die tomorrow, you know you can die tomorrow, but that community would still exist yeah, would still exist. So when people try to say that 'let's recognize the individuals and leave the, the, the community aside', then they are making a very big mistake.

Many Nubians feel themselves to be in the predicament of having no ID card *together*. An individual Nubian is not really vetted, stalled, or denied an ID card that he or she should be entitled to because of doubts about the basic facts of place of birth and parentage, the facts a liberal tradition holds as the only ones that should be relevant to access to citizenship and nationality. Rather, as described in detail above, the process of vetting is being applied to all Nubians precisely because they are Nubian, because they are perceived to be foreigners. Their ethnicity, and not only their birthplace and parents' birthplace are made relevant in this process. When asked why she thought Nubians she knew had been refused ID cards, Mabruka (Interview 48) responded, “[b]ecause the Nubians are not amongst the tribes in Kenya, the 42, so we'll be put like Others.” The resolution of nationality for one Nubian

does not therefore necessarily solve the *inter-connected* problems of denial of membership as social and political standing, and of possibilities for the exercise of rights, either for the Nubian with an ID card, or for those without.

Despite its claims of universality, and the uniformity of ID cards, which do not bear a person's ethnic identity explicitly, the process of applying for an ID card involves reference to tribe both explicitly on the form, where there is a space for the registrar to issue a code alongside the applicant's declaration of the tribe, but also clearly in the mandate of the district vetting committees to target specific tribes. Like the other political mechanisms of recognition and modes of access to rights and participation discussed in this thesis (collective census recognition and ethnic homelands), ID cards highlight and reinforce the salience of ethnicity for citizenship (cf. Steinwedel 2001; Gates 2008). The liberal critique of Kenya's identification regime is helpful insofar as it advocates for an impartial legal and bureaucratic framework for issuing ID cards. However, it falls short of comprehending or critiquing the broader salience of ethnicity in relation to citizenship in Kenya.

Conclusion

The discussion above demonstrates that for many Nubians who are or had been illegally deprived of an ID card, the primary significance of acquiring one lies in the newfound possession of a range of individual rights, and also in the conferral of formal nationality status. Nevertheless, although the ID card is clearly important and has made a significant positive impact on people's lives, it is best conceived of as a necessary but not sufficient condition for full citizenship in Kenya. Effective membership as social and political standing and subsequent possibilities for the exercise of rights, that is participatory parity, remains elusive.

This chapter has suggested that, while helpful in certain respects, the liberal tradition of citizenship fails to account for the reality of citizenship in Kenya. The basis of liberal citizenship implies that being recognised as a citizen (*sans* ethnicity) automatically bestows political equality, however in Kenya formal citizenship without further, different kinds of (ethnic, indigenous and autochthonous) recognition leaves people citizens, but nonetheless unequal with other Kenyans. Rather than creating a universal equality, the difference blindness of the liberal tradition continues to obscure the Nubians' inferior citizenship status in Kenya.

Indigeneity and Collective Recognition

In the previous chapter, I argued that ID cards are insufficient for the achievement of full citizenship in the Kenyan national community. Beyond formal recognition of citizenship status, and possession of individual rights, there are other aspects of citizenship that are required if the Nubians are to become full and equal citizens. This chapter examines Kenyan political culture to understand the role of ethnicity in citizenship, and in doing so draws out the relation between collective ethnic recognition, rights, and participatory parity. In the Kenyan context, there are deeply embedded institutional, social and political mechanisms that establish membership in a tribe as a pre-requisite for full membership in the national political community. Furthermore, the understanding of which tribes rightly count as Kenyan is heavily influenced by notions of indigeneity. The political rhetoric in Kenya of pride in ethnic diversity only extends as far as the 42 recognised tribes. In restricting recognition to those groups, the Kenyan state promotes a different kind of distinction to that between different tribes: that between indigenous and stranger ethnic groups. Nubians, then, want their (ethnic) difference to be recognised in order to reinforce their (indigenous) sameness, and therefore their access to full citizenship, including education and employment quotas, administrative and electoral influence, and land. In making these general arguments, I highlight the point that in Kenya claims for recognition of collective identity are therefore not necessarily claims for preferential, special or different treatment, but can be claims for equal treatment and full citizenship. Throughout the chapter I draw particularly on material related to the 2009 Kenyan census to demonstrate these points in more detail.

Census categories and Kenya's '42' indigenous tribes

Census politics

There are few tools more widely used than a census for counting and knowing national populations. Yet, far from being a straightforward counting exercise, a census in fact organises the population and categorises citizens (ethnically, linguistically, religiously, racially) by coding and naming, or not naming (Hirschman 1987; Urla 1993; Kertzer & Arel 2002; Uvin 2002; Ferrando 2008). In the 2009 Kenyan census, the most comprehensive conducted in its 50 year history, the most controversial categorisation, in particular given the recent memory of the 2007- 2008 post-election violence arose in the question, 'What tribe are you?'⁷⁶ The emotive nature of this question is perhaps demonstrated best by the fact that although it had been asked in all previous censuses, in 1999 the statistics generated from the question were deemed too sensitive for public release. Traditionally, in Kenya, it is tribalism – divisions between Kenya's '42 tribes' – that has attracted public, academic, civil society and NGO attention. Inequalities in access to land and the power and resources of the central state have led to persistent inter-ethnic tensions and occasional outright violence. In the census, concern about the potential misuse of the statistics to facilitate patrimonialism and resource grabbing, and thereby exacerbate inter-ethnic tensions, was widespread. Many could not see the relevance of tribe in development planning, seeing only potential for misuse of the figures to direct development funds to 'one's own' (for example see Wanyeki 2009). Others, however, argued that tribe is part of who Kenyans are and should not be ignored, so the question should be asked (for example see Okulo 2009).⁷⁷

In the weeks leading up to the census, the Kenya National Bureau of Statistics (KNBS) and the government tried to defend the inclusion of the tribe question, consistently claiming that the census is simply a tool for government planning. The head of the KNBS

⁷⁶ While this was the most controversial question, the most controversial issue in relation to the census was undoubtedly the corruption and ethnic favouritism in recruitment of enumerators – prized employment opportunities– and the ongoing disputes over their payment. It is difficult to underestimate the way in which this issue overshadowed the tribe question and any other issue related to the census. While it is beyond the scope of this thesis to explore this particular issue further, it is worth noting that this is an example of the ways in which ethnic favouritism operates in Kenya, as discussed further in other parts of this chapter.

⁷⁷ Aside from these main schools of opinion, there was a smaller group consisting of some tribes (and sub-tribes) historically counted as 'Others' or included in bigger umbrella tribes such as the Kalenjin or Luhya who pledged to boycott the census (Matoke & Juma 2009). Nubians were not part of this initiative. In addition, Kenyans of European or Asian origin cannot be coded by tribe, though they are coded by race, and were largely left out of the debates surrounding the tribe question. Their responses to the ethnic coding in the census would be an interesting area for future research.

Anthony Kilele said, “[m]ost people are looking at the question on tribe as a tool for political purposes. Yes, I know some people can use statistics badly given the chance, but let us not bring politics into every issue, as this will be a purely professional exercise. We are getting the information so that it can be used by planners and for statistical reasons” (Kiare 2009).

However, it is widely accepted that there is, in fact, no such thing as an apolitical, neutral, purely ‘scientific’ census. Censuses, like all statistics do not simply deliver raw, apolitical data, but rather they shape the population, the citizenry, both in the historical record and in the present, in the moment of enumeration - in the interaction between enumerator as state agent, and citizen - and in public debates (Andersen 1983; Urla 1993; Ferrando 2008; Starkweather 2009). Censuses determine what is known about a country, what is not known, and what options people have to identify themselves. As Kertzer and Arel (2002:36) argue, in a census, “[w]e witness the struggle among a multiplicity of actors over that most basic of powers, the power to name, to categorize, and thus to create social reality”.⁷⁸ As in Kenya, 65% of countries who conduct national censuses insist on categorizing individuals by ethnicity at the same time as counting them as part of the national whole (Morning 2008:239). Nevertheless, the fact of categorising by ethnicity and the options available for responding to this question, as well as the publication and use of the resulting statistics are often controversial. The division of a population by ethnicity has the potential, in certain circumstances, to threaten national cohesion and the supposedly superior salience of national identity by departing from the liberal emphasis on difference blindness and instead recognising difference.

The Kenyan census can be considered a paradigmatic case of a highly political census environment. Here, it is not the potential for divisions between ethnic groups inherent in counting them that I intend to examine, though that is politically important. Rather, it is the determination of which ethnic groups will be counted at all, and what that means, that occupies my focus. That is, it is not the divisions between ethnic groups *per se*, but between insider and outsider ethnic groups that are of relevance to this study. In Kenya the popular belief that the country is made up of 42 tribes comes not from any constitutional or

⁷⁸ The political debates discussed here are distinct from another way of viewing censuses as political, that is to adopt a Foucauldian view that would understand a census as a tool of governmentality and biopower, rendering individual bodies intelligible by the state, and therefore governable. It is something like this view that Benedict Anderson (183:166) is getting at when he explains that “...census makers [have a] passion for completeness and unambiguity. Hence their intolerance of multiple, politically ‘transvestite’, blurred or changing identifications.”

legislative list, but from the available codes dictated by the state for answering the tribe question in the 1969 census. That census explains the selection of available codes as being based on the 40 tribes of the 1962 census, the last conducted by the colonial government, with the addition of two groups of Somali, marking a striking form of continuity with the colonial regime (Statistics Division 1970:ii). The 1962 census states, "...the indigenous African and Somali population of Kenya was grouped into 40 tribes; immigrants were classified by country of origin. The indigenous tribes were divided into eight major groups on the basis of ethnic, linguistic and geographical considerations. ... The grouping is of course somewhat arbitrary in many cases" (Statistics Division 1966:34).⁷⁹ Though the 42 are not listed anywhere else official, this is poorly understood by the population at large. It is common to hear people talk of the 42 tribes in the constitution, or some kind of list controlled by parliament, though neither the 1963 nor the 2010 constitution, nor any legislation, includes any such list (for example in Interviews 21, 37c, 45a, 45b, 51). As such, the census has, in this sense, been the primary site of official recognition of ethnic groups throughout Kenya's independence. The intimate connection between the census and recognition as Kenyan was exploited in the advertising campaign for the 2009 census, which included the phrases, 'Nipo!' (I am here!) and, 'Natambulika!' (I am recognised!), alongside photos of 28 different faces representing the socio-economic, racial and cultural diversity of the country.

Indigeneity

Standing in some tension with the mainstream understanding of the term in Africa, and its treatment in studies of 'indigenous' African groups, indigeneity is a key ingredient in the salience of 'the 42 tribes'. The concept of indigeneity is highly contested in the international arena, and especially in Africa. After two United Nations decades of Indigenous People, and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in September 2007, there is still no accepted definition of the term. Early in the 1980s, the first UN Decade of Indigenous People decade, the emphasis within

⁷⁹ The 1979 census counted 38 ethnic groups, the main changes being the collapse of the Kalenjin sub-groups into the one umbrella Kalenjin group, the separation out of Basuba from Luo, and the addition of El Molo, a numerically very small group, as a separate tribe. No reasons are given in the report for this change. The general explanation for the groupings is as follows: "The grouping of indigenous African tribes was done mainly on ethnic, linguistic and geographic considerations. Generally, the tribal classification has been restricted to main tribes only and sub-tribes have not been separately indicated" (Central Bureau of Statistics 1979:25). In 1989, the census inexplicably counted 40 tribes (Central Bureau of Statistics 1994). In 1999 the results of the 'the tribe question' were not released. The 2009 coding is discussed further below. The reasons for these changes are ultimately unclear, and they seem to have had little effect on altering the notion that Kenya is made up of 42 tribes.

the context of debating a definition was occupation of an area pre-invasion, and ongoing distinction from the mainstream national community in terms of both way of life and socio-economic condition (Hodgson 2002; Sylvain 2002; Igoe 2006). This definition made sense in the context of contemporary settler societies like Australia, Canada and North America, however its applicability in Africa, Asia and to a lesser extent South America was debatable (Kuper 2003; Kymlicka 2008; Wachira 2008; Hodgson 2009, Leakey 2009). As Africans came to the table with the UN Working Group on Indigenous Populations from the 1990s, notions of self-identification, marginalisation and non-dominance as defining factors began to gain influence in response to the difficulties of identifying who was there first in these continents (Igoe 2006; Hodgson 2009).

The international indigenous peoples' movement has gained significant momentum and worked with a number of African groups to get them recognised by international bodies as indigenous, and subsequently grant them access to the many modes of international assistance, including lobbying but also material assistance, available from international donors and NGOs.⁸⁰ These international networks have given indigenous peoples greater access to resources, especially land and to new channels of patronage (Lynch 2011b:148). International actors increasingly insist on decentralisation, and the international aid community seems to have a general preference for working with indigenous groups, particularly those with a 'connection' to their land (Geschiere 2009:66-96). Consequently, the international indigenous movement constitutes a particularly attractive arena for the practice of extraversion, that is, of looking beyond the local and out to the global, actively forging relations of various degrees of dependency in search of significant benefits (Bayart 2000; Igoe 2006).

Indigenous status is usually seen as bringing with it special, extra or supplementary rights and resources to those accessible by ordinary citizens. Kymlicka (2008) notes that the international human rights regime, particularly the UN, has established an approach to minority rights that promotes *accommodation* (meaning something akin to self-determination) for indigenous minorities, while it only advocates *integration* for other kinds of minorities. Kymlicka (2008:16) explains,

If they present themselves to the international community as a national minority, they get nothing other than generic minority rights premised on the

⁸⁰ In Kenya, the Maasai, Ogiek and Endorois have been particularly active in this movement and fighting for indigenous land rights (Wachira 2008; Lynch 2011a).

integration model; if they come, instead, as an indigenous people, they have the promise of rights to land, control over natural resources, political self-government, language rights and legal pluralism.

It is therefore completely unsurprising that groups such as the San in Southern Africa (Sylvain 2002), Maasai in Tanzania and Kenya (Igoe 2006; Hodgson 2009), the Endorois in Kenya (Lynch 2011a) or the Mbororo in Cameroon (Pelican 2009) have sought to 'brand' themselves as indigenous in order to access these benefits (Comaroff & Comaroff 2009). The absence of any robust criteria to determine indigeneity has led Igoe (2006) to characterise the term as having a self-ascribed polythetic nature, meaning there are neither necessary nor sufficient conditions for the use of the term. The acceptance of self-identification and marginalisation as defining elements of indigeneity therefore lend the term well to strategic deployment. As a result, the indigenous peoples' movement has been criticised as the product of ambitious and sometimes self-serving NGOs (Kuper 2003).

This is particularly so in Africa, where it is not immediately clear why some groups should be considered more indigenous than others. The long and complex history of migration in Africa means that, unlike settler-dominant societies such as Australia, it is rarely possible to identify who is indigenous if first occupation is adopted as the key criterion (Suzman in Kuper 2003:399; Geschiere 2004:254; Kymlicka 2008:12; Leakey 2009). Attention to indigeneity in Africa has therefore focussed on the strategic adoption of the term, enabled by its polythetic nature. Conceptually, the emphasis has remained on indigeneity as a *special* status entailing *extra* rights. Though the criteria for earning the label are emerging as different in Africa compared to settler-dominant societies, the outcomes generally share this notion of indigeneity as something *special* or *extra* in common.

Certain groups in Kenya, such as the Maasai, Ogiek and Endorois mentioned above, claim the more 'special' indigenous status, connecting themselves to the global indigenous peoples' movement. The 2010 Kenyan constitution also adopts the 'special' understanding of indigeneity, focusing on protecting cultural and especially ecological rights. Indigeneity is most explicitly referred to in Section 260, where the definition of 'marginalised communities' includes, among other categories, "an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy." However, it seems that two quite different conceptions of indigeneity are in operation simultaneously in the country.

In fact in Kenya, the more prevalent praxis of indigeneity is different from this ‘special’ notion. It is not only small groups who manage to exploit the international movement and gain extra rights and resources which can be considered indigenous. Rather, as the national censuses indicate, it is the 42 tribes of Kenya who are in practice implicitly, and sometimes explicitly, considered indigenous. The criteria for indigeneity are not marginalisation, self-ascription, or non-dominance; nor is it just a small minority aboriginal population who claim indigeneity. Instead, first-occupation in the sense of having been a ‘tribe of Kenya’ when Kenya as such came into being seems to be the requirement. Consequently most (but not all) of the population fall into one of the 42 tribes and are implicitly considered indigenous. It is perhaps most explicit in the 1979 census, which discusses the grouping of “indigenous Kenyan Africans” into a list of tribes. The implication of this categorisation is that people who do not belong to a tribe in the list of Kenyan tribes cannot be indigenous. Indigeneity is, then, more the norm than the special exception. It is not only a status that entails special rights, and certainly not to accommodation akin to self-determination, as Kymlicka observes. Rather, it is more importantly and more commonly (if not exclusively) a status denoting equality and rightful belonging to the Kenyan nation. Furthermore, it has pervaded principles of belonging and access to rights, resources, power and participation in the country since independence. Although not an official policy, the 42 tribes benefit in practice from their designation as an indigenous Kenyan tribe in ways that constitute them as a majority, as full citizens. The ways in which this occurs are usually unclear at best.⁸¹

In 1962, immediately prior to independence and after the 1962 census, the Kenya Regional Boundaries Commission (1962:4) recommended administrative boundaries that grouped populations in large part on the principle of either ethnic homogeneity or compatibility, stating that,

⁸¹ The significant exceptions to this belonging regime are Kenyan Asians, Arabs and Europeans. In the 1979 census it states that “non-African Kenyans were groups[sic] into 4 groups. These groups are Kenyan Asians, Kenyan Europeans, Kenya[sic] Arabs and other Kenyans” (Central Bureau of Statistics 1979:25). This suggests that these racial categories are considered non-indigenous, but Kenyan nationals. In contemporary Kenya, the exclusion of these racial categories, especially Europeans and Indians, from indigenous status has little material effect on their lives. Their superior economic status has meant that their inability to access the benefits, described in what follows, of being one of the ‘42 tribes’ has not led to material deprivation. The comparative situation of these strangers, who are generally absent from public debates about tribe and belonging, and the Nubians, who engage heavily in such debates (at least at the local level), demonstrates the extent to which economic circumstances influence engagement with parochial discourses, such as indigeneity. However, it could be argued that the place of these racial outsiders in Kenya is still, nevertheless, not as secure as the 42 tribes. Idi Amin’s expulsion of Ugandan Asians, though extreme, serves as an example of the possible consequences of being racial strangers in a context where not only racial but also ethnic indigeneity governs principles of belonging. I discuss this further in what follows.

We were told by delegation after delegation that they regarded the Commission as the last chance they would have of achieving association with the people with whom they felt they had similar customs, language and other affinities and that if they could not obtain their wishes in a constitutional manner they would feel compelled to do so by force.

From the consultations of the commission in 1962, up to and including the Interim Independent Boundaries Review Commission of Kenya, formed in 2009, the determination of boundaries around administrative and electoral units has been contested precisely because there is a great deal at stake (Statistics Division 1966:36; Fox 1996:597; Anderson 2010:30-32; Lynch 2011d).⁸² Ethnic groups who are able to demographically dominate a particular unit have access to decision making power, development resources and new channels of patronage, as well as official and unofficial quotas in various arenas which privilege the dominant group. Education is the only arena in which quotas have been official policy, with Provincial and National secondary schools reserving a high percentage of places for students from the district and the province in which the school is located (Otieno 2010; Daily Nation 2011). Although there is no official policy, similar principles apply to employment opportunities in the armed forces, police and civil service. Finally, decision makers in local administration tend to come from the dominant ethnic group, and work to ensure that development funds are channelled to the needs of their own ethnic group, often at the expense of others in the area.

This form of political organisation, in which access to rights, resources and power is predominantly at the local level, and depends predominantly upon membership in the locally dominant ethnic community, has taken its most explicit form in Kenya in recurring debates over *majimboism*⁸³ that have taken place in Kenya around independence, again during the transition to multi-partyism under Moi in the early 1990s, and most recently in the constitutional debates of 2000-2004 and 2010. *Majimboism* is a doctrine of political and administrative organisation that favours a high degree of decentralisation ostensibly in order to protect the interests of minority (ethnic) communities from state domination by the big tribes. During the colonial period when Africans were permitted to engage in formal politics, African politicians were encouraged to build their power bases only at the local level. Locally based ethnic welfare associations developed, and African political parties were either not permitted at all (from 1953 to 1955), or only permitted at the district

⁸² It remains to be seen the extent to which this pattern will carry over to counties, the new administrative units established by the 2010 constitution.

⁸³ *Jimbo* is the Swahili word for state or region.

level (Ogot 1995a:52-53; Nasong'o 2007:28; Anderson 2010:25-26). At independence KADU, made up predominantly of politicians, including future President Moi, representing the smaller tribes in the Rift Valley and on the Coast, wanted protection of the interests of the regions and so advocated for a *majimboist* constitution. A settler politician at the time, Michael Blundell, cited land, education, the police and the composition of the civil service as some of the interests that needed 'protecting' (cited in Anderson 2010:28). KADU succeeded in establishing a *majimboist* political and administrative structure in the 1963 constitution, but it was rapidly dismantled after independence by Kenyatta's KANU. The centralised state that Kenyatta formed persisted until the 2010 constitution. However, while Kenyatta centralised power and resources, he did not fully dismantle the provincial administration itself (rather appointing its staff instead), and it was the persistence of this administration, with its roots in the colonial era of native reserves and native administration, that allowed Moi to reinvigorate a *majimboist* politics upon the return to multi-partyism in 1992 (Anderson 2010:44). This marked the most violently expressed period of *majimboism* in Kenya's history, when Moi used a highly xenophobic *majimboism* instrumentally to prove to Kenyans that multi-partyism would only lead to chaos (Ndegwa 1997:610; Anderson 2010:34-43).

Ordinary Kenyans have not always supported the *majimboist* national politicians, even in the heartland of *majimboism*, the Rift Valley, where in 2002 the anti-*majimboist* National Rainbow Coalition (NARC) received over 40% of the vote (Anderson 2010:46). In the Ghai constitutional review of 2000 to 2004 (headed by Professor Yash Pal Ghai, and henceforth referred to as the Ghai Constitutional Review), and the 2010 constitutional review, Kenyans supported decentralisation, but without insidious *majimboist* tendencies. This leads Anderson (2010:47) to conclude that, "[a]t each critical juncture, thus far, political inclusion has triumphed over ethnic exclusivity. But this does not imply that ethnic political claims have diminished". As Anderson (2010:51) notes in a postscript to the same chapter, the post-election violence of 2007-2008 proved that although ordinary Kenyans rightfully abhor the violence now associated with *majimboism*, the fear, suspicions and xenophobia that underpin the *majimboist* position persist, and, "...the claims of the *majimboists* once again sit very firmly at the centre of Kenya's political agenda, their sinister threat of violence no longer latent and implied but vividly apparent." While decentralisation is not necessarily in itself problematic, *majimboism* often has been in practice because it has arisen within a politics of fear and has developed an insidious,

xenophobic and exclusionary character that has come to characterise decentralisation and the operation of the provincial administration in Kenya since independence (Ogot 1995b:259; Ghai 2008; Anderson 2010:29).

It is therefore unsurprising that in 2009 many feared that where census results would be used in relation to development planning, it would be to justify this ongoing ethnic favouritism on the basis of demographic dominance at the local level. Recognition as an indigenous tribe clearly has repercussions for the exercise of individual rights that are possessed in formal terms (insofar as that requires the material and intersubjective conditions that other tribes enjoy by virtue of being able to dominate particular areas), access to all the available rights and benefits (quotas in education and employment, influence in decision making), and in practice equal social and political standing – effective membership – locally and therefore nationally.

The National Cohesion and Integration Commission (NCIC), formed in 2009, “to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of different ethnic and racial communities in Kenya and to advice [sic] the Government on all aspects of ethnic relations” has recently and rightly criticised these official and unofficial systems for fostering ethnic parochialism (Kikechi & Jamah 2010). The Commission has been commendable insofar as it has brought these issues out into the open for the first time, and has generally criticised the misuse of statistics relating to tribes (Kikechi & Jamah 2010; Baras 2011). However, the additional concern the commission has failed to raise is the exclusion of unrecognised tribes from this ‘preferential’ treatment. The rights and benefits discussed here are the result of, and reinforce the notion that, these 42 tribes are *the* indigenous tribes of Kenya and neither the NCIC nor many other major actors in government or civil society have done much to undermine this belief amongst Kenyans or its influence in policy making. Though the NCIC has marked a shift in the way ‘tribe’ is publicly discussed, the emphasis has now turned towards harmonising relations between the 42 indigenous tribes, without seriously questioning the categorisation in the first place.

Census recognition and the Nubians

The Nubians as Others

Prior to 2009, it is unclear how the Nubians were counted in national censuses. None of the figures for either ‘Sudanese’ in 1962, ‘Non-Kenyan African – Sudanese’ or ‘Non-

Kenyan African – Others’ in 1969, ‘Other Kenyans’ in 1979, or ‘Other Africans’ or ‘Tribe Unknown’ in 1989 correlate with independent research on population and housing in Kibera, or approximate Nubian population figures today (Clark 1970; Amis 1983; see footnote 62).⁸⁴ In any event, all these terms are very poorly defined and suggest either non-citizens, or even non-Africans. For example, where the categories originate, in the 1969 census it states, “Africans who are nationals of Kenya are shown by tribe” (Statistics Division 1970:ii). As discussed above, those not listed as a tribe in the 1979 census are clearly not considered indigenous. The 1989 census had no definitions or explanations at all, and the 1999 census results for the tribe question were never released.

‘Others’ are almost certainly the most politically charged group to emerge from any census that uses the category, absorbing all those inexplicable anomalies that do not fit in a given year into the census makers’ understanding of the ethnic, religious or linguistic makeup of the national community (Andersen 1983:166-170). Insofar as it has the power to categorise and characterise groups according to effective ethnic and racial hierarchies, the census possesses the potential for powerful forms of recognition or misrecognition that impact upon the extent to which people feel respected as equals, and can therefore develop the confidence required for participatory parity. Amongst the Nubians, this was very apparent. The lack of recognition in the census, and in society in general, or misrecognition as Sudanese, was associated with a high degree of disrespect which eroded peoples’ confidence in their place in Kenya. The feelings associated with being relegated to the category of Other were described as embarrassing or humiliating, “like the other tribes who are just here by mistake...” (Interview 30) or in other ways somehow lesser, like foreigners, children, vagrants or even animals. Hassan (Interview 6) thought the label might be because, “we used to be called like refugee, they used to refer to come from Sudan”, a notion Hassan and many of his peers associate with a distant past. In some cases it was even perceived as not being visible or audible at all, for example Jamia (Interview 31) said, “[w]e are so *minority* that no one even could *consider* ... even if you go to the hospital you will be asked ‘Nubi – from where? Sudan?’ you see! You will just be like oh god, I am nothing in Kenya! So our voices could not be heard”.

⁸⁴ The 1989 figure for ‘Other Africans’, 14471, does approximate the possible population of Nubians in Kenya at that time, given that it is currently around 20 000 – 30 000, however it is slightly lower than likely, and it no doubt includes many more individuals who are not Nubian, and are themselves excluded from the list of tribes in other ways (Central Bureau of Statistics 1994).

However, being counted as Others generates more than just intersubjective feelings of inferiority. It also has more tangible consequences for objective opportunities for participation, especially at the local level. Two closely inter-related factors are central here: the Nubians' stranger status and their demographic weakness as a numerical minority. Both of these factors limit the chances the Nubians have for attaining formal political or administrative representation, or pursuing their interests through political patronage.

Political representation

Since the return to multi-partyism in 1992, and the prominence of Raila Odinga in Langa'ata constituency politics, the Nubians (some of whom were active supporters of KANU prior to 1992) have lacked representation in high level politics, and have had minimal influence at lower levels. In the provincial administration, there have been occasional Nubian chiefs and assistant chiefs since before independence, but there is no location (the administrative unit of a chief) which is consistently occupied by a Nubian. To my knowledge, there has been only one Nubian to rise above the level of chief in the district administration, as a District Officer outside Nairobi. At the parliamentary level, no Nubians have been elected MP since Yunus Ali in 1969, and only two have been able to accrue the financial resources to contest an election. In the Nairobi City Council there are currently two Nubian elected councillors, for Makina and Lindi wards, and two Nubians have been Councillors in the past. This is not necessarily disproportionate given the Nubians' small population. However, insofar as the result seems to be an apparent total lack of concern for issues affecting Nubians it is a structure we must question. Abbas (Interview 40) put it this way: "...since we are not that many there's nobody really to present Nubian views on issues, you see, so until we get to the point whereby we raise to the political ladder, then we will always remain oppressed, marginalized."

This lack of representation is problematic because Kenyan politics and administration operate in such a way that office-bearers typically work for the advancement of their ethnic community's interests. Political office is perceived by both office-bearers or candidates, and their tribe, as a route for accessing development for one's community. Communities expect any of 'their own' in office to deliver on development goods, such as civil service, army or police positions, educational bursaries, and various kinds of development funding, including constituency development funds (Haugerud 1995; Lynch

2006a; de Smedt 2011:219-222). Ogot (1995b:249) explains that, “political parties in Kenya have been, in reality, coalitions of ethnic-based factions. ...the political and economic goals are thus viewed not in terms of individual welfare and happiness but in terms of ethnic security and welfare.” Amina (Interview 23) invested her hope for the future of the Nubian community in a political representative for these reasons, saying that, “a situation whereby we get Nubian Chiefs, we get Nubians in various positions, so that these are the people who will actually push the Nubian forward, so that is what I am actually hoping for, for the future of the community.” The extent to which people believe that any Nubian in office would undoubtedly understand and represent Nubian interests fails to take into account the possibility of dissensus in terms of understanding and articulating ‘Nubian interests’, or the possibility that a Nubian may not, in fact, work for Nubian interests once he or she reaches a position of power and influence. Nevertheless, the faith in a deep connection between representation and the advance of the community’s interests is strong.

Consequently, people occupying or running for these positions are often motivated by a desire to ‘give back’ to their community. For example, one former candidate for a Nairobi City Council (NCC) seat said he was running not because he wanted to serve his ward, but because he wanted to be, “a representative of my community in the City Council of Nairobi” (Interview 4). Zaid (Interview 37a) alluded to the moral obligation giving rise to this kind of attitude when he said, “...if today I was the Prime Minister of Kenya, then surely I would want to [...] empower economically all the Nubians as much as I can.” Gore Mohamed (Interview 50), the NCC Councillor for Makina ward, evaluated his performance as Councillor in terms of what he has been able to deliver to the Nubian community explaining, “I can say comfortably since I was elected, I have recruited about 25 youths, yeah, [...] armed forces, forestry, yeah, through our MP, through the Prime Minister. So whenever there was a slot somewhere he would say this is for the Nubians.” In a context where, “...every tribe has got a Godfather, every tribe has got somebody to lean on...” (Interview 17), a lack of representation constitutes a serious disadvantage in terms of exercising and attaining rights.

The Nubians’ lack of these evidently important forms of representation has been brought about by an institutional design and political culture that privileges large indigenous tribes. A centralised state with a majoritarian voting system has a great propensity to work against minorities, compounding the disadvantages the Nubians face as strangers (Ghai 2003). In a

context such as Kenya where ethnic voting blocks in parliamentary and city council elections are the norm, and subsequent administrative appointments are characterised by ethnic favouritism, disadvantages are inherent (Hornsby 2001; Lynch 2006a; Baras 2011).

Parliamentary election results for Lang'ata have traditionally reflected the ethnic demographics of Kibera.⁸⁵ Particularly since the return to multi-partyism, MP Raila Odinga (of the Luo tribe), scooped the seat, and has maintained it ever since. It is well understood that ethnic voting blocs have significant effects on general elections in Kenya, and Raila is widely accused by Nubians and others of stacking Kibera with his kinsmen for this very purpose (Throup & Hornsby 1998; Njogu 2001; Rutten et al 2001; de Smedt 2009b). Ismail (Interview 49a) explained,

[a]nd so whenever Raila decided that he wanted to be a member of parliament, he already had a ready constituency there in the name of the tenants, his own people. And that's how he came into here, and after he came, he brought in more, more came voluntarily because they saw he was their MP, so the demography started shifting dramatically. Of course to the disadvantage of the Nubians. They were now outnumbered not only by the Kikuyus, by the Luos, by the rest of the Kenyans and so on. So they had no voice of their own

In such an environment it is impossible for the Nubians to compete.

In order to rectify this, some Nubians have expressed a desire for administrative and, more optimistically, electoral boundaries to be redrawn around their population so that they can demographically dominate. Such a scenario would place the Nubians in a more equal position to most 'indigenous' tribes of Kenya who, even if they are also numerical minorities, have their interests protected in this way. Amadi (Interview 12) argued that,

we want to elect our people, we want our region to be known, like Kibera. You see we have Kikuyu, Kikuyu constituency, people their people, but also we want Nubians constituency so that we can elect our leaders. They don't know our problems so that . . . you see . . . our MP's not a Nubian, [...], he's a Luo from Kisumu.

Similar sentiments were expressed in rural Nubian settlements, for example in Kisii where the local mosque leader informed me that the Nubians' have (unsuccessfully) lobbied the local administration for Nubia village to be declared a separate ward (Interview 21).

⁸⁵ Mwangi Maathai, a Kikuyu, defeated Yunus Ali when Kibera became dominated by Kikuyus. Richard Leakey, a Keyan-European, was MP during the Moi era partly because he enjoyed Moi's favour, and partly because during that period the ethnic demographics of Kibera were mixed and no one block-vote dominated. Leakey was defeated by Raila Odinga in the first multi-party election in 1992.

Muhidin (Interview 30) explained how he thinks a census code would facilitate such a scenario,

Ah that [the census code] is identity, because already we have a district called Lang'ata district. You know Nairobi used to be a province and at the same time a district by itself, but now there are several districts. We have ours here you have seen, called Lang'ata district. The district commission is already there. So whatever will come around, that one we will have to get our fair share of the national cake as the Lang'ata residents. We are the only indigenous people in Nairobi. If it comes to recruitment of people in the army, we will get the priority, if it comes to this national youth, police or any other activities which involves assistance to indigenous people of that particular area, we will benefit! The bursaries, famine relief, we will also get our share as the residents of Kibera.

An alternative option to redrawing boundaries and attaining demographic dominance would be to establish affirmative action measures for minorities. 'Fatuma' (Interview 45a) explained,

there was need for people from this community to be included in political and government structures. For the simple reason that as a minority ethnic community, minority in terms of numbers, we don't have the political clout to pass policies that are favourable to us. And some policies which are passed, actually are detrimental to us.

An affirmative action mechanism in the form of 'nominated' seats to Parliament and NCC was available under the 1963 constitution to ensure some representation for minorities. However, in practice it rarely works that way and instead these seats have normally been used as bargaining chips to secure the contingent interests of dominant political players. In part because of the ineffectiveness of this mechanism, other Nubians have sought the establishment of other affirmative action measures. In the Ghai Constitutional Review, the submission prepared by the Nubian community emphasised the need for special provisions for minority representation in government (Nubian community 2000). Under the 2010 constitution, marginalised and minority communities and groups are most notably entitled to affirmative action programs in relation to governance, education, employment, development of culture and language, and access to water, health care and infrastructure (Section 56); special representation in Parliament (Section 100), and County Assemblies (Section 177(c)); and benefits arising from an 'equalisation fund' to remedy past material inequalities (Section 204). Furthermore, "Protection of the marginalised" is a national

value under section 10(2b). Presently, however, it is too early to tell how they will be legislated, and whether or not the Nubians will (be able to) take advantage of them.⁸⁶

In the meantime, the Nubians will continue to experience their small population as a liability (cf. de Smedt 2011:189). This is expressed, for example, in a widespread belief amongst the community in an inflated population figure of 100 000 to 200 000, and a similarly widespread reluctance to accept the more accurate but much lower figure of 20 000 to 30 000.

Political patronage

The Nubians similarly lack influence when attempting political patronage, as opposed to formal representation, as a tactic to claim their rights or pursue their interests.⁸⁷ This strategy is still favoured by the KNCE, whose political sub-committee attempted to rally a block vote in the 2007 election (Interview 2b). However since the dominance of Luos and the prominence of Raila Odinga, this bargaining has had very limited success. Many Nubians complain that politicians promise them favours, such as land title, an end to discrimination in access to ID cards, or various forms of development, only to conveniently forget those promises after the election. Ismail (Interview 49a) complained that, "...we are being used and being dumped, we are being used and being dumped, we are being used and being dumped." Given their extremely small population, it would almost be surprising if these politicians did keep their promises. The Nubian community represents neither threat nor incentive in electoral terms. Their numbers are so small that, as has been proven in every election since the return to multi-partyism, there are no consequences for aspiring MPs for not appeasing this minority community. Zaid (Interview 37a) astutely observed that,

⁸⁶ Section 260 of the 2010 Constitution defines 'marginalised community' as "(a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole; (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or (d) pastoral persons and communities, whether they are— (i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole." The same section goes on to define 'marginalised group' as "a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4)." What would count as a 'minority' is not explicitly defined.

⁸⁷ This was a relatively successful strategy with MP Richard Leakey, when Kibera's ethnic demographics were in transition and the Nubians were in a better position to take advantage of that balance of power. During this period they were able to secure title deed for the Makina mosque and the Islamic graveyard (de Smedt 2011:111).

they feel like you're talking of less than 100, 000 people. I mean in terms of even the electoral process, these are people they are non-consequential. They are not gonna make any difference, yeah? They are not gonna make any difference, so why the hell should you care about them yeah.

Without even the option of patronage, let alone representation, the Nubians are left with very few avenues to claim their rights and assert their membership. Their participatory parity is severely hampered by both their minority and their stranger status.

The 2009 census: towards recognition?

In the 2009 census there were major changes to enumeration of tribe, which many Nubians felt held the potential to remedy their exclusion from opportunities to be elected or appointed to local administration, or have some influence over political patrons.⁸⁸ All minority and sub-tribes in Kenya were coded, more than doubling the number of tribal codes by including some newly recognized tribes and breaking down others into umbrella and sub-tribes. Results were released for 111 tribes, though only the biggest 24 were publicly highlighted (KNBS 2010:397-398; Oparanya 2010).⁸⁹

However, the KNCE were officially notified by the Minister of State Planning, National Development and Vision 2030 (2009) that, "you shall be encoded as the 43rd tribe of Kenya during the August 2009 census". Many people understandably interpreted the code as meaning exactly that: the Nubians were the only tribe added to the list of indigenous tribes, when in actual fact, the Nubians were given code '220', and were one of many new tribes to be coded. The 2009 census therefore represented not the expansion of the 42, but a seeming collapse of qualitative hierarchical codes that render some groups indigenous and some groups as Other.

⁸⁸ Though this hope was largely based on the belief that the Nubian population figure would be much higher than it actually is.

⁸⁹ This 111 tribes includes tribes counted alone, as well as sub-tribes. In counting these tribes, I excluded the umbrella tribes (Luhya, Mijikenda, Swahili, Kalenjin, Kenyan Somali) as they are reported as the sum of all their sub-tribes. The sub-tribes do, however, include categories such as 'Luhya – so stated' for all these umbrella tribes, and these are included in the 111. In addition, the report includes the "ethnic affiliation" (as all the categories are called) of 'Kenya –so stated', which was an option for the first time in the 2009 census, introduced for those who did not wish to state their tribe. The total for this category was 610 122, a significant but not overwhelming figure (out of a total population of 38 610 097). It also includes Kenyan Arabs, Kenyan Asians, Kenyan Europeans, and Kenyan Americans, followed by a series of undefined categories that include Isaak, Leysan, East Africa, Uganda, Tanzania, Rwanda, Burundi, Other Africans, Asians, Europe, Americans, Caribbeans, and Australians. With the exception of 'Asians', 'Europeans' and 'Americans', who if Kenyan are clearly counted as such, it is not clear whether these remaining categories are citizens of Kenya, or the other country.

The reasons for the major changes in the enumeration and reporting of ethnic identity are not clear. It is possible that this is a reflection of a slow shift towards a more inclusive approach to belonging and national identity in Kenya, at least on the surface. The Agenda 4 Reforms brokered by Kofi Annan after the 2007-2008 post-election violence highlighted inter-ethnic relations and minority rights as areas in need of improvement, and the government is keen to demonstrate to international monitors that it is taking these issues seriously. However, the extent to which it translates into a meaningful inclusiveness remains to be seen. The various other mechanisms and beliefs that have grown up around the notion of the '42' will be much more difficult to dismantle.

The extent to which this new coding system will have repercussions for the Nubians therefore remains unclear, but still crucially important. Li (2001:650-651) explains that subaltern, marginalised communities have little choice in practice if they want to emerge from marginalisation, than to make their claims within the available 'spaces of recognition.' Nubians perceive that in order to gain the social and political standing, and possibility of exercising rights by participating in public affairs, aspects of citizenship that other Kenyan enjoy primarily at the local level, there must be a change in the way they are perceived: from ethnic strangers to an indigenous tribe. This places them in a position of having to find grounds on which to articulate first their visibility (as opposed to invisibility in the category of Other), but also their Kenyan-ness.

In response to being perceived as foreigners or strangers, Nubians strongly resist a contemporary identification with Sudanese nationality (although they acknowledge their origins). Contesting a history that places them as allied with the colonial power and not a 'real' part of Kenya, Nubians seek to position themselves as Kenyan. Many Nubians emphasise aspects of their history which are consistent with Kenya's contemporary goals as an independent African nation and downplay those historical circumstances which ally them with other countries, particularly Britain and Sudan. In particular, they rest their claim to indigeneity upon being the first to develop Kibera. For example, a press conference held by Zidu Guwa, a Nubian youth pressure group, in protest at the lack of consultation regarding the Kenya Slum Upgrading Project (KENSUP) in Kibera, focussed on the argument that 'upgrading' Kibera without taking into account the Nubian claim to the area was trampling on the 'minority and indigenous rights' of the Nubians, as 'this is their indigenous home'. Another Nubian (Interview 55b), in reference to the land rents that he perceived the government collected from others in Kibera, argued that,

It's time that maybe some of what they have, should come to Kibera to benefit the indigenous of Kibera. And if the people benefit, their lifestyle will be uplifted. They will be able to participate in the day to day life like those other communities which have been enabled for a long time.⁹⁰

Many Nubians, and especially those involved in organized pressure and leadership groups (as the above quoted participants are), understand themselves as indigenous partly because they were the first to develop the land in Kibera (a point I return to in the next chapter), and partly because being indigenous to a particular area, especially a particular administrative district, is evidently understood as a precondition for control over and access to resources that are attached to that area.

In practice this desire to be understood as indigenous to Kenya has resulted in both a semi-organised campaign for recognition, and low level strategies of resistance. A small number of groups engaged specifically and actively with the issue of recognition in the census, using it as a vehicle to argue for the perceived associated benefits, most notably land. The KNCE petitioned the government for a census code for more than a year in advance of the count. They held a press conference the day before the census, during which they voiced their grievance about being counted as Others in the past, and their hope that, as promised by the government, this year would be different. Reference was made both to indigeneity and preferential access to development in relation to census coding. Issa Abdul Faraj, the chairman of the KNCE, stated that Nubians are Kenyan citizens “by ancestry” and that they “came to Kenya like all the other tribes, from outside”, suggesting that they are entitled to the same implicit recognition as indigenous. He further said that they are the “most marginalized of the marginalized” and the “poorest of the poor”, suggesting that this was a result of their historical exclusion from the coding system and associated benefits.

However, despite these efforts, the claim of the Nubians to be recognised as the 43rd indigenous tribe of Kenya went largely ignored by other Kenyans. This reflects a general lack of capacity amongst the Nubians and their leadership groups to successfully engage with national power and culture brokers in pursuit of their goals. For example, no Nubian groups made any effort to join forces with other minorities who were making similar arguments around the census and threatening a boycott, a strategy that may have attracted more attention (Matoke & Juma 2009). Nor did the KNCE or any other group question the Minister’s power to unilaterally declare them the 43rd tribe, or understand where ‘the list’

⁹⁰ It is not clear what ‘land rents’ he was referring to.

is kept, or the process through which it could be changed. The KNCE and the Nubians in general did express scepticism about whether or not the promise would be kept, and whether or not anything would come of it. However, no Nubians were able to get any more information or any firmer guarantees from government, and nor had they followed up on the publicly available results by the time I visited again in April 2011, eight months after the results were released.

Instead, in relation to census coding, as with other issues, political frustration tended to manifest itself in lower level acts of resistance, often unplanned or loosely planned, and of varying levels of success. Outside the leadership and other organised groups resistance to designation as Other in the census occurred in a less formal fashion. Some Nubians in Kibera, particularly women, talked of boycotting the census if they were not coded, and Zuhura (Interview 26) explained to me her experience,

... I heard a knock at the door, and I opened the door and I saw them with their t-shirts, showing that they are the ones participating in the sensa [census] with the badge, and bags, so I come and let them inside and I told them, 'But wait first.' First I remember I didn't tell them to sit down. I told them, 'You know I am a Nubian, and can you check in your list if my name is there? My tribe name? And if I have a code? ... I have to ask you before you start your work.' One of them took a book and looked inside the book and he told me, 'Ah mama! Here is your tribe's name and code', and I told them, 'Ah welcome, have a seat.' and then they asked me, 'You couldn't let us sit before you saw that?' and I told them, 'Yeah! If I didn't have a code the way you entered my house is the same way you will use going, because I was not ready for the counting.' So they sat down, they started the questioning. I answered them very well, and I was very happy to see my tribe now has a name in Kenya's documents, and a code. And I felt very happy.

Given the radical change in tribal enumeration in the 2009 census it seems unlikely that either the formal lobbying or informal resistance were responsible for the sudden recognition of the Nubians, or any of the other groups recognised for the first time. Nevertheless, these activities and actions on the part of the Nubians, organised and otherwise, are testament to the widespread dissatisfaction with their exclusion from the recognition regime in Kenya.

Native slot? Native norm

The case of the Nubians' struggle for recognition as the 43rd tribe of Kenya illuminates the nature of indigeneity in Kenya. As discussed earlier, the recent literature on indigeneity in Africa has focussed on extraversion and strategic self-ascription of indigenous status for

benefit in terms of political clout and (necessary) material development arising from a special status (Igoe 2006; Hodgson 2009; Pelican 2009; Lynch 2011d). The emphasis has been on groups who have reached out to fill the ‘native slot,’ that is, the space made available by anthropology, and more recently by the international indigenous peoples movement, for people with certain characteristics to obtain a particular prestigious status and extra benefits (Li 2000; Karlsson 2003). Seen this way, indigenous peoples are sought out by anthropologists and other researchers, international movements, NGOs and donors in order to be examined or assisted, and certain groups of people respond by reaching out to fill that slot. Indigeneity in this sense is an act of positioning (Li 2000).

Although it can also be understood as an act of positioning, the Nubian case stands in tension with this understanding of indigeneity. Given their quite recent arrival in Kenya, and the nature of that arrival – as the colonial armed forces – indigeneity seems on the surface quite a strange claim to make. The Nubian case suggests that in Kenya indigeneity is not necessarily a ‘slot’, a niche anthropological or political category that denotes distinction and a prestigious kind of belonging and bundle of rights. Rather it is the norm. Full citizens in Kenya are full citizens because they are quietly considered indigenous. The Nubian case illuminates the extent to which the understanding and practice of indigeneity in Kenya departs from the understanding and practice described amongst distinct groups such as the Maasai, Endorois, or Ogiek.

In Mamdani’s (2001a) conceptual development of the category of ethnic stranger, it is precisely this predicament that he sets out to address. For Mamdani (2001a:659), the postcolonial order is one in which the threat from other races has been supplanted by the ‘threat’ from other stranger ethnicities; and rights, resources and power have been withheld from these groups accordingly,

the nonindigenous in the postcolonial period are less and less racial, more and more ethnic. The clashes about rights too are less and less racial, more and more ethnic. Put differently, ethnic clashes are more and more about rights, particularly the right to land and to a native authority that can empower those identified with it as ethnically indigenous.

Mamdani emphasises here the circular nature of the relationship between rights and indigeneity. Indigenous status grants access to rights, power and resources (including land), and at the same time, those who have access to these social and material goods (especially land, which I deal with in more detail in the next chapter) as a matter of course

and by virtue of their ethnicity are understood as indigenous and rightful nationals. With indigeneity as a precondition for accessing full citizenship, those who are not recognised as indigenous through the available and prevailing channels of recognition (such as the census), are akin to citizens minus.

Particularly prior to the post-election violence of 2007-08, the Kenyan state actively promoted a false idea of the country as united by nationality, when in fact it had not only been divided by ethnicity, but also between indigenous and stranger groups. The operation of ethnically divisive and parochial mechanisms such as census coding, district quotas for education and employment, or ethnically homogenous or compatible demographic distribution within administrative and electoral units has only been openly discussed during periods of debate over *majimboism*. The more insidious and fundamental question of who has control over recognition of ethnic groups, and through what processes, has never really been open to public discussion.

Only in the peace negotiations of early 2008, the Agenda 4 reforms, and the 2010 constitution, has Kenya seen an unveiling of these underlying assumptions about who properly belongs in Kenya and the beginnings of debates about them in the public realm (Interview 57). At the Bomas conference in 2005, which debated the 2005 draft constitution, there was a short but significant (from the perspective of my argument) debate about the possibility of codifying the 42 tribes of Kenya in the new constitution, as Uganda has done.⁹¹ However, as Yash Pal Ghai, the Chairman of the Ghai Constitutional Review, explained to me, within a couple of hours the list was so unwieldy, complex and contradictory that the idea was abandoned (Interview 54). The preparation of legislation to give effect to the constitutional provisions for the advancement of ‘minority’ and ‘marginalised’ groups is likely to require a refinement of definitions of these terms, which will inevitably entail debates about the nature of ethnicity and indigeneity in the country. For example, the constitution has provision for a new category of land – ‘communal land’ – which is to be vested in ‘ethnic communities’ or ‘communities of interest’. The legislation that will give rise to the more specific character of communal land will

⁹¹ The Ugandan constitution explicitly grants citizenship by birth only to people whose parents or grandparents were members of one of the indigenous communities present in Uganda on 1st February 1926. These groups were debated in 1995 when 56 groups were decided upon, and again in 2005 when another nine were added. Ugandan Asians argued that they should be considered indigenous, but they were unsuccessful in making it onto the list (Manby 2009b:55-56).

therefore require clarification of the criteria to be considered an 'ethnic group' (Interview 57).

If this debate can get off the ground, then it may open up the possibility not of extra, special rights and recognition for groups like the Nubians who seek recognition of an indigenous status, but rather to reinforce their claims to full citizenship on a par with other Kenyans (cf. Nyamnjoh 2005). In this regard, the strategy of claiming indigeneity can be about nothing more than equal status. Claims for recognition are not always a case of seeking some kind of absolute autonomy, but rather, "to become part of, and thereby transform, the state" (Englund 2004:3, cf. Landau & Misago 2009; Hodgson 2009). This renders the nature of indigeneity in Kenya quite distinct from that of countries like North America and Canada, where sovereignty, varying degrees of autonomy and even secession are part and parcel of the common claims made by indigenous groups. Effective membership, necessary for full citizenship, requires in this case not only formal recognition of nationality and citizenship status, but also less formal recognition of ethnic indigeneity.

This form of recognition, more than the formal recognition accorded to individuals via documented citizenship, opens the door to opportunities for participation. In this regard, indigeneity operates in Kenya as a precondition for participatory parity. As well as the opportunities for demographic dominance in administrative units described earlier, recognition as indigenous does confer respect and subsequent confidence in ways which constitute (in part) the intersubjective conditions required for equal participation.

Recognition of sub-national identities in Kenya in the form of (indigenous) ethnic identities is therefore, less a threat to people's sense of national identity than a precondition for it. No individual identity depends on membership in one group alone, although in some cases one particular group can be much more salient than others. Rather, we each derive our sense of self from our membership in a number of different groups, some more homogenous than others, some more tightly connected than others. In different contexts at different times each of these aspects of one's identity will carry varying importance (Armstrong & Thompson 2009). These identities can in many cases be interdependent, where recognition as a member of one group requires recognition as a member of another. In the case of the Nubians, their responses to the census demonstrate that individual recognition as a Kenyan requires recognition of their tribe as Kenyan. Not

only can other sources of identity and calls for allegiance co-exist with the nation, but in cases such as this they actually constitute the currency with which people interact with the national community. As Issa Abdul Faraj (Interview 32) put it, “[t]he new code yes it’s good. It’s recognition ... It’s empowerment. You get a sense of belonging. There is nothing bigger than a sense of *belonging*. A sense of *ownership*. The sense that you are *part* of the great effort of Kenya, as a people and as a nation. It’s great. Really super.” Jamia (Interview 31) summed up the feeling when she said, “[e]ven somebody told me ‘Nimetambulika! Najulikana!’ [I have been known/distinguished! I am known/recognized/understood!] [laughs] ... For the first time since I was in Kenya! This time I was known! That I was there!”. ‘Amina’ (Interview 28) described how the census code changed how she felt about the place of her tribe amongst the others in Kenya,

To me, it is good, finally we are being recognized. But still, I mean the whole nation, and all the other tribes you know they cannot absorb. They know it is 42 ... But ah kind of it makes me feel like being somewhere. At least when people start talking about 42 tribes, I say no! It’s 43, and my tribe is the 43rd tribe. And then when they say that, they kind of ask me ‘How? Who are you?’ – ‘I am a Nubian!’ and then it gives me the opportunity to explain who Nubians are, how they came about.

Though the details of the coding did not technically place the Nubians as 43rd ‘Amina’s’ comments are testament to the salience of the prevailing conditions under which respect and confidence in the polity depend on being part of the indigenous recognition regime.

Conclusion

This chapter has added a critical additional layer to understanding the nature of the Nubians’ deprivation of full citizenship. Collective recognition and rights are an important requirement in addition to the crucial but insufficient, inadequate citizenship conferred by individual recognition with an ID card for the attainment of full citizenship. This chapter demonstrates that not only has Kenya had limited success in achieving harmonious relations between the 42 recognised tribes, but through the construction of indigenous ethnicity as a precondition for full citizenship the Kenyan state and polity have generated a new boundary to effective membership. Collective recognition as an indigenous tribe of Kenya in the census, in administrative policies and practices, and in the popular imagination is a constitutive component of full citizenship in Kenya because of the way in which it enhances the intersubjective and objective conditions under which the Nubians live, further approaching the conditions required for participatory parity. In seeking full

citizenship, the Nubians have (perhaps understandably) adopted the strategy of seeking to cross the boundary from being considered strangers to being recognised as indigenous.

Nevertheless, even individual and collective recognition and rights leave a shortfall in relation to full citizenship. Both individual and collective recognition were seen by many as considerably less important than title deed for communal land in Kibera. In comparison to other Kenyans with full citizenship, land stands out as the most significant gap, the most significant of the problems in not only the objective, but also the intersubjective conditions in which the Nubians live. Just as indigeneity governs, in practice, who belongs and who doesn't in Kenya, so does autochthony and it is the task of the following chapter to explore this final aspect of full citizenship in Kenya, in relation to its denial in the case of the Nubians.

Autochthony: Rights, Recognition and Land

In the preceding chapter I discussed the way in which the unclear but critical notion of indigeneity implicitly governs access to full citizenship in Kenya. This chapter goes further to explore the benefits and risks associated with autochthonous notions of belonging, exploring the nature of Kenyans' relationship to land, and particularly tribal rural homelands. Again, this chapter argues that it is the pre-existence of social and political mechanisms that entrench an idea, in this case the idea of tribal homelands, and compels the Nubians to make their claims for membership and rights in particular ways. The Nubians are engaged in a struggle for a homeland, at least partly so they can consider themselves, and be considered by others, as Kenyan. The Nubian land claim is therefore ambiguous, collapsing the distinction between strategic deployment of identities, and genuine attachments to them, investing autochthonous meanings in land which have come to acquire great significance for the community. The increasing salience of these autochthonous meanings ultimately stems from the Nubians having 'nowhere else to go', that is, being in a socially, politically and physically precarious position in Kibera. The problem is therefore deeply rooted within a politics of abjection. In exploring this move towards autochthony the chapter also draws out the ways in which autochthony discourses are dangerous and unstable and, while they help explain the nature and background of the Nubian claim, they also carry conceptual inconsistencies and vast potential for political instability and further human rights violations.

The politics of place and first-occupation

In Francophone Africa autochthony has operated as a discourse in which people assert belonging since colonial times, but its popularity as a strategy is now increasing in other parts of the continent. Autochthony has its etymological roots in Ancient Greek, where 'autos' refers to 'self' and 'chthonos' to 'soil' (Loraux 2000). Strictly speaking, an autochthonous community is one in which all members are directly descended from an

original forefather who was, mythically, born of the earth where the community resides. Autochthonous communities have theoretically always been who and where they are, a pure community built on blood (descent) and soil (territory) (Loraux 2000). However, in Africa (and elsewhere), there is a growing trend of deploying autochthonous discourses without necessarily adhering strictly to this definition, instead resting claims on vaguer notions of first-occupation and permanent residence (Jackson 2006; Leonhardt 2006; Marshall-Fratani 2006; Pelican 2009). These claims are often made as absolute claims, in-keeping with the character of autochthony, even if they are widely known to have little basis in historical fact. The emphasis is less on a myth of an original man springing from the literal earth, and is instead on the idea that particular people were the first to use, understand or control the land, and have stayed there ever since (Malkki 1992; Comaroff & Comaroff 2001; Geschiere 2004; Geschiere & Jackson 2006; Geschiere 2009).⁹² Autochthony is therefore both politically destabilising and conceptually incoherent insofar as it is absolute in theory and rhetoric, but slippery and unstable in practice (Geschiere 2009).

Like indigeneity, autochthony carries notions of a more prestigious belonging based on being first, and both terms carry, at least in theory, associations with *special* rights (Lonsdale 2008; Geschiere 2009:11). Since the 1960s, and in Africa since the 1980s, indigeneity has largely been seen as a powerful and righteous tool for proclaiming these special rights and protections for unique peoples who perceive themselves to be at risk of domination. In contrast, with political roots as far back as Ancient Athens, autochthony is usually seen as dangerous, and the associated rights claims are seen as arrogant and chauvinist attempts of often already dominant groups to sustain their position (Gausset et al 2011:139). For example, autochthony was resurrected a core value of Nazism, when blood and soil were seen as the only moral basis for citizenship. In African (and other) contexts, both indigeneity and autochthony are strategic responses to political, social and economic exclusion, marginalisation or crisis, and both are therefore claims that are made not in a self-contained way, but rather with explicit reference to outsiders. They operate as fundamentally relational concepts (contradicting the theoretical absoluteness of autochthony). The difference between the two is that claims of autochthony are almost entirely constituted by claims vis-à-vis others – specifically claims over relative rights to

⁹² For ‘understanding’, ‘control,’ and ‘work’ as three idioms of connection to the land in Kenya, see Lonsdale 2008, p.306.

own and exclude others from territory. In contrast, claims to indigeneity in practice tend to include other substance – specifically claims that a group has a unique culture and way of life, and often also that the group is marginalised by the dominant society (Geschiere 2009; Gausset et al 2011). It is for this reason that autochthonous discourses tend to be even more politically problematic than indigenous ones.

In the face of dramatic increases in exclusion, marginalisation and crisis in Africa, and in Kenya particularly since the economic downturn of the 1980s, the appeal of autochthony as a strategy for making sense of this new social, political and economic landscape, and for emerging from marginalisation is increasing (Dunn 2009; Lynch 2011d). As economic opportunities have become more scarce, principles governing access to land and resources have become more and more exclusive, and temporal priority in its various guises (indigeneity and autochthony) has become a recognisable, comprehensible and well accepted way of anchoring claims to land, even if particular cases are often contested. In this way, as we have seen in the previous chapter's discussion of the Nubians' aspiration to be recognised as indigenous, autochthonous claims are also very often claims made by communities who are reappropriating the terms set by the dominant society and making claims within the prevailing spaces of recognition (Li 2001:650-651). As the rules of access to land and rights of exclusive control of land have changed and become increasingly autochthonous, Africans have, "sought to negotiate new social identities in order to take advantage of commercial or political opportunities" (Berry 1992:345-6).

Ethnicity as a category of identity and social grouping is particularly adept at the kind of flexibility required to operate in the rapidly changing social, political and economic landscape of the African continent. While drawing on oral and written memories and histories, as well as cultural traditions, ethnicity can and does expand, contract and mutate in different circumstances depending on the utility of the options at hand (Lynch 2006b). Attempting to render an ethnic group indigenous, or autochthonous, has in recent decades become a particularly powerful trend in these ongoing processes of adaptation. Groups who never thought of themselves in this way, like the Nubians, are beginning to do so, prompting Lonsdale (2008:311) to conclude that, "...in Kenya, as elsewhere, 'autochthony' is a strategy rather than a fact."

As with indigeneity, there are compulsions and incentives constructed at both the national and global levels for asserting an autochthonous status. At the national level, as states fail

to provide for their citizens, and in some cases even to guarantee their physical safety, the protection of a homeland in which rights to live on, use and govern the land are restricted has obvious appeal. It provides advantages ranging from the possibility of subsistence agriculture on less congested pieces of land, to the possibility of a bounded political constituency or administrative unit in which a particular group can then dominate decision making and take advantage of allocated state resources (Lynch 2011d). Autochthony is a way of gaining some economic security, control and predictability in the face of, “the daily inequalities, the unpredictable inclusions and exclusions by which their states decide who is to gain from global linkages, and who bear their local costs” (Lonsdale 2008:312). At the international level it is not only the indigenous peoples movement, discussed in the preceding chapter, that is having unacknowledged and unintended effects on the consolidation of exclusive identities. Neoliberal agendas emanating from global multi-lateral institutions which have significant influence over aid and credit dependent countries place significant emphasis on decentralisation, encouraging newfound particular attention to the local (Geschiere & Jackson 2006; Geschiere 2009). Multi-lateral economic and governance institutions, international NGOs and states are increasingly encouraged to localise management of resources and decision making, rendering local ‘homelands’ even more appealing. Viewed from these perspectives, autochthony can be understood as only ever a ‘second-best strategy,’ one adopted after the failure of the normal channels to guarantee the wellbeing of citizens (Lynch 2011d:18).

In the previous chapter, the self-ascribed polythetic nature of indigeneity was discussed. If determinations of indigeneity are highly politicised, then determinations of autochthony are even more so. Not only does an autochthonous status carry, by definition, a kind of natural right to land but it does so in insidious, naturalised, apparently self-evident ways (Comaroff & Comaroff 2001; Geschiere 2009). When people make this claim it is to make that ‘natural’ right politically effective. Malkki calls such discourses an ‘arborescent culture’ because of their emphasis on terrestrial notions of membership such as ‘roots’ and ‘homeland’ (Malkki 1992). In largely unexamined ways, these discourses make particular configurations of membership (inclusions, exclusions, and the rights associated with both) seem natural and normal.⁹³

⁹³ One negative aspect of this apparent ‘naturalness’ that has not yet become a complaint in the Nubian community, possibly because their land is not yet secure, is its internal domination effect. Autochthonous discourses discourage contestations and questioning from within. These discourses entrench “the local appeal

However, the ‘naturally’ self-evident quality of such configurations of memberships is, nevertheless, deeply ambiguous (Geschiere 2009). Being more about relative rights over land than any substance (beyond often vague notions of first-occupation), autochthonous discourses are characterised by a deep ambivalence and plasticity which makes them highly amenable political instruments of exclusion, manipulable in whatever ways arise as necessary to exclude various kinds of ‘threatening’ groups (Marshall-Fratani 2006:22). Jackson (2006:109) describes how in the DRC, the language of autochthony has translated this obsession into a paranoid (obsession with outsiders in your homeland) and nervous (fear that you will be found to be less autochthonous in your area than some other group) obsession with impurity and infection of the body politic with ‘insects’, ‘vermin’ and ‘pathogens’. The result is an endless conflict, sometimes violent, over, “‘who is who’ and ‘who really belongs where’” (Lynch 2011d). As Geschiere (2009:89-94) explains, the segmentary tendency of autochthonous discourses leads to the drawing of circles around autochthons at ever closer range.

This desperate search for those who don’t belong is always endless because, as it is deployed in Africa, autochthony is never definitive (as the original definition of autochthony emphasises), but is rather always a matter of degree (Kuper 2003:392; Geschiere & Jackson 2006; Kymlicka 2008:15). Jackson (2006:99), in his discussion of the more popular usage of autochthony discourses in the DRC explains that, “...autochthony operates as a loose qualifier, a binary operator: autochthony is adjectival, relational rather than absolute.” Even in Ancient Athens, though the origin myth implied an absoluteness and timelessness beyond comparison, the primary function of the myth was to justify the inherent right of rule of a very limited political community. Yet, in doing so autochthony denies the migratory nature of human history (Loraux 2000). As Lynch (2011d:392) compellingly points out, the status of a ‘true’ autochthon is impossible to

of communal association with a particular territory or geographic space. ...” (Lynch 2011b:163), what Appadurai (1998) calls the ‘spatial incarceration of the native’, where being ‘native’ (you could say here being ‘autochthonous’) means being not only persons who are from certain places, and belong to those places, but they are also those who are somehow incarcerated, or confined, in those places.” (Appadurai 1998:37). Physical, moral and intellectual immobility are the result, with particular peoples assumed to be firstly whole and tightly bounded, and secondly, only able to think and act with any reason within the confines of their particular niche – territorial, ecological, moral and intellectual (Appadurai 1998:37-38). In the case of autochthonous claims, the groups making them can be understood to be engaging in a process of self-incarceration, as they develop, come to believe in, and promote the idea that the only place they can belong is their homeland. Where once these native ‘prisons’ were the domain of the anthropologist, today they have become in extreme cases (such as the DRC, Ivory Coast, and parts of Cameroon) the only zone of particular peoples’ access to full citizenship.

determine, as much because of the impossibility of determining first occupation in a continent with centuries of undocumented migration, as because of the,

multiple and cross-cutting layers of ethnic appellations, which result, for example, from changes to administrative boundaries and colonial terminology; the lack of clear definitions for what constitutes an indigenous group but also race, nation, ethnic group, tribe or clan; and complex local histories of marriage, ethnic incorporation, tension and conflict.

This obsession with eradicating outsiders and drawing impossibly clear boundaries and identities is one of the most powerful mechanisms available in the establishment and sustenance of particular groups as strangers, or *allogènes* as they are known in francophone countries (*allo* referring to ‘other’, and *genes* referring to ‘descent’ or ‘origin’). Especially in times of scarcity, constructing such stranger groups enables ‘autochthons’ to understand themselves as superior, and therefore, in the presence of *allogènes*, perceive themselves to be disadvantaged based on a belief in their superior rights (Marshall-Fratani 2006:16). As Kuper (2003:390) explains, when first occupation is associated with superior status vis-à-vis ‘late comers’, salience attaches to the idea, “that descendants of the original inhabitants of a country should have privileged rights perhaps even exclusive rights, to its resources. Conversely, immigrants are simply guests and should behave accordingly.” Autochthony makes possible the categorisation of certain people as anomalous strangers, possessing different (and sometimes no) rights, an issue of tangible local concern (Geschiere 2009:229).⁹⁴

Autochthonous discourses related to rights and belonging have important impacts on the character of the objective and intersubjective conditions of political life, promoting the age old myth of a relation between blood, soil, and citizenship. Struggles for autochthonous status are therefore also struggles over full citizenship. In an environment dominated by autochthonous discourses, in order to access full citizenship individuals and communities must (continuously) prove their descent, often in ethnic terms, from a community with an original attachment to a particular piece of land. As the influence of this discourse spreads, people(s) who cannot prove such an attachment – strangers – are vulnerable to

⁹⁴ It would of course be naïve to presume that all people can fit into this typology of autochthon and stranger. There also exist populations who are considered neither autochthons nor strangers (Geschiere 2009:124-129). Jackson (2006:113-114) points out the pygmie people of the DRC, and Congolese Hutus (other Hutus are presumed to be rwandaphone and therefore stranger) as examples. Marshall-Fratani (2006:12) highlights the importance of liminal spaces as those in which autochthonous discourses crystallize, because they are the spaces from which the discourse desperately attempts to evict all populations, the spaces which, once closed off forever, would represent complete control, a condition which is, of course, never possible.

deprivations of membership and rights. In extreme cases, people can be robbed of these aspects of citizenship not only at the local level, where autochthonous struggles most commonly play out, but also at the national level.⁹⁵ The incentive to make blood and soil claims could hardly be greater. These dynamics of citizenship require interrogation and serious consideration. In order to effectively mitigate the exclusionary potentials of autochthony it is necessary to try and understand the source of its emotional and political appeal, and the case of the Nubians helps us to do this (Geschiere 2009).

Land culture in Kenya

In Africa, the meaning and place of citizenship, belonging, and access to rights and resources, have been interpreted and re-interpreted through land (Berry 1992; Cohen & Atieno-Odhiambo 1992; Peters 2004). In Kenya, as in many other African countries, contemporary land culture is often analysed with a heavy emphasis on the changes in configuration of the relations between land, community, identity, resources and power which occurred during the colonial period (Colson 1971; Berry 2002:641). The establishment and consolidation of native administrations and native reserves, including the actions of both colonial officers and African intermediaries as well as the changes in behaviour amongst ordinary Africans in response, played a key role in this regard. This compartmentalisation of tribes resulted in a political-institutional system of assumed exclusivity and cohesiveness of ethnic communities with customary rules relating to use, access to, and exchange of land and its resources in the particular parcels of land they were allocated (Berman 1998; Berry 2002). For the first time in East Africa the notion that land could be owned exclusively rather than only used, and that it could be profitable, came to dominate. As the population of Kenya exploded the increasing land scarcity accelerated the shift towards seeing land as exclusive property rather than a resource to be shared by all, but owned by none, in the interests of the community (Colson 1971). Though land in native reserves could not itself be sold, and was not a commodity as such, it was native reserves that witnessed the most exclusive approaches to land become the most deeply embedded. The colonial state administration was structured so that access to resources was only possible as a member of an ethnic group in one's rightful territory. This increased the

⁹⁵ In the DRC and the Ivory Coast, the most extreme cases of societies where autochthony discourses have taken widespread and explicit hold over formal and informal conditions of belonging, masses of people have been outright denied their citizenship in law and in practice (Jackson 2006; Marshall-Fratani 2006; Geschiere 2009:98-123).

self-consciousness of ethnic groups and operated as a powerful incentive to adopt exclusive approaches to community and land.

As discussed in the previous chapter, the 1962 Regional Boundaries Commission divided Kenya into administrative units, taking into consideration the desires of particular groups to be part of particular units. By and large, boundaries were determined by the ethnic makeup of populations (Kenya Regional Boundaries Commission 1962). The resulting character of these political and administrative units has been to favour their particular 'home' tribe. In this process, groups who did not fit into the colonial distribution of land and authority, such as detribalised natives or people of a non-dominant ethnicity, were rendered strangers in the units in which they found themselves (cf. Sorrenson 1968:37-38).

In the contemporary day to day life most Kenyans, including those who live in urban areas and particularly Nairobi, consider themselves and their tribe to have a rural home, or *shags* as they are referred to in *Sheng*.⁹⁶ For example, the Kikuyu consider their home as Central Province, the Luo as Nyanza, Luhya people as Kakamega, Kisii people as Kisii, and so on. The 1979 Kenyan population census states that, "[i]t is clear [...] that for all tribes there is a province in which most of the tribe resides, or the home province" (Central Bureau of Statistics 1979:26). A host of contemporary social, cultural, political and economic practices sustain the notion of tribal homelands in Kenya. It is not uncommon for someone to ask where your *shags* is as an indirect way of asking what tribe you belong to. People return to their rural homes frequently for holidays, weddings, funerals, and importantly, to be buried, sometimes at great cost (Cohen & Atieno-Odhiambo 1992; Shipton 1992; Geschiere and Gugler 1998). In post-independence Kenya neither state nor society have been truly able (or willing) to nullify the deep seated connections between particular ethnic groups and their parcels of land. In a different context, Klopp (2000) argues that the 'pilfering of the public' has been one of the great tragedies of irregular land allocations and land-grabbing throughout Kenya. The pilfering of properly public space, in the sense that it can be enjoyed by any citizen, has occurred not just through irregular private allocations, but through the re-designation in social and political norms of parcels of land as ethnic rather than public in the sense of being available to anyone.

However, as a result of the official dissolution of native reserves, the postcolonial state also went further with individual property titling than the colonial state. The new elite in

⁹⁶ *Sheng* is an extremely localised form of Swahili spoken in Nairobi.

independent Kenya benefitted from the colonially authored constitution which cemented a private property approach to land ownership initially proposed in the 1954 Swynnerton plan, which aimed to distribute small parcels of land to individual families (Shipton 1992). The registration and titling of land was believed (and still is in many development circles) to be the key to the development of the country, as private parcels of owned land could be used as collateral for credit from state or private institutions, which could in turn be used to develop the land and increase agricultural productivity (Peters 2004:274; Manji 2006). In fact, the registration of large portions of land as freehold enabled the post-independence elite to portion it out to patrons to maintain a hold on political and economic power, often at the expense of indigenous and other marginalised communities whose rights are less protected under law (Shipton 1994:364; Klopp 2000; Ndungu 2004; Wachira 2008:6, 23). Furthermore, the general principles of private individual titling favoured the Kikuyu elite because of their position at the time: their population had outgrown their ‘traditional’ land, they were agriculturalists and so better suited to individual land than for example pastoralists, and (at the risk of over generalising) they had been participating in the capitalist market economy for longer, so had more money to buy it (Ndegwa 1997:608).

In this sense, private titling and ethnic homelands have operated in Kenya as two distinct and frequently conflicting principles of land distribution. The land tenure system in Kenya since independence designates all land as either freehold, leasehold or public land, but also recognises customary tenure for lands in rural areas that do not fall into any of the previous three categories. Such land is governed under the Trust Lands Act and is vested in county council trusts (Waiganjo & Ngugi 2001:4).⁹⁷ The 2010 constitution contains provisions for a new category of land – ‘communal land’ – which is likely to be similar to Trust Land, but hopefully with more popular control. The character of this kind of land tenure is still to be legislated. Although the statutory understanding of land is legally superior, and therefore individuals with titles have their rights protected in disputes against those with customary rights to the land, in practice the statutory rules do not always carry more weight in people’s actual use and transactions of land (Shipton 1994; Waiganjo & Ngugi 2001; Médard 2008; Wachira 2008:7-8). As Shipton puts it, “...market logic never simply

⁹⁷ Customary tenure systems vary between communities but have some characteristics in common including: rights to access based on membership in a political community or investment of labour or capital in the land; rights of control for the relevant authority in the community which can be enforced in relation to allocation, use, and as a defence against outsiders; rights analogous to private property for individuals who are members of the community or who have invested labour; and a principle of equity in access to resources which by their nature must be shared, such as pastoral land (Shipton 1992; Waiganjo and Ngugi 2001, p.3).

shuts out political or cultural reason” (Shipton 1994:365). Furthermore, illegal appropriation and allocation of land by government elites has been prolific in the post-independence era (Klopp 2000; Ndungu 2004). Often this allocation has taken place in the form of ethnic favouritism, further blurring the lines between the two approaches to land. The extent to which this often ethnically parochial ‘land grabbing’ has shaped contemporary attitudes to land cannot be underestimated. A well-regarded National Land Policy was passed by parliament in 2009, which, if given effect in legislation, will redress the major grievances associated with land in the country. However, to date no progress has been made on this front.⁹⁸

The *majimboism* debates are particularly illustrative and illuminating of these conflicting approaches to land (and citizenship) in Kenya. The previous chapter discussed the *majimboism* debates in relation to political organisation, but it has been the land aspect of these debates that has proven to be the most controversial. This was particularly so in the early 1990s as Kenya returned to multi-partyism. Out of fear that the numerically dominant tribes (Kikuyu, Luo, Luhya) would dominate politics in a multi-party democracy (but also to prove to Kenyans that multi-partyism would lead to chaos), Moi advocated *majimboism* as a defensive form of ‘protection’ of the rights of minority tribes, like his own Tugen (a Kalenjin sub-tribe from the Rift Valley). While decentralisation can have the effect of empowering minority communities, the *majimbo* position was more sinister, most notably in its emphasis on land rights only for locally indigenous tribes (Ogot 1995b:259; Ghai 2008). Ndegwa (1997:610) explains about Moi’s *majimbo* campaign,

the *majimbo* rallies introduced a new lexicon of difference and intimidation, especially with reference to rights of access to and settlement on land and rights of political participation in selected regions. For instance, *madoadoa* (spots) and *kwekwe* (blemishes) referred to “contamination” of the ancestral lands of the Kalenjin and Maasai in the Rift Valley region by migrant ethnic groups (especially Kikuyu). These new settlers were also termed *chui* (leopards), a more insidious reference to the interlopers as land-grabbers.

The gist of the *majimbo* position was that ethnic homelands should be fortified not only as the primary locus of rights, duties and political participation, but also that in order to own land securely one must own it in ‘their own’ rural area (Anderson 2010:41-42). Individuals who owned privately titled land in areas other than their ‘homeland’ (most notably Kikuyu

⁹⁸ In particular, the policy promises to make environmental sustainability a priority, to redress historical land grievances, and to improve administrative procedures to make them more efficient and transparent (National Land Policy Secretariat, 2009).

individuals in Kalenjin areas, and in Coast province) have been driven out during violence in the Rift Valley in 1991-2, again in 1995, and most recently in 2007-2008 (Médard 1996; Anderson & Lochery 2008; Médard 2008).

Tensions between competing approaches to land in Kenya are still prevalent today. Principles of ownership and use based on ethnicity continue to compete with those based on private property norms. Whether land is an ethnic or national resource is a question that remains unresolved. These competing approaches to land have led to a serious instability in Kenya that is at its most pronounced in ethnic territorialism (Peters 2004:336). It is in the context of these tensions surrounding land, exacerbated by the increasing scarcity of land and other development resources, that the Nubians perceive themselves to be in the position of having to carve out a space for their community.

Nubian struggle for Kibera

Nubians all over Kenya have petitioned the government before and after independence for secure title for the land they were settled on. Kibera in Nairobi has been at the centre of the struggle, and has proved the most difficult to secure.⁹⁹ As discussed in chapter 2, almost from the very beginning there was ambiguity surrounding the legal status of the land. As was common practice in the military at the time, the Nubians believed they were given the land by the British in lieu of a pension. The colonial government, though agreeing it had a moral obligation to settle the Nubians somewhere, still considered Kibera Crown Land (Usher 1928; DC Nairobi 1931a, 1931b; Acting Commissioner for Local Government, Lands and Settlement 1931; Carter 1934:171; DC 1936; Chief Native Commissioner 1948; Nairobi City Council 1959; Permanent Secretary for Housing, 1960). The current government still consider the land as Government land and the Nubians and all other residents as squatters (Kenya Ministry of Housing 2007:8).

Without any title to protect the Nubians' ownership of the land the 4197.9 acres originally gazetted as a military reserve has been encroached upon significantly, as detailed in

⁹⁹ Of the Nubian settlements outside Nairobi that were part of my field research, residents in the Nubian settlements in Eldama Ravine, Kericho and Kisii have been given allotment letters for individual title deeds. Residents in Kibos have been lobbying to get them, but so far without any success. Allotment letters entitle individuals to purchase their plots of land if they can afford to. The grievance expressed in many of these communities is that they cannot afford to buy the land, and they feel they should be given it as a matter of right. There is less concern in the rural settlements that individuals might sell their land and thereby break up the Nubian settlements. This may be because the land is of much less value than that in Nairobi, or it may also be in part out of a lack of knowledge and understanding of the land tenure system. Nevertheless, these settlements are considered by the Nubians as 'Nubian villages', and they wish to maintain them as such.

chapter 1. In the colonial period large pieces of land were appropriated on the fringes of Kibera for European sporting clubs and housing estates, and after independence the National Housing Corporation constructed a number of other middle class housing estates, almost all of which failed to benefit the Nubians. Since the 1970s congestion has increased significantly and now the small remaining piece of land, 550 acres, has become completely filled-in with informal housing leading to slum conditions.

In rural areas, the most common form of communal land tenure is having the land scheduled as Trust Land, vested in a County Council Trust. However, the Nubians do not see this as a viable tenure option. Given the land they are seeking is extremely valuable commercially and in an urban area prone to land grabbing, as well as constituting a massive multi-ethnic settlement, the Nubians argue instead for what they see as a more legally robust tenure option: freehold communal title (cf. Shipton 1994:365; Bassett 2005). Most (but not all) Nubians want communal rather than individual title, in order to preserve the land for future generations. The fear associated with individual titles is that the desperate economic circumstances many families face will force them to prioritise their short term interests and the sell their plot to non-Nubians, and before long the land they have fought for will no longer be theirs (KNCE 2005).

Land title is being pursued concurrently by two leadership groups in the community, the KLC and the KNCE, who were originally combined in the 'Kibera Village Committee', established in 1999 by the Permanent Secretary in the Ministry of Lands and Settlement in response to the need to organise a representative group of Nubians to consult with government. The KLC, aligned with Raila Odinga's Orange Democratic Movement (ODM), have been pursuing solely the land issue, while the KNCE have successfully pursued recognition in the census and improved access to ID cards. As such, the KLC have gone further in developing plans for how to acquire the title, and advocating the Community Land Trust (CLT) model by which the freehold title is vested in a Trust and structures are owned according to conventional private property norms (Bassett 2005). There is, however, no widespread understanding or agreement amongst the community about the intricacies of the land tenure options. KLC are pursuing such a title for only 300 acres of the remaining land, allowing another 250 acres to remain government land inhabited by other Kibera residents and available for KENSUP. The KNCE, aligned with President Mwai Kibaki's Party of National Unity (PNU), and many members of the community, are resentful of this agreement as they perceive 780 acres as rightfully

theirs.¹⁰⁰ Already, in the serious rifts in the Nubian community, the segmentary tendencies of autochthonous approaches to land are evident (Geschiere 2009:89-94).

The Nubians have so far been unsuccessful in securing their land through either legal activism (for example like the Endorois),¹⁰¹ or through the more common political patronage routes.¹⁰² The Nubian MP Yunus Ali was unable to make any progress beyond raising the question in parliament a number of times. Since then, the efforts of the community have primarily consisted of petitioning government leaders – usually the President (first Kenyatta, then Moi and now Kibaki). In the last ten years or so a faction of the community has petitioned the Prime Minister Raila Odinga and his close colleague the Lands Minister James Orengo. These petitions have usually taken the form of letters and memoranda or visits when they can secure an appointment. There have been various promises made by various government offices in response to these petitions, particularly around election times, however, to date none have been forthcoming.¹⁰³ More recently, the ACHPR case includes an argument that the Kenyan government has breached respect for property rights: “As a result of the historical failure to recognize Nubians as citizens and their ongoing tenuous citizenship status, Kenyan Nubians have never been given legal protection for their ancestral homeland of Kibera, contrary to Article 14 of the African Charter” (OSJI 2011a). However, this argument is largely overshadowed by five other arguments relating to the ambiguous citizenship status of many Nubians. The OSJI and CEMIRIDE, who have taken on board this case, have been reluctant to address such an ambiguous and controversial land issue directly. The Nubians have thus been unable to meet their goal through any of the usual methods of negotiation around land in Kenya.

¹⁰⁰ To my knowledge there is no written evidence of this acreage, but it is believed to include some uninhabited land by the river in Lang’ata not usually considered part of Kibera.

¹⁰¹ The Endorois are a small community in Kenya who took a case to the ACHPR. The February 2010 decision was a landmark one in which the Commission ordered the Kenyan government to return Baringo National Park to the Endorois community on the grounds that it is their right as the indigenous people of the area. However, the transfer of land title is still pending nearly two years after the decision (Lynch 2011a).

¹⁰² There is one small exception to this. In 1984, the Lang’ata MP Richard Leakey of KANU helped get the Nubians title deed for the Makina mosque, the biggest and most central mosque in Kibera (de Smedt 2011:111).

¹⁰³ These minimally include promises in parliament June 1993 (National Assembly 1993); as part of the Squatter Settlement Programme of 1997 (Ngala 1997); and in the establishment of the ‘Kibera Village Committee’ in 1999 by the Permanent Secretary in the Ministry of Lands and Settlement, a committee of various Nubian elders which preceded the formation of the KLC and the KNCE. The committee undertook surveying and a workshop on the CLT tenure model between 2000 and 2002 in preparation for receiving the title deed (Department of Physical Planning 1999). Most recently, President Kibaki issued a presidential directive to issue the Nubians land title after a 2007 visit from the KNCE (Chege 2010). Various other promises were frequently mentioned by Nubians, but could not be corroborated with any documentation.

There are a number of reasons for this. The location of Kibera, situated within walking distance from the Central Business District of Nairobi, and in the middle of an otherwise middle to upper class area, makes the land extremely valuable, prompting many to think about it not as land, but as real estate. Many Nubians speculate that the government want to continue to hold this land in reserve so that it can be doled out for patrimonial purposes, as has happened in the past (Amis 1983; Osborn 2006). The exploitation of positive media exposure around KENSUP suggests that contemporary politicians may view this upgrading project also as a patrimonial resource (IRIN 2009).¹⁰⁴ Furthermore, and perhaps most importantly, the Nubians are now radically outnumbered in Kibera, which has a population of somewhere between 200 000 and 300 000, of which the Nubians are not more than 10 000 to 15 000. As discussed in the previous chapter, a disproportionate number of these other inhabitants are Luo, and Kibera is located within Lang'ata constituency which has been held by the Luo Prime Minister Raila Odinga since 1992 (Njogu 2001).

The discussion so far has explained the practicalities of the Nubian land struggle. However, more explanation surrounding the meaning of the land to the community and the basis for the struggle is required. Fundamental to further understanding is a discussion of the seemingly absurd claim that an urban slum could constitute an ancestral homeland for a community who are dispersed across the region and who have lived in Kenya for only a century. Despite residing in urban environments, Nubians find themselves compelled to invest meanings in land that are typically associated with rural life. Nubians, like many other Kenyans, understand land to be a communal resource imbued with ancestral significance, vital to the community's culture and identity. The Nubian land claim has come to develop autochthonous characteristics consistent with the relationship forged by other ethnic communities in Kenya between tribe and land (cf. Li 2001). In particular they appeal to first occupation as a justification for exclusive land rights. As de Smedt (2011:244-245) explains "[m]any Nubis claim they would defend (their rights in) Kibera with their life, whereas most people of the other communities probably would not – Kibera is not their tribal homeland."

¹⁰⁴ KENSUP is the most recent of a number of urban renewal and slum upgrading projects in Nairobi. During the period of fieldwork for this thesis, and at the time of submission, it remains the most significant threat to the Nubian land title as it is backed by the Government of Kenya and UN Habitat and is supported in particular by Prime Minister Raila Odinga. Nevertheless, it has been a deeply flawed project and there is no guarantee that it will continue as planned (Friday Bulletin 2004; Omenya and Huchzermeyer 2006; Rono 2007; Huchzermeyer 2008).

The autochthonous meanings invested in Kibera

The Nubians consciously and actively locate their heritage and ancestry not in Sudan, the home of their forefathers, but in Kibera. The settlement of the soldiers of the KAR with their families in Kibera at the beginning of the twentieth century represents the establishment of a homeland for the community after decades of military migration. The KNCE explain that, “Kibera and other Nubian settlements in the country have been in existence for over one hundred years and with no other rural or tribal homes these have logically been regarded as the ancestral land of the Nubians” (KNCE 2005). This statement demonstrates the Nubian interpretation of history, understood through a language of ancestry and heritage, where traditions have been invented and continue to be renewed in various kinds of association with the land – authentic and strategic (Ranger 1983, 1995). In a myriad of ways, including story-telling, reminiscing, and careful preservation and display of symbols of the early settlement, Nubian families engage frequently and sincerely with this history and contribute to ongoing transformations in its interpretation, each deepening and making more concrete their attachment to land, transforming it from space into place (Gupta & Ferguson 1992).

The notion of first occupation and that the current generation’s fathers’ fathers lived in this particular place (even if it is acknowledged that earlier they did not) is felt to be the basis of a right to continue to live there. Mama ‘Jonuba’ (Interview 1) explained,

I cannot say that I am from Sudan because it was our grandfathers who were born there. So after they came they had no aim of going back, because they didn’t know if they went back where they would go to. But it is the British who took them and brought them here, and they let them build their homes here, so after the blacks got their independence we had settled here. And so we became part of this ‘government’. Those now living here are their children, the children of their children, and the children of their children’s children.

While the relatively recent arrival of the Nubians in Kenya features in narratives of their settlement, more central to these contemporary narratives is the assertion that the current and future generations therefore necessarily and unequivocally belong there. Thus the notion of heritage is intimately connected to notions of guardianship or trusteeship for future generations, a notion highly consistent with Islamic conceptions of land as vested in God, but, “temporally enjoyed by men and women through responsibility or trust” (Sait & Lim 2006:10).

This general sense of a unique attachment to Kibera as a historical homeland is reflected in the way the Nubians sometimes refer to themselves and are categorised by others (Clark 1970:16) as ‘urban villagers’, a community who, “adapt their non-urban institutions and cultures to the urban milieu” (Gans 1965:4). The way Atieno-Odhiambo (1977:8) described the Nubians in the late 1970s still resonates today:

... they are now [in the 1970s] third generation immigrants with no tangible ‘tribal’ hinterland to go back to, and yet they still emphasise ethnic cohesion, and maintain very close kinship, social and voluntary associational ties In their contexts, the backyards that the British awarded them to build their tin huts on were at the same time their ‘tribal’ hinterland. Their communities have formed urban villages in the sense therefore that they have lived for two or three generations in a specific area, gaining the monopoly on the use of land, housing and trade in these areas. They have at the same time regrouped because they have been thrown back on themselves so much, with no other hinterland and no other kinsmen other than Wanubi from other villages.

In this passage, Atieno-Odhiambo points to the practices that have forged this connection since the Nubians moved from the various places where their forefathers came from and arrived in Kenya. Originally, they dominated the use of the land for agriculture and cattle grazing, housing with their large homesteads, and trade in the area, with people from other tribes being either tenants or workers. All the while they have maintained clan and other kinds of social associations developed during their decades of migration and temporary settlement in rural and pre-urban areas. The absence of any other place in which they had the rights to dominate the land in these ways reinforced their place in Kibera. Families regularly visited their extended relatives and friends in other Nubian settlements, and continue to do so, continually re-establishing those settlements, especially Kibera, as Nubian in character (see also Clark 1970:16-17). Though the dominance of use, housing, and trade has diminished, and the Nubians have now thoroughly lost control of Kibera, it is the memory of this era and the continuation of social practices and relations from then that buttress their sense of unique historical attachment.

Within the collective memory great emphasis is placed on the initial settlement of the 4197.9 acres. Nubian families relay a consistent narrative about being ‘brought by the British’ and settled with *shamba* passes, where they built homesteads that they continue to live in. Again, Mama ‘Jonuba’ (Interview 1), one of the oldest remaining Nubians whose father built a homestead in the initial settlement of Kibera, explained this period as follows:

At that time the place was so bushy, filled with big savannah, and that's where the name Kibera came from ... So they kept on coming, cutting down the trees and bushes, wanting to know the name of the place, that's when the place was given the name Kibera because of the big trees and bushes.

Mama 'Jonuba's' family and many others retain their original *shamba* passes, and refer to them as documents proving their 'ownership' or right to the land. These *shamba* passes largely correlate with a map from 1934, held by a few different leaders in the community, which marks out the plots for each homestead with the plot number and family name. At a community meeting held in March 2009 by the KNCE this map was rolled out and people gathered excitedly to find their family's plot and share family histories. Yusuf Diab, the secretary of the KNCE declared confidently that the Nubians are not squatters or slum dwellers but should be proud of their land. Zamzam (Interview 47), a young Nubian woman later explained to me about her family home, "Now you see number 103, that's our plot number ... We've not removed that number, we just left it there. Up to now. Us we are the grandchildren. Great grandchildren they are here..." Her sister Mariam (Interview 47) further explained that in the struggle for land title,

they start by mentioning these plot numbers 103, 104. You know if they start doing that, the government will surely know that 'Oh, these people, they know for sure that that land is theirs, they have their numbers, their documents, their shamba pass, their forefathers were there, so these people, if they surely know that they are the owners of this place, we cannot do what? We cannot ignore them, as we have been doing.

It is not only the historical fact of the settlement, but the contemporary reification of its symbols that promote a sense of ownership of the land.

Figure 5.1: Nubians viewing a 1934 map of Kibera, with demarcated plots (Photo by author, 29th March 2009).



Compared to now, with Kibera highly congested and living conditions sub-standard, the era when families each had their own homestead is viewed as a 'golden age' in the history of the community (Smith 2004). Tales of fishing and swimming in Nairobi dam, going for walks in the remaining forested areas, and grazing cattle right up to the 1960s and 1970s are frequently relayed to visitors to convey the loss that has occurred with the congestion of the area. A survey of landlords and tenants in Kibera in the late 1960s attests to the Nubians' special attachment to the land. The survey reported that landlords (almost all Nubian) had been on the land much longer than the tenants, most having been born there, and the character of the area, evident for example in social, sporting and political associations, could be mostly attributed to the Nubians (Clark 1970). In 2010, an exhibition by photographer Greg Constantine held not only in a gallery in central Nairobi, but also in Kibera, displayed photographs of contemporary Nubians juxtaposed against photos of their grandparents and great grandparents from the early twentieth century onwards, graphically illustrating the contrast between past and present in Nubian Kibera (Constantine 2011).

The claim to Kibera is bolstered by a vigorous defence of the integrity of the Islamic cemetery in Kibera, the only cemetery there, and predominantly occupied by Nubians. It is often pointed out that other residents of Kibera usually get returned to their rural homeland for burial when they die. The Nubians are the only community who routinely bury their dead in Kibera. The cemetery therefore functions as a physical representation of Nubian ancestry which unites the community and marks out territory that is significant to them alone. In highlighting this aspect of their claim on Kibera as territory, the Nubians appeal to a well-established notion that in Africa, your home is where you are buried (Shipton 1994; Durham & Klaitis 2002; Geschiere 2009:190-207).¹⁰⁵

The community also continue to think of particular sites as culturally significant because of their historical (and to a much lesser and more covert extent, contemporary) connection with animist rituals involving dancing, music and the sacrifice of animals in order to protect the community or bring about other particular goals such as a peaceful marriage or a recovery from illness. Though any practice of these rituals is condemned by the mosques and largely socially frowned upon, the sites still represent significant historical engagement with the land and its 'spirits' that mark the special attachment of particular

¹⁰⁵ Islamic law allows for the significance of cultural and ancestral attachments to land, including as more than property, but as a "permanent temporal abode" (Sait and Lim 2006:17).

clans to particular areas. One of these sites, used by the Muru clan, is a cave in the side of a small incline above a creek, deep in Gatwekera, one of Kibera's villages. This site is now littered with rubbish and human faeces and has clearly developed other uses for the non-Nubian community who live immediately on top of it. With the increasing congestion of space in Kibera and the severe outnumbering of the Nubians, as well as the constant threat of further land encroachment by developers (formal and informal) and KENSUP, it is increasingly difficult for the Nubians to protect and preserve these sites of historical significance.

Figure 5.2: Cave in Gatwekera, formerly Gumberedu, where Muru clan rituals used to be performed (photo by Author, 13th April 2011).



Kibera land also constitutes a necessary condition, in the eyes of many Nubians, for the preservation of their culture. Ismail Ramadhan (2004) explains that before the area became congested, and when their forefathers felt more secure in their tenure, "[t]he environment was conducive to economic development, practising and maintaining the cultural heritage and preserving social activities such as weddings, burials, education, sports and other forms of entertainment." The physical gathering together of people to perform cultural ceremonies, particularly weddings, burials and *larbein* requires a place for these events to be held. Since approximately the middle of last century an annual celebration of the 'Sister Club', where Nubians from all over Kenya and Tanzania gather for Nubian *dholuka* music and Nubian food, has frequently been held in Kibera (as well as Bombo in Uganda). Since their initial settlement and continuing until today Nubians travel from all over East Africa for these ceremonies.

The fear of many Nubians is that the insecurity of their land tenure in most of the Kenyan settlements will lead to the loss of open areas and the impossibility of easy gathering for these celebrations, leading people like Hassan (Interview 3) to ask, “[w]here are the Nubians going to be settled? Nowhere! This ... this is a race which is going to be extinct you know.” Already there is really only one remaining open space the Nubians can reliably use for gatherings, and because it is part of a school use of the space requires a fee. Factors such as high levels of intermarriage with other ethnic groups and loss of Kinubi language amongst children (which is already underway) exacerbate these fears.¹⁰⁶ Many people reflect that even if some people move away as long as the Nubians as a collective still have Kibera at least some of these traditions will continue.

In part because of these notions of heritage, ancestry and trusteeship, land represents for the Nubians a crucial part of, “what people have at their disposal in organizing and thinking about their lives” (Strathern 2009:19). Perhaps the most basic aspect of this is the continued physical congregation of like-people in the same place, and all that comes with that. In such a context, social relations are reasonably predictable and navigable and it is possible to learn, “how to hustle” (Interview 41a), or how to get by in life. This ontological security is a significant part of what the Nubians associate with Kibera and other Nubian settlements. That is to say, a place to live together is a prerequisite for the embodied presence of community members in each-others’ daily lives. This presence sustains a sense of stability and relationships of respect and reciprocity, underpinned by a shared identity (cf. James 2006). One fairly wealthy Nubian (Interview 35) who chooses to continue living in Kibera, despite having the possibility of social and physical mobility, explained her decision,

You know, okay, to stay here I like it because, you know all the families ... all Nubians they were together. Now if you want to go and visit your friends, families and all that, you can go even walking. But ... if you’re staying far away from people, you know it’s very difficult. Maybe you can stay there for three days, four, five days you come back to see your people.

This quote demonstrates the extent to which land is intimately tied up with the integrity of the community, the, “intangible but vital capacity for relationships that the land and its

¹⁰⁶ A related, but slightly different fear, one which has already been realised, is that the traditionally spread out and dignified way of life of the Nubians (as Muslims), where different members of the family have sufficient privacy, and where there is room to comfortably accommodate guests will be lost. Abdul (Interview 47) explained his present situation, where he shares his grandfather’s plot with a now very extended family and tenants, “[n]ow this is a bathroom, you are entering the bathroom and your daughters are seeing you, your mother ... this is not our culture.”

fruits mobilize” (Strathern 2009:29) The closeness and routine, reliable interactions that constitute daily life for Nubians and solidify their relationships to each-other are dependent upon security of place. In the event of the Nubians being driven out of Kibera, either dramatically through mass housing construction by KENSUP or slowly through their ongoing marginalisation there, these patterns of social interaction would be disabled.

It is not only the tangible human relations that contribute to Kibera’s significance for the Nubians, but also the difficult to capture ways in which place is linked to identity. When asked what Nubian land would mean, it was often spoken of as something like “our identity” (Interview 50 Gore), or as Makkah (Interview 41c) put it, “in Kibra we already have a *signature*,” meaning a territory marked out as theirs alone and which in turn serves to identify them. The importance of place as an anchor for identity is further explained by Muhidin (Interview 30),

Nubian land is a pride. It's a pride because you come to know your identity. Today even if I go to ... Mombasa . . . I'll always attach my identity to this place. There will be a house here which will not be sold to anybody. And that one will make a centre focus of actually where we came from, identity. Yeah. ... Even if it is ten, twenty years, a hundred years, still this place will remain. The culture will remain the same. Yeah. Because Nubians have been there over 3000 years ago, and up to now we are there, so it is not easy for Nubians to get lost.

What matters here is having not just a space, but a *particular place* as the context in which to understand one’s place in the world and foster a sense of security in the face of increasingly rapid social and economic change (Haugerud 1995; Eyoh 1999; Lonsdale 2004:80). Place mitigates the chances of getting ‘lost’, as Muhidin put it, not only in the physical sense but in the sense of having somewhere where people know to find you, or your ancestors (past and future), or people like you.

At risk of abjection

So far, I have conveyed the immaterial meanings invested by Nubians in Kibera. However, equally important are the more tangible functions the land is perceived to perform and the acute fear of a future where the land is not secured. If we can understand what is at stake in more material and immediate terms, then it becomes easier to also understand why a turn is taken towards an exclusivist autochthonous approach to land. One of the most obvious values associated with Kibera is its economic value. Without underestimating the other ways in which land is significant it is widely acknowledged that land is relied upon as a

source of livelihood, particularly in the face of post-independence economic uncertainty and land scarcity (Berry 1992:651; Shipton & Goheen 1992:308; Shipton 1994:355; Wachira 2008:23). This dependence on land is especially acute for marginalised communities who are excluded from other economic opportunities (Wachira 2008:23). For many Nubian families Kibera constitutes their most important source of livelihood in the form of rental properties, their primary ethnic economic niche since the decline of gin production in the 1950s and 1960s (de Smedt 2011:145).

Although Kibera has become horrifically congested as a result, and the Nubians were complicit in this to a degree, these rental properties are invaluable to the Nubians. The other sources of income they historically relied upon, including military salaries, income from brewing ‘Nubian gin,’ shopkeeping, and subsistence agriculture, made the Nubians significantly wealthier than other Africans, particularly during the colonial period (Clark 1978-9; de Smedt 2009a). However, these other sources of livelihood have largely dried up since the massive influx of other people to live in Kibera. As a result, by the early 1980s Amis’ (1984:92) research on housing in Kibera suggests, referring to Nubian landlords, that, “[i]n particular for those who are landless and without employment in Nairobi this sector [rental] provides the income for their survival.”¹⁰⁷

In addition to this economic value, title deed for Kibera is perceived as holding significant security value for the Nubians. Many conflicts in Africa that appear to be ‘ethnic’ are in fact far more about land, and scarcity of land, than anything else (Berry 1992; Shipton & Goheen 1992; Shipton 1992, 1994; Berry 2002; Peters 2004:271). Kibera has seen a number of violent clashes, in 1992, 1995 and most dramatically in 2001 and 2007-2008. While the Nubians were not directly targeted in the post-election violence of 2007-2008, a conflict that played out in Kibera primarily between Luos and Kikuyus, the three major clashes before that affected the Nubians very directly (de Smedt 2009b; Osborn 2008). These clashes were popularly referred to as ‘rent riots’. The Nubians are the only ethnically homogenous and resident landlords. As such, although they are only a small percentage of total landlords, they are easily targeted by large numbers of Luo tenants (de Smedt 2011:113). Conflicts in Kibera have thus often taken on a very strong ‘Nubian versus. Luo’ ethnic dimension. However, in each of these episodes national level politicians, including former President Moi and current Prime Minister Raila Odinga,

¹⁰⁷ Unfortunately there is no up-to-date data on the extent of the Nubians’ dependency on rental income. A comprehensive livelihoods study of the community would be beneficial in this regard.

manipulated the situation on the ground with a view to winning votes – especially among the large Luo population – in upcoming elections, demonstrating the dangerous potential of ethnic patronage politics (Shilaho 2006; Dimova 2010; de Smedt 2011:112).

Amongst the Nubian community there is a widespread perception that if they had land title, they would hold some authority and control over the area that would ensure their economic and physical well-being in times when competition over land (such as in the form of control of rental properties) becomes violent. Even when violence is not directly targeted at them, as in 2007-2008, a place of refuge in such circumstances is important to the Nubians. When explaining why the Nubians need their own piece of land, Muhidin (Interview 30) said, "... from recent tribal clashes arising from this general election some of our smaller tribes like ours, we don't feel safe staying in these other people's big area. This is our only home, and we feel we are more comfortable here, and more secure." When I asked about how people would feel about the possibility of being compensated with land somewhere else, outside Nairobi, responses like Abdul's (Interview 47) were typical, "...not interior because there's what we call the tribal clashes, that's why we are afraid of."¹⁰⁸ As discussed earlier, violent clashes over land have driven people from different tribes 'back home' repeatedly during recent decades.

In addition to the potential threat of inter-ethnic violence, the Nubians suffer other physical difficulties as a result of the insecurity of their tenure. As long as they are considered squatters, the Nubians (and other residents of Kibera) face the threat of eviction and destruction of their residential and investment structures at any moment. Memories of forced evictions to make way for National Housing Corporation Estates in the 1970s and 1980s from areas like Toi (now Fort Jesus), Lomle (now Ayany), Sarang'ombe (now Jamhuri), and Langata make this fear an acute one (KLC 2001; Ramadhan 2004; KNCE 2005; de Smedt 2011:91-92). A range of other problems related to security and physical well-being result from their landlessness and insecurity of tenure in the form of slum conditions described earlier (KNCE 2005). Kibera's residents frequently deploy the language of filth and danger, using words like 'slum' and 'ghetto', to emphasise the extremity of these conditions.

Just as in rural areas, land is perceived by the Nubians in this case as a crucial resource in terms of livelihoods and physical security. The risk of being permanently driven out of

¹⁰⁸ By 'interior' Abdul is referring to rural areas of Kenya.

Kibera is therefore perceived as an extremely serious one. The predominant and preferred response to this risk has been to lobby the government for title deed. However, a significant number of Nubians have also purchased land, often through life long saving and community cooperatives, in peri-urban areas in order to mitigate these risks (de Smedt 2011:114). Typically, a family of up to 20 or so members will pool their resources to purchase a plot within a larger cooperative, the leaders of which are then responsible for negotiating and executing the land purchase. Plots seem to be on average one to two acres, and they take many years to pay off. However, very few Nubians live in these areas and most of the plots in the cooperatively purchased lands in places like Athi River and Kisaju are undeveloped. After raising the funds for the plot, most families struggle to raise further funds to either farm it or put up structures. But more importantly, it seems they often do not really want to live there. To my knowledge no more than one or two families live permanently on their peri-urban plot. These plots appear to be more a form of insurance than a genuinely preferred option for settlement. They are a strategic attempt to mitigate the risks of living in Kibera. As Makkah (Interview 41c) explained this is,

kind of a security, ... we have at least somewhere we can build a permanent home, and live peacefully without being questioned ...because ... we bought it, we paid for it, and we can live there without ... the government asking us ..., unlike in Kibera [where] we can't build a permanent home. Yeah, it's just shanty, shanty ... and all the time there is conflict ...

Far from undermining their claim to an attachment to Kibera, as I sometimes got the impression they felt it would when people talked to me about these plots, the purchase of these plots can be interpreted as further evidence of their precarious position in Kibera and their reluctance to actually settle there is only further indication of their significantly greater sense of belonging and security in Kibera.

In many ways the Nubians already feel that they have been marginalised insofar as they are considered strangers and face regular discrimination. However, the fear and experience of being pushed not just to the margins of society and politics, but of being pushed out altogether, that is, the fear of abjection, is most apparent in the fear of being expelled from what they perceive as their land. Abjection operates through specific structures and processes and in Kenya, land allocation and deprivation are heavily implicated in the politics of abjection (Ferguson 1999:238). If they were to be expelled from Kibera the Nubians would be forced to find an alternative place to live in a country with little land left, where moving to another area entails the ever-present threat of violence inflicted

against those who 'do not belong'. Others in this position in Kenya have been perceived as contaminants, as *madoadoa* (spots or stains), or *kekwe* (blemishes) (Ndegwa 1997:610), and therefore a source of disgust and fear that must be contained or eradicated, often violently. The challenges to physical security and livelihoods in such a situation would be immense. Though the Nubians' present condition is in no way a desirable one insofar as they are already marginalised strangers, expulsion from Kibera would represent something more extreme.

Land, autochthony and belonging in Kenya

Gausset et al (2011:141) argue that, "[i]t might be time to end the sterile debate in terms of 'for or against' the concepts of autochthony and indigeneity, and to focus instead on the context and legitimacy of the different political projects that instrumentalise them." Understanding the Nubians' position and their response to it helps us do this. The risk of abjection that the Nubians experience as a result of their landlessness is connected to its signification: lack of land means that they came later, as opposed to the autochthonous tribes of Kenya, which were there first, and the Nubians therefore have no rightful claim to Kenyan land, or even citizenship. The state in Kenya has a long history of marginalising minority and indigenous groups through a denial of recognition of their collective land claims (Wachira 2008:25). Land is the primary mechanism through which the Kenyan state and Kenyan society can continue to make politically and socially hierarchical distinctions between ethnic strangers and ethnically indigenous groups, recognising the full and rightful membership of only the latter (cf. Mamdani 2001b:31). Landlessness sustains a continued perception that the Nubians are strangers, people with no place, physical and therefore also political, in Kenya, and as such landlessness, more than any other factor, has been both the cause and effect of the Nubians' marginal status in Kenyan society.

In this condition of being landless strangers, the Nubians are forced to look to dominant discourses, the available places of recognition, to reach towards a fuller citizenship (Li 2000, 2001). In doing so, the strategic and authentic aspects of the Nubian claim merge together, and the dichotomy between those two ways of looking at the claim collapses. As Li (2000:153) explains, the meanings generated by certain strategies come to transcend the context in which the strategy was developed, and evolve into genuine and authentic ways of understanding one's place in the world.

Lonsdale (2008:307) argues that a, “claim to be original, autochthonous, a first-comer, is the weapon, even the refuge, of the weak” (cf. Alcida Rita Ramos in Kuper 2003:398). There is some truth in this, but a truth that requires unpacking. As he himself observes, “all Kenyans are learning more exclusive attitudes to territory” (Lonsdale 2008:306), and so the Nubian claim is nothing out of the ordinary. In fact, it is the opposite. It is an attempt to understand their situation and to make their appeal for equality in ways that are intelligible and meaningful in the society and the political culture in which they live (Dunn 2009). Many communities in Kenya respond to the dispossession of land and resultant inequalities by cloaking essentially class based claims in ethnic clothing (Klopp 2002:274).¹⁰⁹

Though expressed, as the mainstream society and political culture dictate, in a language of belonging which is intimately connected to blood and especially soil, the claim is at root one for inclusion and equal treatment based on a universal humanity but expressed in ethnically parochial terms. Kenyan political culture requires that, in order to be effective, human rights claims must be packed in an ethnic vocabulary, one which is not only indigenous, but increasingly autochthonous (cf. Li 2000). The Nubians do not have many of the usual grounds on which to make special claims to particular parcels of land. They cannot claim any ‘ecological indigeneism’ by purporting that they understand and can care for the land in a way nobody else can (Lonsdale 2008; Lynch 2011b:154-5). Nor do they work the land, drawing on its literal fruits. It could be argued then, that the Nubians adopt the strategy of an almost autochthonous claim on Kibera not *despite* their relatively weak claim to autochthony, but *because* of it.

The dangers of autochthony

The Nubians’ land claim, invested as it is with autochthonous significance based on first-occupation, may be designed to achieve basic, morally justifiable human rights claims involving the escape from marginalisation and the threat of abjection. From one perspective, the inclusion of this relatively new community into the land regime in Kenya could be a, “sign that the conversation continues” (Berry 2002:655), the conversation about the relationship between land and citizenship. However, we must be wary of drawing this conclusion. The Nubians’ claim to first-occupation, and to the exclusive land

¹⁰⁹ Klopp also uses this discussion to draw out examples of inter-ethnic solidarity in class based issues, particularly landlessness, even at the same time as land claims are presented as ethnic assertions. This will be discussed in more depth in coming chapters.

rights associated with that status, is not a sign of a renegotiation of the relationship between land and belonging. Rather, it is a sign of the further consolidation of connections between exclusive ethnic territory and national belonging. It is a sign that the Nubians have bought into a system which restricts full citizenship to those with particular kinds of claims, claims which by their very nature are exclusive. Any claim to a status that aims to exclude others outright from land is not an attempt to undermine the autochthon / stranger distinction in the pursuit of a more equal national community. Rather, it is an attempt by one particular group to shift from one category to the other. It is representative of a, "...general trend to transform territory from the site of a civic project into the site of memory" (Maier 1993:150) by emphasising past parochial attachments to place rather than future inclusive ones. When the Nubians plead that they have 'nowhere else to go!' they point to a fundamental rights problem. However, the more profound problem that needs to be addressed is why rights problems are pursued in Kenya via ethnic exclusivism.

This is perhaps nowhere more evident than in the fact that Kibera was almost certainly inhabited by other people before the Nubians; in particular by Maasai pastoralists who have long struggled to command rights to land that they do not occupy in a sedentary manner (Hodgson 2009). The Nubians maintain an understanding that the British had made an agreement with the Maasai regarding the transfer of the land to the military (Carter 1933:572-578). Nevertheless, they tend to largely ignore or downplay any connection this previous community had to the land in Kibera. This draws attention to the nervous and paranoid nature of autochthony discourses, where alongside an obsession with purification, with eradicating outsiders, there exists a simultaneous fear that the group making the claims will be found out to be not so original after all, that others are more so (Jackson 2006). If the Maasai were to publicly make a historical claim to the land in Kibera (which does seem unlikely), this could seriously threaten the Nubian claim in both moral and practical terms.

In addition to this past problem is an equally significant but more urgent future one: what will happen to the enormous number of other residents in Kibera who have come to Nairobi in search of economic opportunity. Within the Nubian community there is no clear and unified position on how this extremely political and controversial issue could be handled. Some Nubians hold potentially dangerous opinions about what should happen in the event that they receive land title. Combined with the propensity on all sides for using ethnic youth 'gangs' to resolve disputes, these opinions run the risk of violent clashes that

would be far more serious than those of the 1990s and 2000s (Katumanga 2005; Osborn 2008). For example, one Nubian man¹¹⁰ explained why he thinks the Nubians should be the exclusive occupiers of the area, "... there's nothing they can do [about being ejected] because they have their rural areas, their identity card is showing where they are heading from. I've never been there to compete with them on theirs..." In this quote the pattern of exclusion that the Nubians have suffered, and in some cases seek to perpetuate, is painfully evident. Just as other tribes have had the benefits of full citizenship in their rural areas, so many Nubians seek the same.

It must be emphasised, however, that this extremely parochial attitude to land is not unanimous. Many members of the community make the vague but potentially promising distinction between security of tenure and exclusive tenure, and plead that all they are looking for is the former, for a, "guarantee that we can live here uninterrupted" (Interview 2a).¹¹¹ Some Nubians sympathise with the other residents in Kibera. Hassan (Interview 6) once explained to me that, "[t]his is no jokes in Kenya. People are living in poverty. They [the other residents] also need something small," and elaborated on how, in the event of land title, he thought Kibera's current residents could stay as tenants of the Nubians. In particular, the two main leadership groups in the community both acknowledge that the Nubians would have to find ways of accommodating the other residents of Kibera, not least because of their mutual dependency in terms of commerce and housing. Importantly, if collective title were to be given, it would likely be to one of these groups as they are currently the only bodies with the legal status of a Trust that could hold a communal title deed. However, the methods of accommodation advocated by these two groups are quite distinct, and unfortunately at no point has the community been able to gather together and hold any kind of discussion or debate on how this very sensitive issue should be approached.¹¹²

¹¹⁰ Due to the extremely sensitive nature of some statements in this section, I will not attribute all of them.

¹¹¹ How it would be possible to guarantee secure tenure without making it exclusive was not explicitly discussed in this interview.

¹¹² As mentioned previously, the KLC want 300 acres for the Nubians, and are willing to sacrifice the other 250 acres for use by other communities, with compensation. The KNCE have a more general approach of including other residents in Kibera through business and as tenants, but insist on receiving title deed for 780 acres, the size they believe the land to be. Issues the community would need to collectively decide upon include if they still want a CLT model of ownership, as proposed to the community by KLC in 2001, and if so, which Nubians would be entitled to plots. Contentious issues would include how to deal with those who have bought land outside Nairobi, those who have relatives in other Nubian settlements, those who have inter-married, and how to allocate land to those with a large number of rental structures that would likely be demolished, as compared to those with currently perhaps only one or two rooms in which they live with their

Given the ambiguities in the Nubians' approach to past and future Others in Kibera, their taking up of this near-autochthonous discourse compels us to ask, "for whom and with what effect" does the conversation continue (Peters 2004:279). It is clearly important to understand the interconnecting, shifting, manipulable and re-definable characteristics of tribal homes and identities (Vail 1989; Cohen & Atieno-Odhiambo 1992; Shipton 1994). However, as Peters (2004) reminds us, we do need to also commit ourselves to asking more precise questions about the nature of the social, cultural and political relations, and particularly inequalities that are embedded in land (Gupta & Ferguson 1992:11). When people and places are connected in apparently historically or naturally self-evident, yet deeply ambiguous ways, there is a dangerous propensity to entail exclusion, invisibility and persecution, generating the 'aberrant' condition of the ethnic stranger (Malkki 1992:27; Geschiere 2009). This propensity is inherent as much in the Nubians' claim for Kibera, as it has been in their historical exclusion from the Kenyan land regime. While the Nubians have historically suffered in this aberrant condition of being a stranger, if Kibera is to become exclusively Nubian land, then other kinds of strangers will be created. When autochthony and indigeneity become central modes of belonging to a particular place belonging comes to depend on the obviously arbitrary, and often difficult to prove, facts of descent. In this way the connection of ethnicity to land, and of land to citizenship, takes precedent over any more civic notions of the conditions of belonging.

Implications for full citizenship

As explained in the introduction, the predominant approach adopted by well-intentioned NGOs to the Nubians' citizenship problems has been to place the emphasis on access to ID cards. Understandable as this is given the sensitivities around the land issue, and the comparative likelihood of success in using legislative means to secure access to ID cards as opposed to access to land, the discussion here suggests that this approach starts at the wrong end of the problem. In practice it seems that a recognised homeland is the very *basis* of participatory parity, of full citizenship. Rather than citizens being entitled to land,

whole families. How to avoid increasing segmentation of the community in these negotiations will be a challenge (Geschiere 2009:89-94). The mode of development, including funders, would also need to be discussed, perhaps starting with KLC's model of multi-storey developments where families would get rooms to live in and rooms to let. A procedure for the allocation of plots for infrastructure and public utilities would also need to be decided upon. In addition, the community would benefit from giving more thought to how current tenants would be accommodated in much better quality houses where the rent would be many times more than what they are currently paying. This aspect of accommodation is too often brushed over when Nubians talk about continuing to allow their current tenants to live in their new structures. Finally, the issue of how to compensate non-Nubian structure owners, both resident and non-resident, also needs attention.

it seems that those with land are entitled to citizenship. Tribes in Kenya who can identify their *shags* do not have their membership or their rights questioned.

Working back from this chapter through the preceding two, it is possible to map the ways in which ethnic territorialisation and heightened localisation of membership and rights impact upon the practice of citizenship in Kenya. Collective recognition as an indigenous tribe opens the door for its members to dominate local decision making organs and take advantage of local development funds and quotas in education and government employment. Arrangements such as these head dangerously in the direction of establishing localised ethnic enclaves of membership and rights where people can only be elected, be appointed to civic administration positions, be educated or be employed in their homeland, locally defined in autochthonous terms.

Following from these collective modes of citizenship are of course individual modes, equally determined by autochthonous and indigenous modes of belonging and therefore also increasingly localised. In the process of applying for ID cards, the state seems to only understand citizens in terms of their district of origin. Stories of up-country Nubians being told to go to Nairobi, the ‘district where they belong’, in order to get a passport (Interview 20) are uncomfortably reminiscent of Ivory Coast’s ‘National Operation of Identification’ (Geschiere 2009:98). A non-Nubian explained that, “...a Nubian will say ‘I come from Kibera’, what they call Kibra, so it’s very difficult for some officials to relate to that, so they are given a very hard time” (Interview 25). If state officials are unable to comprehend a Kenyan citizen without an ethnicised district of origin, then the autochthonous tendencies at play in Kenyan citizenship deserve more serious attention. For better or worse, it seems that a homeland, rather than individual citizenship status, constitutes the most important objective and intersubjective condition for participatory parity and full citizenship in Kenya.

Conclusion

This chapter has attempted to understand the ways in which the Nubians have experienced their landlessness in order to make sense of the autochthonous meanings they have invested in Kibera. As in the previous chapter, I have argued that the Nubians’ approach to their predicament – in this case landlessness, in the previous chapter lack of collective recognition – can be understood as a rational attempt to make appeals for equality within the available spaces of recognition. In Kenya, the increasing importance of not only blood

but also soil as preconditions for full citizenship is an alarming trend illuminated by the Nubian case. As long as *descent and land* are required for political membership, then exclusion becomes inevitable and other more equal terms on which people can be included become irrelevant. The next chapter consolidates the discussion in these three chapters by clarifying the concept of citizens minus.

Citizens Minus

.. they don't want that they be given special status, that in terms of land they'll be given a much bigger land than the others, no. In terms of citizenship they are given a higher status than the others you know, or economically they are given... No. They just want a level playing field (Interview 37c).

The discussions in the previous chapters have established that although Nubians now have improved access to ID cards and some small form of recognition in the 2009 census, the citizenship they experience is far from full when compared to most other Kenyans. The problems the Nubians face with collective and individual rights and recognition of membership are not an issue for ethnic communities in Kenya who have a homeland. Such Kenyans experience their citizenship as significantly more meaningful and more secure, and attain a much higher degree of participatory parity than groups, such as the Nubians, who lack a recognised *shags*. This chapter draws together the previous three chapters in a more general discussion about different qualities of citizenship. Those Nubians who have ID cards are best considered citizens minus: legally equal, but suffering from a deficit of membership and therefore rights. Though deprivation of citizenship, or various elements of it, is sometimes understood as abjection, this is a term better reserved to describe *de jure* stateless people, fully cast out of society. Citizens minus are not abject, but they are marginalised.

To recap the preceding chapters, we have already seen that in recent years the Nubians have achieved some considerable success in securing citizenship as legal status in the form of ID cards. After nearly two decades of severe discrimination, during which time vast numbers of Nubians aged over 18 went without an ID card, the KNCE have been able to secure an arrangement whereby Nubian elders sit on district vetting committees and can vouch for the identity and entitlement to Kenyan nationality of applicants. The KNCE were assisted in this lobbying activity by CEMIRIDE, who helped the Nubians bring a case to the Kenyan High Court, arguing against vetting. However, this case stalled

inexplicably and was later abandoned. In the apparent absence of domestic avenues for the resolution of the problem, CEMIRIDE and the Nubians were forced to take their case to regional courts instead. Furthermore, even the solution of having Nubians on the vetting committees is not a satisfactory arrangement as far as accessing full citizenship is concerned. The policy of vetting based on the applicant's ethnicity, rather than any well founded doubt regarding their entitlement to Kenyan nationality, is discriminatory. Vetting is only routine for ethnic communities in Kenya who are considered non-indigenous, while members of any one of the 42 recognised tribes of Kenya are able to receive ID cards through the normal, much less demanding procedure. The arrangement of having Nubian elders on a vetting committee is *ad hoc* and precarious. It leaves the Nubians vulnerable to a return to the earlier arrangement of insurmountable demands from vetting committees, resulting in individuals living for many years without an ID card.

These impediments to accessing ID cards, and the associated rights and benefits, are a direct consequence of the denial of recognition of the Nubians as an indigenous tribe of Kenya. There are no clear or accessible mechanisms through which the Nubians can definitively seek collective recognition as an indigenous Kenyan ethnic group. Though they received a code in the 2009 national census, so did 110 other ethnic groups, therefore it is not at all clear that this code represents the inclusion of the Nubians as the '43rd tribe', that is, inclusion in the prevailing recognition regime that is governed by notions of indigeneity. It may be too early to tell, but it seems the dramatic change in tribal enumeration in the 2009 census has had little effect on the hold of 'the 42' over the popular political imagination. This lack of recognition means that the Nubians are unable to access the rights and benefits available to the recognised tribes of Kenya, particularly through the administrative and electoral units which usually largely correlate with ethnic demographics. In particular, the recognised tribes, especially the larger ones, are able to elect MPs who are then able to work for the interests of the community at the national level. They are also able to dominate local administrative units and take advantage of a greater proportion of local development opportunities and quota systems for employment and education. In the absence of such recognition, the Nubians must confront the continued perception that they are foreigners, strangers, and the subsequent exclusion from the political community in terms of their affective sense of belonging, social and political standing, and opportunities to exercise rights.

However, more than any other factor, the Nubians' stranger status is marked by and experienced in relation to their landlessness. Though the rights and benefits accessed with collective recognition, and administrative and electoral dominance are important, nothing is more valued or more fought over than land. In the context of increasing ethnic territorialisation in Kenya, the Nubians have come to regard Kibera as their homeland, and invested in it autochthonous meanings related to being first occupiers, and aspiring to exclusive control over the area. As with ID cards and collective recognition, the leading Nubian groups have focussed on petitions directed at, and meetings with the appropriate ministers. KLC have led the way on this issue and have been working on it since around 2000. They have developed a sophisticated understanding of land titling in Kenya and agreed amongst themselves upon a model of land ownership that they believe would suit the community's needs, the CLT model. In the past they have even partnered with a major international aid agency to hold a workshop for the community on how this model would work in practice. However, their success halted there. Like the KNCE, who have started lobbying on this issue more recently, KLC have been able to secure a number of promises from government officials and ministers, but there has been no action. These groups, despite prolonged effort, have been unable to hold these politicians to account for their promises. In this regard, too, the Nubians have been left behind the recognised tribes of Kenya. A tribe with a homeland faces none of the deprivations of recognition or barriers to possessing or exercising rights that the Nubians face. In this sense, it is the homeland that is the basis of participatory parity in the Kenyan polity, and the Nubians are lacking in this area.

Although the inferior quality of the Nubians' citizenship and their ongoing exclusion from the Kenyan polity is quite evident in the preceding chapters, it is clear that statelessness is not the right way to understand their political condition given their increasing acquisition of ID cards. In what follows, I venture a distinction between stateless people as abject outcasts, and people like the Nubians as citizens minus, and therefore marginalised.

Abjection

De jure stateless people can be accurately described as in an abject condition. Even under ideal material circumstances, *de jure* stateless people are completely precluded from membership, and consequently have no enforceable rights. Though both entail exclusion, abjection is distinct from marginalisation. It is helpful to capture the distinction between

these two degrees of exclusion by using a spatial metaphor, with marginalisation indicating the outer margins of society, while abjection indicates its total outside (cf. Werbner 2004:50).

To live in conditions of abjection is to be cast out of the prevailing order of things, to be thrown or fall over the proverbial edge. People are generally cast into this condition because of their propensity to repel or disgust, because of the fear of the contamination they could cause to that from which they are expelled (cf. Kristeva 1982; Nussbaum 2004). Politically speaking, the fear is often of foreigners, aliens or strangers who represent a threat to the body politic, in terms of its identity or the claims they might make on a community's limited resources. Mamdani (2001 a) describes ethnic strangers as taking the place of racial strangers, both having been perceived as foreign and threatening. From this position, their threat is eliminated, and in this sense, the rendering of abject outsiders serves the purpose of protecting and fortifying the insider population. Insofar as it does this, the abject outsider can be considered not only 'outside' than the underbelly of the mainstream order of things (Ferguson 1999:242).

People who suffer from oppression and domination may be in politically undesirable positions, but at least theoretically for such people the possibility of resistance remains alive. Once cast into a condition of abjection, people are moved beyond such a point, to where they are invisible and inaudible, neither subject (of politics or discipline) nor object (of elimination) (Isin & Rygiel 2007:184). Abject people, expelled from the political community, need not suffer from oppression. The problem is not that their liberties (to speak, to act) have been denied them. Rather, the problem is that they are free to do and say whatever they please, but nobody is paying attention (Arendt 1973:296). They are stripped of the possibility of acting politically, and so are forced to live in a kind of social and political vacuum, where they are neither seen nor heard, unable to effect any real change in their lives.

Arendt (1973:296) claims that the great tragedy for stateless people is that, once deprived of any shred of membership, they lack the right to have rights, and are therefore, "deprived not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion." The primary human right is a public context in which we can act and be taken seriously, the publicity of which gives actions and opinions a significance which is denied to the stateless. They can neither participate in the

determination of which rights are thought about as such in the community in which they live, nor claim those rights in the event that that they are violated. As non-members, they suffer injustices or enjoy privileges not on the basis of anything they say or do, or could say and do, but on accidents of birth, such as being born into the wrong ethnic group. It makes no sense, in such a situation, to suggest that such people have rights, and participation is rendered utterly meaningless.

People excluded as ethnic strangers are *at risk* of lacking the right to have rights. That is, they are lacking the status or effective potentiality of participation in the public determination of which rights are considered as such. This level of exclusion will often result in a sense that the ethnic stranger is in effect an outcast.¹¹³ The Nubians therefore often experience their political exclusion as if it were an abject condition. Before I turn to a more precise formulation of the Nubians' condition as marginalised rather than abject, it is worth considering in more detail the ways in which they experience a sense of abjection in order to more precisely articulate the difference between abjection and marginalisation.

The language of abjection is quite commonly deployed by Nubians when describing their political exclusion. Adam Hussein Adam, a Nubian who works for OSIEA (Interview 24), explained to me that without a code in the census, the Nubians, "don't exist in abstract terms," and many other Nubians used similar language more literally. For example, in expressing his frustration with being left by the British, 'Abdulkadir' (Interview 29) lamented that, "[f]rom being used as tools for fighting, until up to now it has reached a point whereby they were even maybe, they were even forgotten. Yeah. As if they didn't exist, you see." Others expressed this feeling in terms of being somehow inhuman. Rashid (Interview 10) like Abdulkadir above, said that, "[t]hey use us as dogs of war, and leave us like dogs." Even a non-Nubian observed that without having a code in the census, the Nubians, "...could easily have been counted as cows or goats!" (Interview 25). This likening to animals is extremely evocative of the disgust associated with abject people, and their subsequent dehumanisation - the epitome of abjection. In more tangible terms, people talked frequently about a fear of the extermination of the community. People expressed concern that if their position did not improve, the Nubian community (its culture, or in

¹¹³ Arendt would have been very critical of a political community for whom ethnicity was a criterion for membership. As Benhabib (2004:58-62) explains, Arendt's rejection of metaphysical foundations for the notion of right, such as moral claims, led her to instead argue that we must make each other equal via a political decision to do so on the basis of nothing other than our shared humanity, and that ethnic (and other) differences have no place in the polity (Benhabib 2004:58-60). I address the place of ethnicity in the political community in the next chapter.

extreme cases its population) would “disappear”, become “extinct” (Interview 3), be “like the dinosaurs” (Interview 41c), “consigned to oblivion” (Interview 32) or “just fade away [...] slowly by slowly” (Interview 47).

The sense of powerlessness that defines abjection is sometimes felt by the Nubians, as Ali (Interview 51) put it, “[w]hatever comes, others or what, you just accept it.” Makkah (Interview 41a) agreed, explaining that, “[y]ou are just there but nobody recognises you. If anything happens to you no one will care.” These sentiments were most frequently expressed in relation to land, where the lack of land title has historically meant the Nubians have no recourse to administrative or legal redress if they are evicted or if someone builds on the land they occupy. In lamenting the lack of a hearing from the provincial administration, Aba Segia (Interview 11) complained that, “[t]hey don't see our problem. Now you tell me where else can we cry? There is nowhere else to cry!” In Eldama Ravine, Aziz (Interview 14) explained, “[s]o we don't have much say about land here. If you are given, we accept. If you are not given, we keep quiet.”

Much of this sense of powerlessness stems from a perceived invisibility and inaudibility. Hassan (Interview 3) complained that, “... this is a tribe that can stay anywhere without being noticed because mostly they don't ... they are not allowed, they are not they don't talk aloud like these other tribes, you know.” This kind of invisibility is distinct from the kind of isolation resulting from being deliberately ignored by the authorities. This more profound invisibility is much more insidious. It is not a case of the Nubians attracting attention and being oppressed because of it, but rather a case of them feeling as if they are not attracting any attention at all, and instead being caught up in more generic mechanisms of exclusion, or slipping through the cracks of inclusion. Issa (Interview 32) put it vividly,

It is neither here nor there for them. In fact, there is no enmity [...] there is no hatred, there is no concerted, deliberate effort targeting the Nubians to destroy them. No. It is just that the bureaucratic machine just grinds on. It has no brains. It just grinds on. They don't see you among the ethnic groups that they are supposed to see, and the machine just crushes on. [...] So you can see that there was no targeted policy to destroy and get rid of and things like that. It's just that bureaucratic idiosyncrasy. I don't see you in the code. The wheel just grinds on.

As discussed in the previous chapter, the most extreme expressions of abjection were generally in relation to land, where the fear of a loss of not only a social and political, but a

physical place in Kenya was acute. To reiterate the point of the previous chapter, Makkah (Interview 41b) explained that,

... the Nubians are the worst hit yeah. Because everybody else is acknowledged, everybody else has their land. If anything happen, if anything bad happens in Kibra today, say the government decides to come and demolish all the houses, the Luhyas will run to Mumias and wherever, the Kikuyus will run wherever they are ...in Kericho where where, whereNyeri, they go back to their homes. The Luos will go to Nyanza or wherever, but what about the Nubians where will we go? We have nowhere to go, so at the end of the day we are the ones who will suffer, yeah.

Employing vivid language of abjection, Abbas (Interview 40) pleaded that Kibera, "...is the ancestral land, what guarantee do you have that the government is going to give them? If the government doesn't, it means that the whole community will be thrown away, will be thrown out, yes." Others referred to themselves as being "homeless" (Interviews 3, 30, 34) or "lost" (Interview 17) if they are evicted from Kibera. It is in the potential landlessness, therefore, that the Nubians sense themselves as being at the most risk of being cast into abjection, to the point where some already feel they have been.

Without denying the severity of these risks, the fear of them, and the more general feelings of abject exclusion that Nubians experience, I suggest here that their situation is less one of abjection, and more one of marginalisation. The intention is not to downplay their exclusion, but rather to more accurately capture its nature so as to enable a clearer view of the potential remedies. Marginalisation makes it difficult to pursue rights and interests, but not impossible. As long as the Nubians remain marginalised and do not slip into abjection, then the possibility of moving towards equality with full Kenyan citizens remains alive.

Marginalisation

Rather than seeing the Nubians as cast out of the Kenyan polity, it is more accurate to think of the Nubians as pushed to the margins of society, to the edge, of little consequence to the political community, but not entirely abject. The very language with which the Nubians describe themselves alludes to this position. It is frequently said that they are 'sidelined', or even "backsliding" (Interview 27). Yusuf Diab (Interview2a) expressed that,

[w]e have a great hope that ah future generations in our community would not remain *backward* because of a non-availability of education or resources, and that they do... to participate in the development of the country and of the resources and equal business with everybody else in Kenya. ... We want our people not to feel *alienated*, or to be *sidelined*. (my emphasis)

Abdul (Interview 47) used a similar language when he said that, “[a]fter independence the British government surrendered Nubians to the African government so that we became the citizens of this country, but the administration of black put Nubians *aside*” (my emphasis). Others described themselves as feeling “pushed to the ground” (Interview 31), “pushed to the wall” (Interview 21), “deep, deep, deep down in the rubbles” (Interview 37a), “pressed down” or “just floating” (Interview 44). Positioning in relation to other Kenyans was also often evoked, most commonly through the phrases “trying to catch up” (Interview 16) or “lagging behind” (Interview 30).

This position has meant that Nubians commonly encounter ignorance about their identity, their culture, and their history in Kenya. Ramathan (Interview 5) relayed the common experience, “because some places if you go you say you are a Nubian people will look at you as if ‘hey, Nubian?’ They have not heard of that thing. But we are there.” Others talked of these kinds of experiences in schools (Interview 29), universities (Interview 39), and civil society meetings (Interview 26). Zaid (Interview 37a) nicely summed up the effect of these kinds of interactions, “[t]hey are saying that, ‘hey you shouldn’t be here’. You know? ‘You shouldn’t be here. You should be somewhere else.’ So it actually weighs you down, completely, it completely weighs you down.”

Marginalisation is defined by Young (1990:53) as expulsion, “from useful participation in social life and thus potentially subject[ion] to severe material deprivation and even extermination.”¹¹⁴ Young (1990:55) clearly articulates both the distribution and recognition aspects of marginalisation, identifying the circular relationship between material deprivation and engagement in public life when she says that, “... while marginalization definitely entails serious issues of distributive justice, it also involves the deprivation of cultural, practical and institutionalized conditions for exercising capacities in a context of recognition and interaction.” In this sense, marginalisation by definition erodes the quality of citizenship of the marginalised by depriving them of *both* the objective (distribution) and intersubjective (recognition) conditions of participatory parity.

Young (1990:53-55) considers marginalisation to be one of the five faces of oppression. To the extent that the deprivations facing the Nubians are deliberately inflicted, this may be appropriate. Some Nubians do feel that this is the case. Makkah (Interview 41a)

¹¹⁴ It is also notable that the Africanist sociological literature on strangers also refers to marginality as the condition of a particular category of stranger: (s)he who seeks membership, as opposed to a visit or residence in a compulsively hostile host society (Levine 1979:31).

declared that, “they know about us they just don’t want to recognize us yeah. They are just shutting us out of their minds and everything but we are there”, implying that the government are deliberately ignoring the Nubians in order to inflict harm, or minimise any threat they might pose (for example to the government’s ownership of the land in Kibera). However, it seems that by and large, the neglect of the Nubians is not so much a deliberate effort to generate disadvantage, but is rather negligence. Rather than consider marginalisation as one of the five faces of oppression, as Young does, I therefore excise it from oppression. Oppression implies that the state or society deliberately expend energy to inflict harm, or at least create disadvantage, but the situation of the Nubians seems to be qualitatively different from outright oppression. To the extent that they exist only on the margins, the Nubians are not always the target of this kind of deliberate effort, but rather they suffer from neglect. Their stranger status renders them unworthy of public attention.

Citizens minus

Rather than being stateless and abject, therefore, it is more accurate conceive of the Nubians as citizens minus and marginalised. The notion of citizens minus was discussed in the introduction where I proposed that different qualities of citizenship can be denoted by suffixes of ‘plus’ and ‘minus’ (cf. Cairns 2000). To be more explicit about what the term ‘citizens minus’ should be taken to mean, it is helpful to distinguish between this term, and the more common term ‘second-class citizen’. The latter term is often used colloquially, and so can be understood to mean different things in different circumstances, but broadly speaking it refers to an inferior quality of citizenship (KNCHR 2007:vi). One of the most productive uses of the term has been its use to describe the citizenship status of ‘subject races’, who as we have seen, during the colonial period were considered citizens (as opposed to subjects), but whose rights were restricted under law, and were fewer and inferior to those of white settlers (Mamdani 2001a). I propose that it is valuable to distinguish between inferior citizenship as inscribed in law, and that which is inferior not in law, but in practice. I reserve the term second-class citizens for the former, and citizens minus for the latter. Precisely because it is inscribed in law, second-class citizenship, for example like that of subject races during the colonial period, is of a different character requiring different, more obvious solutions than inferior citizenship in practice. When a certain category of people are legally considered inferior, the remedy is obvious: change in the law. What is less obvious is what to do about people who are legally equal, but in practice treated as inferior citizens. Often this category is occupied by people who were

formerly second-class citizens, and who, even after the law has changed, have difficulty actually exercising their newfound citizenship. It is also often occupied by people who were formerly stateless, and similarly have difficulty exercising newfound citizen status. Citizens minus are those who have equal legal citizenship status and nationality, but whose citizenship is inferior in terms of participatory parity, where participatory parity is constituted by formal and effective membership and effective rights.

Chapter 2 explained the problems the Nubians have faced and continue to face in relation to ID cards. Within this reasonably discrete problem (access to ID cards) we witness struggles over both formal, boundary-crossing membership, and effective membership as social and political standing. At first glance the problem with access to ID cards appears to be one of primarily the former kind of membership: denial of ID cards is denial of formal membership status, total exclusion from the circle of membership. From this perspective, the Nubians' recently improved access to ID cards solves any membership problem, for all that is required is mere possession of an ID card and the formal nationality status and membership in the national community that represents.

However, even within the processes currently in place for the Nubians to attain ID cards, the problem of inferior social and political standing, inferior effective membership, is very apparent. While Nubians seem to now be able to get an ID card, they cannot do so in the standard way. Instead, they face extra administrative requirements in order to obtain (recognition of) their formal membership. Unlike other Kenyans, the Nubians (and other non-indigenous and non-autochthonous tribes) are compelled to undergo a process of vetting when they apply for an ID card. This can be expensive and time consuming, but above all it is humiliating, resting as it does on an unstated assumption that the Nubians are not *prima facie* Kenyans.

The interaction between these two forms of membership, played out in the acquisition of ID cards, is also particularly evident in relation to security of membership. An absence or a weakness of social and political standing renders even the formal, boundary-crossing kind of membership insecure and precarious. Kenyan citizens who are undoubtedly members, who enjoy the social and political standing of one of the recognised indigenous and autochthonous tribes of Kenya, attain ID cards as citizens by birth, and are therefore never at risk of having their citizenship revoked. Kenyans who have formal membership (an ID card), but lack social and political standing, do not enjoy such security. Instead, they may

be attaining ID cards as citizens by registration, a formal status that is revokable. Furthermore, the current arrangement through which Nubians can access ID cards is *ad hoc* and lacks safeguards. At any time it could be made more difficult for Nubians to get ID cards again. Not only would this deny the upcoming generation formal membership, but even Nubians who currently have an ID card could find themselves stripped of their formal membership for something as simple as being pick pocketed on a *matatu* and losing their ID card, unable to replace it.¹¹⁵

The social and political standing that constitutes effective membership in Kenya is restricted, as we have seen in chapters 3 and 4, to Kenyans who are understood by the state and other Kenyans to be indigenous and autochthonous to Kenya. In particular, it is autochthony, the enjoyment of a patch of ethnic territory within Kenya that signifies belonging to not only the ethnic group but also the nation, that functions as the basis of effective membership and acts as the most fool proof guarantee of recognition and respect from others of rightful belonging in the political community. Without a *shags* to point to, or with some doubt over whether or not a tribe is one of the 42, it is difficult to attain the same social and political standing and therefore confidence in membership.

The acquisition and maintenance of *formal* membership status is highly contingent upon the informal social and political standing of a person. The preceding three chapters have demonstrated that to think of membership as only formal, only a zero-sum boundary crossing condition (as the liberal citizenship tradition suggests) is to fail to take into account the full experience of the Kenyan political community. Instead, there should be grey areas in our thinking about membership, areas that allow us to comprehend how people can be members, but at the same time not members, formal but not effective members. Such people are situated on the margins of the circle of membership, near the boundary between formal members and non-members. They are dismembers: different from total non-members (the abject stateless, who lack even formal membership), but not far from it, disconnected in important ways from the body politic, and treated as inferior to other members.¹¹⁶

¹¹⁵ A *matatu* is a mini-bus, a key part of Kenya's public transport system.

¹¹⁶ The notion of dismemberment has a strong affinity with abjection, both drawing on bodily analogies (Kristeva 1982). However, abject people are the total non-members, the total outsiders. True, they are the 'underbelly', but this anatomical analogy, on my reading, is most illuminating in relation to what the very expulsion and total exclusion of abject outsiders says about the body politic from which they were expelled – in this case things about its valuation of certain kinds of identities (ethnicity, indigeneity or autochthony).

As a consequence of this reduced social and political standing, dismembers or citizens minus such as the Nubians also face a range of problems relating to their rights. Along with the fragility and insecurity of formal membership status comes a concomitant insecurity of possession of the rights entailed in that membership. The rights associated with an ID card can be revoked along with ID card itself, with no avenue for redress. However, beyond that, even without revoking the rights, they are less meaningful. Though now that most Nubians have an ID card, they *possess* the same rights as other citizens in the sense that they are formally entitled to them, as Arendt (1973:293) reminds us, it is only as a *member* of a political community that one can actually claim any rights. If we consider the term ‘member’ here to refer to both formal and effective membership, then it becomes clear how the Nubians can be formal members, but still face problems making their rights effective.

Disconnected from the body politic and treated as inferior members, it is much more difficult for the Nubians to exercise their rights than it is for other Kenyans. In the Kenyan case, the political, institutional, social and economic conditions under which citizens are able to exercise and not just possess their rights are conditions which privilege indigeneity and autochthony. This institutional design and political culture enable, for those recognised tribes, a greater capacity to exercise rights to livelihoods (through quota systems in employment, and through preferential access to economic resources); education (through quota systems), development (through influence in local decision making); physical security (through a safe homeland); property rights (respected land title); the practice of culture (through physical spaces for the performance of culture); ontological and intergenerational security (through security of tenure); and participation (through privilege borne of demographic dominance of administrative and/or electoral units; and increased levels of respect and confidence).

The Nubians’ citizenship deficit can be measured by the degree to which they lack participatory parity, that is, the degree to which the objective and intersubjective conditions in which they conduct their political lives disadvantage them (Young 1990; Fraser 2003). As discussed in the introduction, the Nubians experience unsatisfactory economic conditions which certainly impact upon their ability to participate in the polity, distracted as many families are by immediate material needs. However, this is not strictly

The analogy of the ‘underbelly’ is misleading to the extent that it implies there is still some degree of inclusive connection between the abject outsider and the member (cf. Ferguson 1999:242).

speaking a feature of a citizens minus condition in a context like Kenya, where the majority of the population experience these conditions. Rather, the ways in which the Nubians lack equal objective conditions for participation compared to other Kenyans are related to the available opportunities for participation in formal political and administrative structures. While those Nubians with ID cards are also entitled to voting cards and formal enfranchisement, they lack any more meaningful opportunities for participation. The Nubians do not enjoy the same opportunities as other Kenyans because they are a non-indigenous minority. Both their stranger status and their small population are implicated in this citizenship deficit. In a context of a majoritarian voting system, ethnic voting patterns, and ethnic favouritism in administrative appointments, it is difficult for minorities to gain positions or have much influence over policy and decision making. The mechanism traditionally used for mitigating this problem - drawing boundaries to allow ethnic groups some power and influence in their 'home' district – is only applied to tribes recognised to be indigenous to Kenya, and so the Nubians are doubly excluded from the formal opportunities for participation that full Kenyan citizens enjoy. The 2010 constitution contains some provisions that would mitigate these conditions for minorities and marginalised groups which include special representation in parliament (Section 100) and County Assemblies (Section 177(c)), though, as noted in previous chapters, it is not yet clear what this will mean in legislation and practice.

Furthermore, the lack of recognition as rightful (indigenous, autochthonous) Kenyans constitutes inferior intersubjective conditions for the Nubians compared to full Kenyan citizens. Kenyans recognised as belonging to indigenous and autochthonous groups enjoy the respect associated with a rightful sense of belonging, and associated confidence in one's right and ability to speak and act in relation to public affairs. Jamaldin (Interview 7a) explained,

...our society is not well exposed, I call it the siege mentality, in that we are inward looking because of a quarrel with the government we no longer trust them, we no longer trust non-Nubians because of the damage they have caused to us, so we are living in our own life and we are afraid to face realities, we are afraid to engage others. Every time [...] we remember the damage it caused to us and so a few of us are coming up and saying look ... you have to engage the government, you have to engage others, there is no way you are going to succeed if you don't go out, and you have to do an advocacy program, you have to articulate your issues and you have to defend your position.

Deprived of recognition as indigenous and autochthonous, the Nubians are deprived of this respect and confidence.

Conclusion

In drawing together the previous three chapters, this chapter has argued for an understanding of the Nubians' status in Kenya as citizen minus, a marginal rather than abject condition, though it is sometimes experienced as if it were abjection, and entails the risk of abjection. The chapter has elaborated on the central role of membership in citizenship. Drawing together the work in the preceding two chapters on indigeneity and autochthony, this chapter has articulated the nature of *effective* membership in the Kenyan polity as social and political standing borne of recognition as indigenous and autochthonous. Minus this effective membership, treated as inferior and disconnected to a large degree from the body politic, rights are both more fragile in terms of possession, and more difficult to exercise. Citizens minus lack participatory parity.

In making this argument, the chapter suggests that full citizenship in Kenya is defined by and subordinate to ethnicity. Effective membership in the Kenyan polity, and therefore access to and exercise of rights all depend on membership in (the right kind of) ethnic group. Full citizenship in Kenya is therefore inherently collective rather than individual in nature. Citizenship plays out primarily in ethnic enclaves through which recognition of membership and rights and opportunities for participation are accessed. Almost all the social, political and economic goods entailed in citizenship are either inherently constituted by, or distributed via the ethnic group. In the following two chapters, this thesis turns to the fundamental issue at stake in the discussion of citizenship in this thesis: the place of ethnicity in Kenyan political culture.

~Section III~

future?

Ethnicity and Citizenship

Insofar as the Nubians' condition of citizens minus is brought about by their ethnic stranger and minority status, the profound and numerous mechanisms that are in operation in Kenyan politics and society, and the role of ethnicity in these mechanisms, are in need of interrogation. If it is the case that full citizenship in Kenya requires membership in a recognised indigenous and autochthonous tribe, we are forced to examine in more detail the relationship between ethnicity and national citizenship. This chapter therefore begins to embark on what I called, in the introduction, the second level of analysis of full citizenship in Kenya, the normative analysis of the regimes of rights, recognition and participation, and not only the Nubians' marginalisation within them. The first part of this chapter examines the relationship between ethnicity and citizenship, a relationship that has been deeply contested in the African context. Secondly, the chapter evaluates the options available to the Nubians for emerging from a position of marginalisation, drawing on Fraser's (1997:23-27) categorisation of affirmative or transformative strategies.

Ethnicity and national citizenship

In traditional political theory, citizenship is supposed to act as a source of solidarity and cohesion amongst a national community. The liberal tradition has this as the result of universalism and individual equality. The civic-republican tradition has this as the result of emphasis on civic community, civic duty and participation, to be animated by a public spiritedness that goes beyond individualism or parochial sub-national community attachments (Oldfield 1998). Whatever the source, the agreement is that a national identity and community provides the basis of national citizenship. In both the liberal and civic-republican traditions, ethnicity, though it may have provided the origins of nations, should not be their ongoing foundation. Maier (1993:147-148) explains,

... the modern nation was not merely an expression of ethnicity. It was a commitment to values of communal liberty and culture that might have been organized through ethnicity, through linguistic kinship, but that also

transcended ethnicity. The ethnic unit as expressed in language or faith or even territory was supposed to provide the basis for nationality, its subsoil so to speak. But ethnicity alone did not incorporate values that the nation-state was supposed to achieve. These values remained future-oriented, not just historically conditioned, they incorporated universal aspirations of law, justice and welfare. The modern nation-state grew out of ethnicity, not toward ethnicity.

There are two broad grounds on which ethnicity is deemed to be problematic for national cohesion, or in Maier's terms, for the pursuit of a future characterised by civic values of law, justice and welfare. The first relates to the criteria for membership, and the second relates to competing loyalties.

In modern nation-states, ethnicity is seen to be particularly inappropriate when used as a criterion for either formal membership (from the liberal perspective), or effective membership (from the civic-republican perspective). Insofar as political communities are constituted by the 'we' of 'we the people' (Pitkin 1972:208), this 'we' should, according to traditional citizenship theory, be determined on the basis of equitable criteria for inclusion and be therefore civic in nature. Membership in an ethnic community, on the other hand, is almost always understood as ascriptive, conferred by birth, marriage, or 'adoption', and therefore it can never be an equitable basis for inclusion in a civic community (Ndegwa 1997; Kivuva 2004).¹¹⁷ Benhabib (2004:206-207) explains that the *ethnos* (the ethnic community) cannot serve as a just basis for the *demos* (the democratic polity), because the *ethnos* cannot change itself, it cannot permit free entry and exit. This was precisely the problem that Arendt (1973:275) identifies as the root cause of statelessness, and the mass deprivation of the right to have rights for minorities in Europe after World War I: the nation (meaning the *ethnos*) overtook the state, and the criterion for inclusion became nationality (meaning ethnicity), rather than civic commitment. If these scholars are correct, that ethnicity cannot operate as an equitable criterion for inclusion in the civic community, this poses significant challenges to Kenyan political culture.

The second way in which ethnicity is seen as threatening to normatively acceptable citizenship practices is insofar as ethnic groups act as competing sources of allegiance and obligation. This has been most fruitfully theorised by paying close attention to the

¹¹⁷ While this is an important criticism, it does tend to oversimplify the nature of ethnic boundaries. As discussed in the introduction, the boundaries around ethnic groups are in practice highly contestable, negotiable and responsive to the pressures and demands of prevailing social, political and economic circumstances (Berman 1998; Lynch 2006b:50). Furthermore, it should be noted that national citizenship cannot be chosen at will either, particularly in countries with restrictive citizenship laws (Benhabib 2004).

difference in experiences of obligation and duty between the national and ethnic communities. Various scholars have described and theorised the obligations of ethnic communities, but perhaps the most helpful for this purpose is Lonsdale's (1994; 2004) account of 'moral ethnicity' (which he sets up in opposition to 'political tribalism'). Lonsdale (1994:131) describes moral ethnicity as, "... that contested internal standard of civic virtue against which we measure our personal esteem." Though Lonsdale's use of the term 'civic' here is unhelpful, a point I return to shortly, his general observation about relations between people of the same ethnicity is astute. According to Lonsdale, it is within the ethnic community that debates and contests occur over which actions should be considered distinctive, when, and how, in the face of changing social, political and economic circumstances. Lonsdale (2004:79) is not asserting any inherent value in ethnicity, but is rather highlighting that it is within the ethnic community that moral standards are agreed upon, or more commonly debated. It is therefore within the ethnic community that individuals can enjoy the reputation and esteem that arises from meeting or exceeding the moral demands of the community.

Lonsdale (1994:132) goes on to explain that moral ethnicity is borne from, "...the common human instinct to create out of the daily habits of social intercourse and material labour a system of moral meaning and ethical reputation within a more or less imagined community." In saying so, Lonsdale points to the concreteness of ethnic experiences as compared to national ones. The 'daily habits' of social interaction and labour make concrete communities, or where those communities are so big as to disallow concrete interaction between all members (as in ethnic groups of millions), then these habits make the imagining of those communities significantly easier. The actual social practices that occur in ethnic communities, for example ritual related to rites of passage, or gatherings for judicial or decision making purposes, reify the obligations of the ethnic community. As such, ethnic authorities have the ability to generate obligations and sanction in ways that are experienced and perceived by individuals as much more salient in their real lives than any obligations they may acknowledge towards the national community (Ndegwa 1997:613).

In an earlier but similar formulation, Ekeh (1975) argues that Africans operate simultaneously in two publics – a primordial and a civic public. Ekeh argues that the primordial public is the realm of action that impinges upon the public interest, *and which is governed by the moral norms of the private realm*. By this, Ekeh means that the moral

meanings that operate in what is conventionally understood as the private sphere, for example norms of care and reciprocity that exist in a kin group, also operate in wider ethnic communities, whereas they do not operate in national publics. As such, the ethnic community is imbued with moral pressures and demands, the fulfilment of which constitute what Lonsdale would call, perhaps unhelpfully, civic virtue.

However, what Ekeh appreciates that Lonsdale does not is the different character of the ethnic public as compared to the civic public.¹¹⁸ While Lonsdale is right to highlight the importance of the moral standards that are generated within ethnic communities as an important source of guidance on how to behave in relation to others, Ekeh's characterisation of these norms as 'primordial' rather than civic is more accurate. While 'primordial' may be too pejorative, Ekeh is right that these norms cannot be characterised as civic because they do not apply to relations with *all* others; only to relations with others of the same ethnic group. That is not to say that these norms are necessarily inherently problematic, or that they have no relevance to the public realm. It is rather to agree with Ekeh that moral norms of the ethnic community are significant in a public sense, but are not civic in character.

Ethnicity is usually understood to be separate from and subordinate to national citizenship. This position usually (but not always) appreciates how ethnicity is central to many people's identities and experience of political community, but does not see it is a precondition for the experience of national citizenship. Drawing on Mamdani's (1996) well-known formulation of bifurcated citizenship, that is, of Africa being constituted of both citizens and subjects, a number of scholars have argued that instead, most Africans are *both* citizen *and* subject (Nyamnjoh 2005:38).¹¹⁹ An exemplary position is as follows,

...everybody, not only urbanites but villagers as well, is at the same time citizen and subject - the fact that everyone partakes to some extent at least in civil society but remains at the same time part of the community, defined by custom, as a crucial point of identification (Geschiere & Gugler 1998:315).

These positions refine Mamdani's original formulation by recognising that in different circumstances people claim the status of, and act as, either ethnic members or national

¹¹⁸ Another important distinction between the two is that Ekeh is referring to particular moral norms, whereas Lonsdale (especially 2004) refers more to the debates over what counts as a norm.

¹¹⁹ Here 'subject' can be understood as 'ethnic citizen', as Mamdani reformulated it in Mamdani 2001b. The reformulation takes into account that ethnic communities are not just authorities, but also the source of some important rights.

citizens. The two realms exist side-by-side and people dip in and out of both of them as they strategically and affectively negotiate the challenges of daily life. Ethnicity is regarded variously as either operating without reference to national citizenship, often in conflict with it, or, at times, in cooperation with it. Although this position gives due credit to the salience of ethnicity in people's real lives, and sometimes acknowledges that ethnicity *can* have a productive and creative relation with national citizenship, it is important to recognise that from this perspective, there is no *necessary* connection between the two. Theoretically then, and as advocated by Mamdani (2001b:30), any public significance for ethnicity could fade away. In such a situation, this perspective suggests that people would still be left with their national citizenship, and that the fading away of the public significance of ethnicity would not alter the structure of national citizenship, only perhaps make it more meaningful to people insofar as it fills a void.

In contrast, the examination of the case of the Nubians presented in the previous chapters suggests that ethnicity is not distinct from national citizenship in Kenya. It is, rather, quite integral to it in the two senses in which ethnicity is often perceived to be problematic: as a criterion for membership (insofar as national membership is contingent upon membership of a recognised tribe), and as a source of competing allegiances and obligations (in the sense that duties to fellow ethnic members take precedence over duties to fellow nationals, and members of recognised tribes use the national state to advance the interests of their communities). To the significant extent that this is so, then ethnicity is clearly not distinct from national citizenship: it is very much part and parcel of it.

The preceding chapters have elaborated in detail on the normative problems posed by ethnicity as a precondition for membership. As long as membership in particular tribes is a precondition for membership in the nation, then certain portions of the existing community and all newcomers will be deprived of full citizenship, even if they have long-standing and deep connections to the political community, and nowhere else to be considered full and equal citizens.

The preceding chapters have also touched on the normative problems posed by the precedence, in practice, of obligations to fellow ethnic members. Much of what the Nubians miss out on because of their citizens minus status is the result of other tribes placing the rights and interests of their fellow ethnic members over those of other fellow

nationals. However, before I proceed with attempting to fully critique the role of ethnicity in Kenyan citizenship, it is necessary to explain in more depth this second problem.

The absence of principles of civic virtue in the national sphere, and a variety of particularly strong moral norms and obligations in the ethnic sphere erode the obligations we would usually expect in a national political community. This results in national citizenship being subordinate to and defined by ethnicity. The national public is then characterised primarily by inter-ethnic competition, rather than civic allegiances, that is, by ‘uncivil nationalism’, as Berman (1998:338-339) puts it,

... internal processes of moral ethnicity, groping towards defining communities of cultural identity and social responsibility, contrast with an external realm of competitive political tribalism defined by purely materialistic and opportunistic relationships to the state through the control of patronage.

In Kenya and other countries where resources (especially land) are scarce, and power is concentrated in the central state, the demands of the ethnic community encourage competition in the national realm. This is what Lonsdale (1994:132) calls political tribalism, that is, “...the use of ethnic identity in political competition with other groups.” Rather than being the norm of inter-ethnic relations, however, Lonsdale (1994:132) reminds us that, “[t]ribalism is contingent upon political intention and context. Far from explaining all African conflicts, political tribalism itself always needs to be explained.” Ethnic groups are not *necessarily* competitive. The history of inter-ethnic interaction is mixed, and includes instances of cooperation and hospitality as well as competition. In pre-colonial Africa, the structure of the political economy meant that, “prudence set limits to cultural chauvinism” (Lonsdale 2004:78). It was not in anyone’s interests to act out of chauvinism or xenophobia, and cooperation paid more dividends than competition. The reasons why competition is so much more prevalent in Kenya today therefore require, as Lonsdale commands, an explanation.

This explanation can largely be found in the colonial era, in the (partial) transformation of the local economy to a capitalist one, the concentration of power and resources in a central state, and the nature of the administration of that state, that is, as a decentralised despotism; and also in the post-colonial continuation of these processes and modes of governance, formally and informally (Mamdani 1996; Berman 1998; Lonsdale 1994). As agricultural production, land, property and labour were commodified in the colonial era, a new relation was established between people and their economy, a relation which upset

many traditional social orders governing relations for example between generations and genders, but especially between the rich and the poor (Berman 1998). In particular, as Africans were given only partial access to these markets, and only in particular forms, their dependence on colonial administrator patrons, and in turn the administrators' dependence upon their clients for stability and security of the colonial project, became a deeply embedded feature of Kenyan political economy. Patronage became the primary route to resources, power and prestige, and as a result of the tribal delineation of administrative units, patronage networks tended to be ethnic networks (Berman 1998).

Independent African regimes did little to alter these patterns of resource distribution, and so the strategic benefit of ethnic patronage networks for meeting local needs persists. Lynch (2006a) explains that the logic of ethnic politics is based on a politics of assistance, trust and distrust, and a cycle of perception and action. Lynch (2006a:253) accurately observes that,

...while ethnic politics is frowned upon in the abstract, on the ground, and in a perceived reality where others are looking after their own community, individuals often seek out ethnic patrons, and give their loyal support to, and admire leaders [...] who show themselves to be interested in the well-being of their communities, and who bravely stand up to promote and defend these interests.

The combination of a politico-economic system where power and resources are centralised in the state, and ethnic obligations are keenly felt by individuals and especially leaders, results in a national politics of competition that is endorsed by ordinary people. What Lynch (2006a:251) calls a 'politics of assistance' often constitutes the most pressing demand emanating from one's ethnic community. In order to meet this demand, one must become skilled at competing in the national arena for resources to channel back home to needy members of the community (Lonsdale 1994:138-9). Esteem for leaders is granted on the basis of their ability to meet these demands, and so trust and distrust are pinned on the fulfilment of past promises, or beliefs in the likelihood of future benefits. In response to these pressures, politicians act with ethnic bias, and the cycle continues. The state, the arena of national citizenship, then becomes something to be captured in order to fulfil obligations to subnational communities (Ndegwa 1997:604). We have seen this in the discussion of the expectations of political representatives in chapter 3: they often go into politics in order to serve their community (at least in part), and their community expect

them to deliver. Success is judged on how much of the ‘national cake’ or the ‘fruits of *uhuru*’ can be brought back to the community, to be eaten at home.

Many scholars agree that the principal issue here is that, unlike ‘moral ethnicity’ or the ‘primordial public’, the national arena is devoid of moral norms or principles to govern action and behaviour. Ndegwa (1997:614) argues that, “[i]n the case of Kenya, the national political community (nation-state) lacks the capacity to extract obligation but grants rights freely through a liberal citizenship.”¹²⁰ Ekeh (1975) agrees, arguing that citizenship in the national realm is about material rights claims, but carries no corresponding duties, he thinks because it is not governed by any moral norms negotiated in the more salient private realm. Lonsdale (1994:141) is more specific when he explains that political tribalism exists at the national level because there are no salient mechanisms of accountability, no precedents of good behaviour, and therefore no limits on reward. Berman (1998) calls this, as we have seen, ‘uncivil nationalism.’ Politicians can act in an unprincipled way because they are not bound by the rules and sanctions that govern their behaviour at home in the ethnic community. Any notion of national citizenship as a relation of equals (from the liberal perspective), or a cohesive and participatory political community (from the civic-republican perspective) is seriously eroded in the case of Kenya by the superior salience of ethnicity in daily lives, and the competitive tendencies this form of allegiance promotes at the national level.

Ethnicity is therefore central and problematic to the regimes of rights, recognition and participation which jointly construct full citizenship in Kenya. In the introduction I argued that to engage in a fruitful normative critique of the substance of full citizenship, special attention to the empirical value of ethnicity in citizenship is required. In order to level a critique, it is necessary to understand the benefits as well as the downfalls of a place for ethnicity in the polity. In order to do this, I return to the Nubians’ views on citizenship to try and understand the ways in which they themselves hold ethnicity as valuable, and the ways in which they find it problematic. This is very much a tentative interpretive act, drawing together fine thematic strands from what people told me in interviews, and what I observed during my fieldwork to provide examples. In the process I both critique the role of ethnicity in citizenship, and seek to understand its potential value, so as not to dismiss it

¹²⁰ Here Ndegwa makes a distinction between national citizenship as liberal citizenship, and ethnic citizenship as civic-republican. In his view the former is primarily about rights and has few, if any, obligations while the latter confers obligations upon ethnic members in a way that membership in the national polity is unable to do.

unnecessarily based on preconceived notions of what is and is not appropriate to citizenship.

The following analysis is framed drawing on Fraser's (1997:23-27) distinction between affirmative and transformative remedies to misrecognition and maldistribution. Fraser's concern is to understand when and how recognition and redistribution work towards equality, and when they can undermine it. According to this distinction there are two options for remedying misrecognition and maldistribution: affirm the bases on which recognition is granted and distribution organised, and seek to extend recognition and distributive benefits to new groups; or transform the bases on which recognition is granted and distribution organised, and thereby change the rules of the game for everyone.

In relation to the Nubians' options for remedying their citizens minus status, I interpret an affirmative response as being one which affirms (indigenous and autochthonous) ethnicity as criteria for membership, and affirms the parochialism of moral norms limited to one's tribe. I interpret a transformative response, then, as one which seeks to deconstruct the terms on which recognition is granted and redistributed. In this case, a transformative approach may entail the eliminative deconstruction of ethnicity, and along with it indigeneity and autochthony, an extreme approach I call 'radically transformative'. An analysis of the Nubians' responses to their own marginalisation in these terms enables an understanding of the ways in which they value ethnicity in the polity (by often affirming it), and the ways in which they find it problematic (by sometimes implicitly seeking its radical transformation). This discussion therefore entails an inherent normative critique, but one which is empirically grounded. I discuss these two approaches – affirmative and radically transformative – in what follows, and ultimately suggest, leading into the next chapter, that neither is satisfactory.

Affirming the status quo

An affirmative response to misrecognition and maldistribution aims to change the *outcomes* of processes of distribution and recognition, but not the processes themselves. This kind of response is typically guided by the desire of a particular group of people to be included in the mainstream order of things, including having access to social and economic goods on an equal basis with others, and enjoying the cultural and political satisfaction of having their identity recognised as being of equal value to others. Interpreted in relation to the terms of this thesis, an affirmative response confirms as valuable the regimes of rights,

recognition and participation which govern the constitution of participatory parity or full citizenship. The aim here is not to reconfigure the boundary between inclusion and exclusion, but rather to cross over it. As Fraser (1995b:82) explains it, affirmative remedies propose “to redress disrespect by revaluing unjustly devalued group identities, while leaving intact both the contents of those identities and the group differentiations that underlie them.” In relation to full citizenship in Kenya, affirmative responses can be interpreted as those which seek to include new groups in the prevailing order of things, that is, responses which seek recognition for new ethnic groups as indigenous and autochthonous to Kenya, and facilitate, via effective membership, the exercise of rights.¹²¹

Affirmation of the place of ethnicity in Kenyan society and politics is the dominant response amongst Nubians’ to their marginalisation, as they seek to remedy injustices of misrecognition and maldistribution by having their ethnic group valued equally with others. As we have seen in the previous chapters, Nubians tend to assert their ethnic difference in order to achieve recognition of their indigenous and autochthonous sameness. Viewed from this perspective, the problem is not that Kenya is made up of tribes, but rather that the Nubians are not a recognised (i.e. indigenous and autochthonous) tribe. This leads the Nubians to advocate ethnic inclusivity, rather than the transcendence or eradication of ethnicity, such as when Ali (Interview 51) argued that, “the government should recognize Nubians and all equal rights should be given to the Nubians also just like they are giving it to the other tribes.” Similarly, Issa’s (Interview 32) appreciation of the census code was based on its function in putting the Nubians on a par with the other tribes,

... the government has recognised us as the 43rd indigenous tribe of Kenya, which means we are like everybody else, like the big tribes, the Kikuyu, the Luo, the Kalenjin, Maasai, you name them, Luhya. So you have the Nubians. [...] So they have decided alright we will encode you and treat you like any other indigenous tribe of Kenya, which is a good thing.

¹²¹ Fraser also talks about a possible – she seems to think likely – negative consequence of affirmative recognition, that being the stigmatisation of particular groups recognised as having special needs of some kind. She differentiates between the ‘official recognition commitment’, in which recognition is understood as a positive act designed to confer equal respect and recognise the equal moral worth of all humans, and the unintended consequence of also recognising other, less positive aspects of a particular group, (such as welfare dependency in her example of the poor) particularly when recognition is accompanied by redistribution which can lead to resentment. She calls this second kind of recognition the ‘practical recognition effect’ (Fraser 1995b:85). This is not so much a risk in the kind of recognition I am discussing here, recognition which is already conferred in a very similar way to the majority of tribes in Kenya. It might, however, be a possible consequence if the Nubians were to pursue recognition as an ethnic minority, rather than a mainstream tribe of Kenya.

Issa's choice of tribes to compare the Nubians to is a telling one. The perception that the very small Nubian tribe will be equal to the most populous and powerful (the Kikuyu, Luo, Kalenjin, and Luhya) or iconic (Maasai) tribes in Kenya underscores the perceived advantages associated with ethnic recognition. Ethnic identity is so integral to access to resources and power that, after being deprived of it, it is easy to think of it as the panacea, and to associate with it levels of power and access to resources that the Nubians, as such a small community, are never likely to achieve.

It is quite comprehensible that the Nubians would perceive an affirmation not only of ethnicity, but also of indigeneity and autochthony as an appropriate way of asserting their membership in the Kenyan polity, and pursuing their rights, that is, pursuing participatory parity and full citizenship. As discussed in previous chapters, the opportunities that marginalised groups have for emerging from marginalisation are heavily shaped by prevailing fields of power and 'places of recognition'. In Li's (2000:163) research, the Lindu community in Indonesia successfully made recognition claims based on indigeneity because they told a recognisable story. When the Nubians assert that they are indigenous to Nairobi, that Kibera is their ancestral land, and that they should be recognised as the 43rd tribe of Kenya, this is what they are doing: they are appropriating a story form that is already well accepted in Kenya.

It is only tribes who can tell such a story that are able to even approach participatory parity in Kenya, and so this makes it even more comprehensible that the Nubians would turn to an affirmation of ethnicity and its role in public affairs. The Nubians (probably correctly) see recognition as an indigenous and autochthonous tribe of Kenya as the pathway to security of tenure, to increased development at the local level as a result of dominance of local administrative units, to increased opportunities for education and government employment, and to the respect and confidence arising from being seen by others as an equal member of the polity.

There are other similar examples of ways in which marginalised communities affirm the place of ethnicity in public affairs. For example, Sengwer, often considered a sub-tribe of the Kalenjin, have asserted their ethnic identity and land claims in an attempt to overcome their ambiguous status in Kenya. Like the Nubians, Sengwer have faced some difficulties identifying themselves as such on ID cards, and only received a code in the census in 1999, which was subsequently rendered less meaningful by the refusal of the government

to release the results of the tribe question that year.¹²² The Sengwer do not frame their claims for increased inclusion in terms of a national unity that transcends ethnicity, they do so instead by affirming the ethnic prism through which politics is played out, and, like the Nubians, demanding a place in it. Lynch (2006b:55) explains that, “[i]nstead of arguing against perceived systems of ethnic patronage, Sengwer leaders argue for the creation of a Sengwer constituency, or for an increase in the number of nominated MPs who would then be elected to Parliament by identified ethnic minorities.”

‘Fatuma’ (Interview 45a) made explicit the reasons why Nubians similarly feel they must affirm ethnicity before, or rather than, seeking the transformation of barriers to inclusion in Kenya,

...before ethnic community becomes a non-issue, it is an issue. At the moment that’s what defines us. But before it become a non-issue there are certain things they [Nubians] must do for themselves and also for the community.

As ‘Fatuma’ pointed out, ignoring or transcending ethnicity runs the risk of simply blinding us further to the causes of exclusion and disadvantage for communities like the Nubians and the Sengwer. From this perspective, before ethnicity can become a ‘non-issue’ in politics, ethnic groups which have been historically excluded need to be brought up to the same developmental level as ‘the big tribes’, through affirmative action mechanisms that seek to redress past inequalities and injustices. In the absence of this degree of equality, ethnicity will remain relevant to public affairs.

However, despite the comprehensibility of this move towards affirmation of ethnicity, indigeneity and autochthony, there are some reasons to be concerned about such an approach. While the clear benefits of these practices for members of these groups may be desirable, the privileging of fellow members of the ethnic group can also be problematic. This is evident in two areas in particular, discussed in chapters 3 and 4: administrative dominance, and exclusive land title. Central to the Nubians’ claims for recognition is the hope that such recognition will lead to total control over the land in Kibera, and the possibility having ‘their own’ in positions of power, dominating administrative and even electoral units. Both of these ambitions are potentially at the expense of the many non-Nubians who share the space in Kibera. As Jamaldin (Interview 7a) explained,

¹²² It is not clear in this article exactly what the difficulty with ID cards is, but it is likely that there is no code to identify them in the registrar’s list of codes and that they are instead subsumed under ‘Kalenjin’.

I am not afraid to say so ... we wanted to lock out the other tribes, and the only way we can lock out the other tribes is to bring a concept that will automatically exclude others, because you have to remember why we are fighting. We are fighting for *our* identity, for *our* cultural space, we want to retain our livelihoods and our lifestyles, and we want to protect ourselves against the system that we feel is very hostile to us. So we need a territory that we can control, that we can design our own by-laws and the way we are going to live.

Though there is a defensive aspect to this statement, this affirmation of ethnicity also demonstrates that the Nubians are yet to achieve the status required to compete with other ethnic groups in the national arena, to get their 'fair share' of the national resources. This has been discussed in some depth in the preceding chapters.

While being sympathetic to the risks and threats associated with marginality, we must also be attentive to the affirmation of ethnic chauvinism and xenophobia. Some Nubians, as part of the affirmation of both their ethnicity, and the role of ethnicity in public life, demonstrate an attitude of superiority towards other Kenyans, often linked to their historical role in the country. An extreme form of this was when one Nubian woman¹²³ emphatically asserted that, "... actually the Nubian community in general, brought civilisation into Kenya. Way back when Maasais were dressing in hides and skins, the rest walking bare feet, but our forefathers were dressed in suits." Another Nubian man saw the Nubians as having, "opened up Africa for the other communities", and another expressed a desire for this period of history to be, "...given pride of place, in other words, it's not an accident, [...] it's an epoch making event." Given the role the Nubians played in helping the British colonise Kenya, these kinds of comments risk serious offense to other Kenyans. They could also be perceived as contradicting interpretations of history, discussed in chapter 1, which privilege the Nubians' support for the nationalist cause at Kenya's independence. Though the Nubians have a right to be proud of certain qualities displayed by their forebears during the colonial era, such as bravery and loyalty, when these are expressed in ways that suggest the Nubians are superior to other tribes in Africa they echo explicitly discriminatory claims of their forefathers to that effect, claims made to highlight and protect their privileged status under British rule. These kinds of claims do not so much express a pride in an ethnic culture, as a chauvinism that is not conducive to national cohesion or harmonious inter-ethnic relations.

¹²³ Due to the extremely sensitive nature of some statements in this section, I will not attribute all of them.

Chauvinistic attitudes, especially when combined with a (more legitimate) fear and anxiety about the safety and future of the community, can result in xenophobia, and an unwillingness to live with or share resources with people of other ethnicities, as we saw above when Jamaldin declared that he was not afraid to say that he wants to “lock out the other tribes”. Using vividly xenophobic language, another Nubian woman demonstrated this kind of attitude. After complaining about how newcomers to Kibera sometimes tell the Nubians to ‘go back to Sudan’, or ‘go back to where you came from’, she later unconsciously reappropriated this language in the reverse, asking, “[w]hy can’t government tell these people to go back to where they are, and leave Kib... leave Nubians alone? They should be told to go back to where they come from, they came from their places.” Similar notions were frequently expressed by many others, for example another woman talked of her desire for the future of the Nubian community to have, “one big community living together without any strangers or anybody else, you know from some other tribes coming to mingle with you. A perfect Nubian settlement.” Another Nubian man offered a slightly more hospitable attitude, but made clear the inferior status of non-Nubians in Kibera when he said,

We don’t have any problems with them. It’s only that whenever you come you’re a guest in my house; basically you have to go by the laws of the house. We welcome them but it should be rest assured that this land belongs to the Nubians and should go by our rules.

Others who have come to live in Kibera are often blamed for all that is wrong with the slum, especially the violence. One younger Nubian said that, “[w]e don’t have to develop some new cultures. You can see what happened January, December there [post-election violence]. That is a new culture.”, while another complained that, “the British have left, they’ve left us nothing, yeah? They’ve left us at the mercy of these people who are to us a very inhuman people, Yeah? They don’t care about us.” All of these comments suggest an unrealistic and dangerous desire for a pure, uncontaminated and static ethnic community, a desire that necessarily entails xenophobia and contempt for outsiders.

This kind of attitude is mostly directed towards others who live in Kibera, but at times it extends beyond that, and in doing so affirms not only ethnicity, but indigeneity as central to belonging in Kenya. For example, a Nubian woman complained that,

I was vetted by a that guy was an Asian who was vetting me. You know it’s strange – you as an African, you are being vetted.... I, as a Nubian I am an

African, and I live in Africa. How can an *Asian* come and vet me? To verify if I can get even a passport! Does it not look strange? I was so bitter!

In the same interview as she complained that the Nubians are not recognised as indigenous to Kenya, this woman affirmed indigeneity as a precondition for a rightful place in Kenya by suggesting that Kenyan Asians and Kenyan Europeans have no such rightful place. This theme of understanding the Nubians' place in Kenya in the same way as that of other African tribes is echoed by Issa (Interview 32), who relayed that,

You see everybody in Kenya came from the outside and they came from the outside as a distinct ethnic unit. A distinct ethnic group. The Maasais came in as a distinct ethnic group. So were the Kalenjin. So were the Luos. So were the Kikuyus. So were the Luhyas. You name it – they all came in as distinct ethnic groups.

This notion of all Kenya's tribes having ultimately, at some point in history, come from somewhere else was a common way of justifying the Nubians' sense of themselves as indigenous. It was rarely employed to suggest that the notion of indigeneity does not make sense in Kenya, but rather to include the Nubians in the prevailing regime.

As illuminating as this discussion is, it does not give the full picture of the Nubians' perspective on ethnicity and citizenship, and so before drawing any normative conclusions on the matter, we must turn to a different kind of response to their marginalisation.

Transforming the status quo

To return to Fraser's (1997:23-27) categories, transformative responses to uneven distribution and non-recognition or misrecognition of marginalised groups operate in quite a different way to affirmative responses. While affirmative responses aim to change outcomes rather than processes of distribution and recognition, transformative responses aim to change *both* outcomes *and* processes. This kind of response is, like the affirmative response, often guided by the desire of a particular group of people for equal access to social, economic, cultural and political goods. However, rather than seeking to extend respect to particular devalued groups, transformative remedies to disrespect, "would redress disrespect by transforming the underlying cultural-valuational structure," that is, deconstruct it (Fraser 1995b:83). People who adopt transformative strategies to achieve redistribution and recognition aim to *alter* the very terms upon which recognition is granted and redistribution is organised. The aim here is not to cross the boundary between inclusion and exclusion, but to deconstruct that boundary, to, "change *everyone's* sense of

belonging, affiliation, and self” (Fraser 1995b:83). For example, Fraser (1997:27) explains that the welfare state is an affirmative response to material inequality. It redistributes according to need in order to minimise inequality, but it does nothing to change the underlying structure of a capitalist political-economy. Socialism, on the other hand, is a transformative response to material inequality. It seeks not only to redistribute economic goods to those in need, but to thoroughly deconstruct the basis of any meaningful distinction between the wealthy and the needy. Transformative responses aim to radically blur the very fact of categorisation, rather than to recognise and redistribute to all categories equally. By moving in this direction, Fraser (1995b:86) argues that transformative responses are more likely to encourage reciprocity and solidarity in relations of recognition, rather than having the possible negative, unintended consequence of stigmatisation that she sees as a risk in affirmative responses.

In this sense, transformative responses may have a strange affinity with the liberal citizenship tradition, aiming as it does for a difference-blind universalism. It is not clear that Fraser would condone a reading of her work that takes it to this seemingly logical conclusion – the eradication of all difference, especially given her commitment to the importance of recognition of difference as an aspect of justice. Indeed, Fraser (1995b:83) sees the objective of transformative responses as being to encourage a better kind of recognition, one that fosters reciprocity and solidarity rather than stigmatisation. Nevertheless, her discussion of and preference for transformative strategies does not seem to foreclose this conclusion. Furthermore, whether or not this is a fair reading of Fraser, it is one which draws out some important assumptions underlying some contemporary approaches to ethnicity in Africa which advocate simplistic notions of liberal democratisation and the eradication of ethnicity as a remedy for Africa’s political problems. In this chapter, then, I use the term ‘radically transformative’ to describe responses to misrecognition and maldistribution which seek not to include new groups in the prevailing order of things by recognising them and valuing them as equals, as indigenous and autochthonous tribes of Kenya, but rather those which seek to transform ethnicity, and along with it indigeneity and autochthony, as identities which have inherent value, and on the basis of which a polity should be organised. In the following chapter I will discuss an alternative interpretation of Fraser’s transformative approach, and will refer to it as ‘moderately transformative.’

The discussion earlier in this chapter highlights some serious ethical and political problems that arise when ethnicity is privileged over civic values, namely that impermeable barriers to membership are formed, and that the nation is reduced to an arena of inter-ethnic competition. However, it is not immediately clear from the Nubian case that erecting a binary opposition between civic and ethnic is appropriate. There may, in fact, be redeeming features in ethnicity that earn it a place in the national public, and if that is the case, then we may not want to advocate the radical transformation of the role of ethnicity in politics. Nevertheless, before we reach that discussion, it is first worthwhile exploring what a radical transformation would look like. The discussion that follows examines radically transformative tendencies evident in the Nubian community in relation to ethnicity, including the total eradication of ethnicity, or at least its transcendence and the rendering of ethnicity (as well as indigenous and autochthonous identities) as irrelevant to public life.

Some Nubians and other Kenyans take the extreme position in favour of homogenisation and the total eradication of ethnicity. ‘Fatuma’ (interview 45a) argued that,

... ethnicity in Kenya is something that is ... it’s a disease that needs to be, you know, eradicated. Yeah it’s going to be hard but that’s something that needs to be eradicated. And one way of eradicating it is we have to have a whatever ...an inclusion policy, whereby all have a right to be included in government and political structures and all the other agencies.¹²⁴

Ali (Interview 51) agreed, pleading to other Kenyans,

let’s just live harmoniously with everybody and the government should know that people in Kibera they should not be categorized into tribes or groups or going back to ethnicity or religion or colour or creed or whatever it is.

In many ways, these kinds of radical anti-ethnicity attitudes can be understood as in fact anti-tribalism attitudes, which were even more common. Ali went on to say that,

...we should practise these thing in Kenya, I mean, identify ourselves as Kenyans rather than on the tribal lines. Tribalism definitely brings out problems. All the chaos we have been having here, the wars, the what, the killings based on tribal lines.

Particularly after the post-election violence of 2007-2008, many people turned to the idea of eradicating ethnicity out of fear of its violent potential. This was clearly a widespread

¹²⁴ To the extent that ‘Fatuma’ advocates a policy of inclusion, however, she seems to fall more on the affirmative than the transformative side of approaches to ethnicity in public life.

feeling, as Zeddy (Interview 44), who had been involved in enumerating the census, reported that,

Most of the people did not want to say their tribes. Why? [...] something else might happen after that, after 2012 [election] something else might happen, and then they might come and look for this tribe, that tribe, this tribe, this tribe like that. They might be pointing at this so that's why people are fearing to mention their tribes.

There are also attitudes towards ethnicity that don't go so far as to wish it eradicated, but see it as irrelevant, indicating a transcendence of ethnicity (cf. Anderson 2010:47). These attitudes are primarily exhibited and experienced at the day-to-day level of social or professional interactions. For example, when asked if being Nubian affects his participation in public life, Adam (Interview 42) said, "Not actually. Because actually, whatever I'm doing, I'm doing it professionally." 'Mohamed' (Interview 9) reported a similar experience, explaining that,

You know a person like me, I've stayed outside Kibra when I was young enough to understand other people, like where I was training, we had people from seven different countries, so my understanding of people is I think standard. . . . We had people from Malawi, Zambia, Botswana, the three East African Countries, ... yeah that's almost like it. And ah, we could cope.

'Ibrahim' (Interview 38a) said a similar thing about parent-teacher associations at schools, where,

people are not addressing issues ethnically. It is performance of the students and performance of the school relevant to the national examination, what should we do here? If those things, if ethnicity is not being addressed there, then who is perpetuating ethnicity at the top level here? So it is this leadership that is perpetuating that one.

Though the prevalence of these attitudes at the lower level, and their seeming absence at higher levels of society and politics is significant, they do nevertheless constitute a source of potential for fostering such attitudes in other contexts. In particular, notions of ethnicity being irrelevant, or at least not a source of competition and conflict, are quite evident when individuals from different ethnic groups rally around other sources of identity or common concerns and issues.

One of the most prevalent alternatives to ethnicity as a source of cohesion in this research is gender. Numerous women reported working with and befriending women of other ethnicities in self-help or activist groups. Self-help groups were the most predominant. For

example, the Mchanganyiko Women's Self Help Group in Kibera, a particularly successful one, conduct some income generating activities (a hall and meeting room they rent out, and a water tank), and also runs a preschool for orphans with a feeding program, all collective achievements resulting from small, regular savings contributions from members. These groups are usually made up of people living in the same area, though other similar groups also have a religious basis. For example, Zuhura (Interview 26) is involved in an Islamic teaching group for women only, which meets once or twice a month and holds an open discussion about issues affecting the women in the group, and the Islamic teachings on those issues. Other women's groups are more oriented towards activism. For example, one Nubian woman started one of the first and most successful anti-rape campaigns in Kenya, and others have historically been involved in lobbying government on women's issues from within their membership of political party structures like KANU (Interviews 23 and 35).

Like the specific challenges facing women, broader challenges affecting all Kenyans also operated as a source of trans-ethnic cohesion, undermining inter-ethnic competition. These included challenges to livelihoods in particular, but also issues of safety and security and broader human rights issues. As 'Ibrahim' (Interview 38a) put it,

You know the future of anywhere in Kenya is entangled or is clustered within the future of everyone in Kenya. Because for example when post elections issue came, even though it was not so bad in some parts of the country, but it's affecting us all now. So the future of any community in Kenya, including that of the Nubians, actually is *entangled* into the direction of the national leadership in Kenya.

I observed this most noticeably during a sitting of the *Bunge la Mwananchi* (People's Parliament) in Kibera. The *Bunge* has been a feature of Kenyan civil society for some years (Rasmussen & Kimari 2010; Rasmussen 2011). The organisation operates on the principle that it is Kenyans' history of "coming together that fomented political consciousness among Kenyans for self-determination towards democratic rule" (Bunge la Mwananchi 2011; see also Haugerud 1995). The organisation aims to serve as a platform for ordinary citizens to voice their concerns, and to informally 'train' in the art of public speaking and negotiating. Various chapters of the Bunge operate all over Kenya, and May 2009 was the first time one had been attempted in Kibera. It was attended by Kiberans of all ethnicities. At this event, Amadi, a Nubian with a history of activism, spoke charismatically in the opening address about a range of issues that affect the residents of

Kibera, including governance, injustice, poverty, democracy, accountability, transparency, violence, HIV, the new constitution, and rising food prices. Throughout the day as men and women from all tribes in Kenya, and all villages in Kibera, spoke about their grievances a rapport developed between them. They identified a shared anger at the lack of employment, corruption in the local administration, the lack of water, lack of leadership, violence and insecurity, police harassment, the prevalence of *wazungu* being voyeuristic in Kibera, power shortages and a lack of infrastructure.¹²⁵ Poverty constitutes a divide that is perhaps even more significant than ethnicity. It is common to hear people declare that ‘Kenya has only two tribes: the rich and the poor’ (cf. Maxon 1995:115). Class therefore presents itself as a significant alternative to ethnicity for the expression of solidaristic trans-ethnic relations (Klopp 2002). Cross-cutting issues (such as poverty) or alternative identities to ethnicity (such a gender) represent genuine and significant common ground across which people from different ethnic groups can easily find agreement and express their grievances in common, usually using a shared language of justice and rights.

When it comes to suffering borne from poverty in particular, amongst the Nubians and other tribes there is a deep capacity for recognising a shared humanity. Hassan (Interview 6), for example, expressed profound horror at hearing of people reduced to eating dogs, exclaiming he was saddened by it because, “they are human ... human beings, they are Kenyans.” Jamia (Interview 31) similarly articulated her objection to the perceived sub-standard housing of KENSUP by saying,

Are we not human beings? So why do they want to keep us as if we are . . . chickens . . . we’re supposed to be just in a cube, you’ll be fed there and maybe the water you’ll come and fetch it down and you’re supposed to go with it upstairs. And maybe you know some people are coming from, from let’s say like Kisumu, you come with your family here looking for work. How are you going to stay in that one cube? How? It does not fit. It’s not . . . now I’m not saying of Nubians only, the entire human being. It’s not right. No. They are feeling as if they’re more human beings than others.

Zaid (Interview 37a) expressed a similar sentiment when asked about what makes Nubians different from other tribes in Kenya,

Nubians are not different from other tribes in Kenya. We have the same aspirations. We have the ... our desires may be slightly different but basically we read from the same script. Because if a Nubian sleeps hungry and the other

¹²⁵ *Wazungu* is swahili for ‘foreigners’, used to refer to white people

tribes sleep hungry yeah it's still the same, yeah, it's doesn't make any difference.

In terms of offering more concrete alternatives to ethnicity as the guiding principle of political organisation and development, two particular transformative principles with support in the Nubian community arose: the rule of law, or the privileging of merit or policy over ethnicity. In relation to bolstering the rule of law as an alternative to personal decision making which is prone to ethnic favouritism, Yusuf Diab (Interview 2a), referring to grievances arising from landlord-tenant disputes, and in the post-election violence, argued that, “the way to do it is not the violent way. Things have to be done the legal way.” Extrapolating this to more general terms, in-keeping with OS’s commitment to legal solutions to human rights problems, Adam Hussein Adam (Interview 24), a Nubian working for OSIEA expressed that, “ ... above all else I want Kenya to be a country that is ruled by law. I wouldn't want a country that you wake up under whims you decide so and so doesn't belong, or anyone doesn't deserve better.” The rule of law at both the grassroots level, as Yusuf discussed, and the elite level, as Adam discusses, represent genuinely transformative attitudes to the prevalence of ethnicity in public life.

Similarly, the privileging of merit over ethnicity in judgements of individual people is a notion that has support in the Nubian community. For example, when asked if being a Nubian affected his participation in public life Hassan (Interview 43) (rather optimistically) said,

No being a Nubian doesn't affect because Kenya is a multi-society country and you see we have Asian, we have even some white men who are also Kenyan . So being a, you know, what people judge you from is what you do, they don't judge you from you tribe, from where you have come from. What people will want to, you to do for them is being a good leadership, being God fearing, being a somebody who ...being somebody who can deliver because even here in our society, Nubian society we have some people who have come from outside and they are leading the society and it is not because that of their tribe but it is because of their moral and trust which society has in them.

Only a handful of people agreed with Hassan that this was already the case, and mostly these were people who were professionals, and could fall back on their tertiary education to defend themselves (e.g. Interview 38a). For example, Mabruka (Interview 48) acknowledged that she was hired to her professional job on the basis of her education and experience, but others without that experience continue to face ethnic discrimination. Plenty of Nubians, however, aspired to these kinds of conditions (Interviews 6, 38a, 45b).

In particular, people expressed a desire for national politics to be dominated by people with good education and appropriate qualifications and motivations for the task. This scenario is one in which good policy and good qualifications succeed over ethnic demographic superiority, or historical advantage. Issa (Interview 32) lamented the absence of policy in Kenyan politics,

...you see politics in Kenya ... terrible tragedy is it's always ethnicity based. In Kenya politics is never issue based, and ah... that makes the politicians pretty lazy. All you have to do is whip up emotion about your tribe and you're home and dry. But you see issues are different. They're weighty, you have to research them, you have to convince people, and you have to believe in issues, articulate them, and win people over. Who's going to waste time on all of that?! So you just whip up emotion on tribalism, and you're home and dry as I said.

It is evident, then, that in the Nubian community, and undoubtedly in others as well, there are attitudes and patterns of interpersonal interaction that are radically transformative of the ethnically competitive nature of Kenyan politics and of ethnicity as a precondition for membership. Some are extreme, seeking to eradicate ethnicity all together, but most seek instead to render ethnicity irrelevant to public life. In practice, this occurs when people rally around other trans-ethnic issues, such as gender disadvantage and discrimination, poverty or injustice. Nubians and other Kenyans do possess a language of shared humanity, justice and rights that transcends ethnicity, and they do employ it, particularly when advocating the rule of law, or the privileging of merit, qualification over ethnicity in politics.

Conclusion

This chapter has made explicit two of the main problems associated with ethnicity in the political domain: the problematic nature of an ascriptive identity as a criterion for membership, and the tendency towards inter-ethnic competition in the national realm. The Nubians have experienced marginalisation as a result of both of these problems. Drawing on the ways in which the Nubians have responded to their marginalisation I have explored two potential responses to the problems raised by ethnicity's constitutive role in full citizenship in Kenya. The first, affirmative responses, have been more predominant amongst the Nubian community. Though understandable, a response that affirms the current role of ethnicity in Kenyan citizenship run the considerable risk of fostering chauvinism, xenophobia and inter-ethnic competition.

The second kind of response, less prevalent but nonetheless apparent in the Nubian community, is a radically transformative response. Insofar as this kind of response transcends ethnicity, it appears to offer some civic potential. However, I hesitate to advocate an eliminative transformation of ethnicity. Not only does it seem unlikely that the elimination of ethnicity could ever be achieved, but there may be aspects of ethnicity that are worth retaining. The next and final chapter explores this possibility in more detail.

Redeeming Ethnicity

The previous chapter explored ways in which the role of ethnicity in citizenship in Kenya can be affirmed or radically transformed. There are serious risks in sustaining the role of ethnicity as it currently operates in relation to citizenship in Kenya. As we have seen, as long as (especially but not only indigenous and autochthonous) ethnicity is affirmed as the primary route to full citizenship and participatory parity, then chauvinistic, xenophobic, exclusionary and competitive attitudes are very easily fostered. On the other hand, a radical transformation of the role of ethnicity in citizenship, understood as the total deconstruction of ethnicity (and therefore also indigeneity and autochthony) as modes of differentiation between citizens is a problematic and almost neo-colonial approach to the problem, seeking to eradicate ethnicity all together.

This chapter makes a tentative move towards addressing the pressing and difficult problem of how to overcome this apparent impasse. The notion of radically deconstructing ethnicity (or at least any public significance for ethnicity) seems problematic on both a practical and a moral level. On a practical level it is quite clear that such a task is impossible (Eyoh 1999). Ethnicity has become so deeply embedded in the social, political and economic fabric of Kenya that it is difficult to imagine a Kenya without it. With this in mind, it seems we must look to the mitigation of its more negative tendencies. This is one of the primary motivations of the discussion in this chapter.

On a moral level, the case is slightly less clear. Intuitively, the sense is that there is something of value in ethnicity that we may not want to jettison. Certainly some of the value in ethnicity lies in its role as a bastion of culture, and a significant source of ontological security. Issues of internal cultural domination aside, few dispute this, and most are willing to recognise that ethnicity plays this important role. Nevertheless, some also argue that as a purely cultural phenomenon, ethnicity should be kept in the private realm (Randjararian 1996). This does not seem to adequately capture the kind of value which I suspect ethnicity holds in terms of public affairs. The second motivation in the

work of this chapter is therefore to take seriously the possibility that ethnicity holds some value in relation not only to private life, but also to citizenship. In other words, this chapter is an attempt to come to terms with the intractability of ethnicity in Kenya, in a way that is cognisant of the potential public value of ethnicity, but is wary of its negative tendencies, and does not blindly reify it out of some misplaced sense of political correctness. The chapter first articulates more clearly what features of ethnicity make it worth salvaging in relation to citizenship; and then returns to Fraser's (1997:23-27) transformative approach to remedying injustices of misrecognition and maldistribution, arguing this time for a moderate rather than radical transformation, directed at the nature rather than the existence of ethnicity. I argue that indigeneity and autochthony must be quite thoroughly disassociated from political status, but that ethnicity can continue to have a meaningful place in political life under certain conditions.

Ethnicity's redeeming features

In the previous chapter's discussion of the ways in which some Nubians affirm ethnicity, I argued that such a stance is comprehensible given the nature of the polity in Kenya. Ethnic assertion is the most effective way of accessing rights and being recognised as a full effective member of the political community. However, there are other less instrumental reasons for asserting ethnicity. As in the preceding chapter, I draw here on field research and interviews in a tentative way, pulling together strands of material to suggest some of the ways in which Nubians find value in their ethnicity, regardless of its potential capacity to extract resources from the central state. In particular, ethnicity holds benign value as the basis of cultural diversity and ontological security, and as the primary forum for the public exercise of moral inter-personal relations.

Mariam (Interview 35) explained that, "... you have to be proud of your tribe isn't so? Like now if someone asks me which tribe are you? I can say okay I'm a Nubian! Because I have to mention my tribe, isn't so?" Generally there is a sense among Nubians and other tribes that ethnicity is only problematic when it is politicised (Interview 29), and people will quickly differentiate tribe from tribalism, defending the former, as Muhidin (Interview 30) did,

Now tribe is completely different to tribalism. A tribe, if I have to mention to you the holy book of Quran, God said 'God has created you in different tribes so that you can be able to distinguish each other'. Not recognize, distinguish. Today I can... you can call Doka – Doka from Argentina, or Doka from China

or England or from Australia. The name Doka will be one tribe in the whole world, so it's better to say Doka – a Nubian from this place in Africa called Kenya, is in Kibera in Nairobi. So at least they can be 'Oh yes!', you see – for identification purposes. But tribalism, that is the bitterness. Tribalism is bad, but belonging to a tribe is not bad.

It is at this level, which Muhidin emphasised here as distinction, that the Nubians (and undoubtedly other ethnic groups in Kenya) find a degree of ontological security that is not on offer at the national level.

Especially since the economic downturn of the 1980s, Kenyans have faced extremely high levels of uncertainty in their day to day lives. As we have seen for example in the case of the discrimination against the Nubians in access to ID cards, begun in the early 1990s at least in part as a response to the perceived Somali threat, the Kenyan state acts in often arbitrary and highly unpredictable ways. Haugerud (1995:197) explains that in Kenya, the state is a body, "which citizens often must approach through complex forms of bargaining, manipulation, and payments of unofficial fees." Kenyans have had to learn how to duck and weave to protect themselves against the random acts of oppression or negligence that have come to characterise their government (Lonsdale 2004:80). These insecurities are compounded by a high degree of economic volatility in Kenya, and the compulsion this places on ordinary citizens to fend for themselves and learn to take advantage of whatever opportunities come along, lest they disappear tomorrow (Haugerud 1995; Eyoh 1999). Globalisation too plays a role in increasing uncertainty, as Kenya's economic vulnerability invites often unpredictable interference from multi-lateral banks and development agencies, in which citizens often have little influence (cf. Geschiere 2009:66-96). Not only relations with the state, but also relations with other Kenyan citizens can be unpredictable, and are often experienced as something to be wary of. Repeated episodes of inter-ethnic violence entrench suspicious attitudes towards ethnic others. Though not totally absent, and I discuss this in more depth below, relations of reciprocity and solidarity tend to be more limited outside the ethnic group.

Though the contrast is perhaps over-simplified here, ethnic groups typically have much less abstract, more grounded and more predictable modes of social organisation than those at the national level (Lonsdale 1994:132; Ndegwa 1997:613; James 2006). Ethnic relations are either frequently face to face, as in the case of a small community like the Nubians, or they are mediated by common and tangible practices, rituals and routines. There is a greater degree of communal solidarity, and more face to face acts of reciprocity (James

2006). Within the interpersonal relations of the ethnic group, the degree of order and continuity is greater than it is at the national level, offering, therefore, a greater degree of ontological security. Put dramatically, “[d]eprive a people of their ethnicity, their culture, and you deprive them of their sense of direction or purpose” (Deng 1995:1).

This is not to suggest that ethnic groups are somehow primordial or pre-modern. Clearly they are not, and the definition of ethnicity adopted in this thesis, with its emphasis on adaptability and negotiability, attests to that. Rather, ethnic communities seem to operate as ontological ‘safe houses’ in the face of high levels of uncertainty in social, political and economic relations outside the ethnic group, and in this sense are in fact particularly modern. It is also not to suggest that should the nation develop a higher degree of solidarity and greater tendencies towards reciprocity, and a greater degree of predictability and order, that the ethnic group would fade away. Rather, it is to be fully cognisant of the role that ethnicity can and does play as a result of its being more embedded in daily life and culture, and its capacity for mobilising moral inter personal relations on the basis of a stronger sense of shared identity (even kinship) and mutual obligation (cf. Ekeh 1970; Lonsdale 1994, 2004; James 2006).

In addition to its role as a bastion of culture and ontological security, ethnic communities also constitute the locus of particularly strong negotiated moral obligations towards others, what Lonsdale (1994, 2004) calls ‘moral ethnicity’, and which are played out in what Ekeh (1975) refers to as the ‘primordial public’. While these moral or communal norms, as I refer to them, often have public significance, for example when they are used as justification for channelling state resources to one’s own ethnic community (as discussed in previous chapters), they are not civic, as Lonsdale (1994) describes them, because they are generally only salient in relation to interactions with people of the same ethnicity. Nevertheless, insofar as the norms that play out in ethnic communities *resemble* ‘civic’ norms, insofar as they pertain to an ethos of participation and common respect, rights and treatment of others, albeit within the *ethnos*, as distinct from the *civitas*, they deserve attention. It is not only forms of political organisation that require attention from political scientists, but also the principles that govern them (James 2006). If these appear to be strongest, as they do, at the level of the ethnic community, then they must be taken seriously.

The Nubians attest to the reality that ethnic communities operate as the most significant sites of agency, what Nyamnjoh (2002) calls ‘domesticated agency’, achieved through the fulfilment of communal requests and obligations. This depends, in the case of the Nubians, and other tribes in Kenya, upon concrete rather than purely imagined acts of generosity, assistance and reciprocity with fellow community members. These acts are experienced as the fulfilment of needs by other community members. Many of the social goods we often perceive as rights, or minimally as welfare, are acquired primarily through the ethnic group, because of the superior salience of ethnic obligations. Insofar as these are sometimes described as ‘rights’, they are often explained as communal in nature, and only accessible through communal membership, and as native or indigenous to Africa, as opposed to imposed by colonial powers (Mamdani 2001b:30; Kivuva 2004). These include the immaterial rights to identity and psychological security, conferred through (often ethnic) culture, even as ethnicity is nevertheless continually contested, recreated and renewed in novel ways (Ekeh 1975; Berman 1998:325). They also include more material rights such as access to land, and economic and physical welfare, as we shall see. In what follows I focus on two particular but broad values: reciprocity and concern for community welfare; and accountable leadership. It must be emphasised that this material reflects peoples’ ideal beliefs and aspirations, rather than necessarily any reality. Many of these norms are honoured more in the breach than in the observance. Nevertheless, they stand out as fairly consistent values by which the behaviour of members of the community is judged - criticised, or held in esteem. It must also be emphasised that these values are in no way unique to the Nubian community.

Reciprocity is commonly identified as one of the most predominant values in operation within ethnic groups, and comparatively lacking at the national level (Lonsdale 2004:91). The welfare of fellow community members stood out as perhaps the most widely held value amongst the Nubians I spoke to. Most of the people with whom I spoke have been involved in public activities of any kind cite the welfare of their fellow Nubians as their main motivation. Often this occurs through being involved in women’s or youth self-help groups (which are often all or predominantly Nubian, though some – as discussed above – are trans-ethnic) who are involved in micro-finance programs, take out group loans, and often also working for the community by doing things like running a nursery school, or collecting garbage. Though small fees are usually collected for this kind of work, it is generally seen as mutually beneficial – users of these services get access to services the

government does not provide in places like Kibera, and they are generally pleased to be able to 'promote' their fellow Nubians with their small payments.

Though there are few elite Nubians, they carry particular responsibilities for the less well-off members of the community, reflecting demands on elites that are common across Africa to share their wealth and make good use of any power and influence they might have (Haugerud 1995:108-138). Unlike in abstract and largely imagined political communities, this is a particularly tangible form of reciprocity almost always entailing face-to-face interactions (James 2006:307). For example, the Haiba foundation, a group of Nubian professionals, run workshops for Nubian self-help groups to improve their skills (for example in grant writing, or computer use), have an annual celebration where they award high-achieving Nubian school students, and also mentor younger Nubians. The Nubian University Students' Organisation work in a similar way, using their skills and spare time to tutor Nubian secondary school students, free of charge. Others still have invested time educating and consulting with the community, to prepare a submission for the Ghai constitutional review; or gathering elusive information on the land title and learning the complex land tenure system in order to lobby for a title deed. The spirit of volunteerism is therefore quite high in the community.

However the sense of obligation on those with skills and resources, and need on the part of those without, goes beyond volunteerism and is more accurately described as a relationship of duty. Membership in an ethnic community acts as a kind of insurance or security for hard times, whereby obligations on others are experienced as assistance by the needy (Ndegwa 1997; Nyamnjoh 2002:115). Sharing resources in very tangible ways, such as sponsoring siblings, cousins, more distant relatives or neighbours to go to school, taking in orphans, or sharing food with the hungry, is very common. Many of the self-help groups described above establish small savings that can be drawn upon by any of the group's members in times of need, such as an illness or burial (Interview 16). As Makkah (Interview 41a) described it, "[t]hat's one thing with Nubians. Everybody will come in and help you. Yeah, if it's good if it's bad you'll all share the loss and the profit and the happiness and the sadness together." One of the most potent examples of the commitment to sharing resources was the fairly broad consensus on seeking communal rather than individual title for Kibera, as Zuhura (Interview 26) explained,

But if they give us a *blocked* title, we will be there for the community, we will be there for our tribe, and if it is a project we are doing, for example constructing houses, we'll support even the poor mama, or poor man who doesn't have income. We'll be making something to benefit the community as a whole, and the land will never be sold by anyone.

Even what would be described as nepotism by outsiders is understood within the ethnic community as concern for fellow Nubians, as Issa (Interview 32) explained,

I had a posh job! Everybody knows! I was general manager of human resources, very posh job, very nice, a lot of power and things. But that is besides the point. I always say this: don't give me the special treatment and then forget my people. That would not be correct. Because you see I may have a CV, or be able to pull strings in high places, get a lot of the things that I would normally want to get. But what about my brother? My relatives? My community? They are suffering!

This kind of concern also translates not just to present-day Nubians, but to future ones, and manifests in a sense of trusteeship for future generations. People described their motivations in these terms, as Abbas (Interview 40) said about work he has done in the community, "I don't think I'm going to benefit from it, but I think my grandchildren and the great grandchildren ...," and Kuli (Interview 46) echoed these ideas, saying, "I feel like I'm *giving back to the community*. I feel I have to do this for myself, my kids, and the coming generation, as a Nubian." As discussed in chapter 4, the notion of trusteeship arises particularly strongly in relation to land, as Jamaldin (Interview 7a) explained, "we need to protect this land, not only for ourselves, but for generations to come, if we want to maintain our identity as Nubians, then we need maintain some territorial ground."

Many of these norms are particularly evident when people discuss the leadership of the community. In ethnic communities Steeves (1996:197) explains that, "political leadership is bounded by and serves the ethnic community." This is true of the Nubian community, as it is of others. Amongst Nubians there was fairly widespread praise and gratitude for successes of leadership, particularly for the efforts of the KNCE in securing access to ID cards. Though an important criterion for being considered an adequate leader is to have vision, an understanding of the issues at hand, an ability to go out and speak about them (primarily to government, but also to NGOs and others), more important is the delivery of results, usually measured in material terms (Haugerud 1995:11). In this regard, there is currently a high degree of dissatisfaction with the present leaders' inability to deliver land title. Closely following the emphasis on securing the needs and interests of the community was an emphasis on engaging the community, treating all members as equals, and not

excluding particular people. Criticisms were made quite widely of the way in which women are currently excluded from any proper role in the public aspect of community affairs (Interviews 3, 18, 23, 28, 31, 33, 35, 37c, 38a, 38b, 38c, 45a, 45b, 48) and of the similar exclusion of youth (Interviews 7a, 37c, 38a, 38b, 41a, 45b, 49a, 49b), and rural Nubians (Interviews 2a, 2b, 10, 17, 23, 40, 50). Occasionally people were also critical of the failure of leadership to find ways of engaging community members who have a lower capacity for involvement in communal activities, especially the poor, elderly women, and uneducated people (Interview 38a). Finally, leaders were judged very harshly if they were perceived to be selfish, corrupt, or to have betrayed the community (Interviews 2b, 3, 4, 29, 35, 37b, 38a, 40, 41c, 43, 44, 45b, 47, 49a). Accusations of corruption in particular have led to the seemingly permanent and quite widespread ostracisation of some individuals with otherwise valuable leadership skills that could serve the community well. Taking advantage of the community for one's own benefit, particularly if it is to the community's disadvantage, constitutes grounds for extremely serious judgement.

It seems, then, that there are likely grounds for a normative argument in favour of some public place for ethnicity. Many norms governing interpersonal relations, norms which we have reason to value for their solidaristic and respectful character, seem to be negotiated and judged within the ethnic group, as Ekeh (1975) and Lonsdale (1994, 2004) argue, rather than at the national level. Furthermore, a certain degree of ontological security and preservation of culture also depends upon ethnicity for many people. These tentative reasons, combined with the intractability of ethnicity in Kenya, suggest that we must look for a way in which to mitigate the negative tendencies of ethnicity, and foster these more positive aspects not only within ethnic groups, but also between them.

Moderately transforming the status quo

In relation to ethnicity, the binary distinction between affirmation and transformation as outlined in the previous chapter appears to leave little middle ground. Either we affirm ethnicity as the basis on which we confer recognition and organise distribution in the polity; or we deconstruct ethnicity as a politically relevant and differentiating identity. In fact, as argued here, for practical and possibly also for normative reasons, we may want to search for something like a middle ground.¹²⁶

¹²⁶ By this 'middle ground', I intend something different from Fraser's 'via media,' through which non-reformist reforms which are not that radical in themselves have more long term consequences in terms of

Fraser's (1997:23-27) opposition between affirmation and transformation (as deconstruction) seems to occlude the space – which I don't believe she is actually ignorant of - in which the *nature* of identities, and their *characteristics when deployed in public affairs*, can change, while the identities themselves remain intact. Such interactions do not simply affirm the prevailing recognition regime by seeking to cross the boundary; nor do they necessarily aim at deconstruction. Rather, they can be considered a middle ground in that they seek neither to simply affirm, nor to utterly deconstruct regimes of recognition and redistribution, but rather to alter their nature.

In this case, such a response would seek to maintain ethnicity as a salient identity in public affairs, but to reduce its negative aspects (parochialism, competition) and enhance its positive aspects (the moral norms that govern interpersonal relations, culture and ontological security). This more appropriate response to misrecognition and maldistribution resulting from organising political relations around ethnicity seeks not a total reorganisation of public affairs, but rather a change in the way ethnicity works as an organising principle. Such a move would involve a deconstruction of only certain characteristics of the employment of ethnicity in relation to public affairs. Specifically, such a move would deconstruct the use of ethnicity as a basis of competition, or as an identity which demarcates who does and does not deserve to be extended respect and solidarity. Importantly, this would mean that both indigeneity and autochthony as aspects of ethnic identity would need to be disassociated from political life because of their inherently hierarchical and exclusionary nature. This would be a deconstruction that transforms ethnicity without, and without aiming at, its elimination. It allows for a continued role for ethnicity, but not indigeneity or autochthony, in public life.

Such an approach I call a moderately, as opposed to radically, transformative approach. This approach seems to be closer to what Fraser has in mind when she recommends transformative remedies for misrecognition and maldistribution. Given her commitment to recognition of difference as an aspect of justice, and her goal to imbue relations of recognition with a greater degree of reciprocity and solidarity, this moderately transformative approach seems a better reading of her distinction between affirmative and transformative, but has the added benefit of actively foreclosing the thoroughly

ultimate deconstruction of identities (Fraser 2003:79). I do not intend to imply an aspiration towards deconstruction of identities.

deconstructive, eliminative conclusion that otherwise lurks as a possibility (Fraser 1995b:86).

In Kenya, where ethnicity has a profound salience in public affairs, a *moderate transformation* of the place and nature of ethnicity in public affairs as a response to misrecognition and maldistribution, generating citizens minus, may be the most appropriate remedy for the Nubians' situation for a number of reasons.

Firstly, as the Nubian case demonstrates, a moderately transformative approach keeps open the possibility of addressing cases of misrecognition or maldistribution in which identity is central, *and in which the aggrieved individual or group wishes it to remain so*. The Nubians do not aspire to the deconstruction of their ethnic identity – they want it to be recognised and they wish to maintain it because it is important in practice for the conduct of culture, for ontological security, and as the forum in which needs are often met, obligations discharged, and respect earned. A moderately transformative approach to ethnicity in public affairs makes this possible.

Secondly, a moderately transformative approach to ethnicity makes it possible to affirm ethnicity but without affirming parochialism. In doing so, it allows the Nubians to preserve the salience of their ethnic identity, and to continue to work towards its *public* salience, but without perpetuating exclusion and hierarchical distinctions that would leave others disadvantaged in the way the Nubians have been. Nubians want to be Kenyan *and* Nubian, and a moderately transformative approach might give them a way of doing this without excluding others.

The Nubians' citizens minus condition is not the result of the simple fact of ethnicity, ethnic diversity or the public salience of ethnicity. It is rather the result of hierarchical distinctions between indigenous or autochthonous groups and ethnic strangers; and more widespread inter-ethnic competition. Therefore, it may be possible to retain some public salience for ethnicity, but without retaining the inter-ethnic competitive tendencies, or the hierarchical positions of *indigenes*, *autochthones* and strangers.

Indigeneity, autochthony and a moderate transformation

As they currently operate, indigeneity and autochthony represent serious threats to democracy and citizen equality in Kenya. Korir Sing'Oei (Interview 57), an attorney involved in the various legal cases taken by the Nubians to regional courts, explained that

in Kenya, "...overtly, it [indigeneity] is completely absent! In decision making and policy. But in practice – not *de jure*, but *de facto* – it is the template by which all decisions are made." The preceding chapters have demonstrated this, and at the same time have argued that both concepts are inherently exclusive, and simultaneously unstable in contexts like Africa where it is so difficult to determine who is indigenous and autochthonous (Mamdani 2001a:658-9).

It is therefore appropriate to explore different remedies for dealing with the place of indigeneity and autochthony in the polity, as compared to dealing with ethnicity alone. In doing so it is necessary to be clearer about the relationship between ethnicity, indigeneity and autochthony. Establishing whether or not it is possible to speak of ethnicity in a way that does not necessarily entail indigeneity or autochthony is difficult. In one sense it does seem possible to separate the concepts from each-other. Section II of this thesis demonstrated that indigenous and autochthonous identities are politically constructed. If this is the case, then it must be (theoretically) possible to also deconstruct them politically. This would involve imagining a political community made up of ethnic groups, but groups which are not recognised by others and do not claim themselves to be either indigenous or autochthonous to any part of the country. This may be possible at an extremely abstract level, and on a normative level this kind of imagining has its appeal: it suggests a political community where (ethnic) difference is tolerated or even celebrated, but where difference is not structured in such a way that some (ethnic) groups are politically superior or inferior to others, in inter-subjective or material terms, on the basis of indigenous or autochthonous status.

But, however normatively and theoretically appealing such a situation may seem, it is not clear, at least in the Kenyan context, that it has analytical value, and it is far from clear that it represents any kind of empirical possibility. Ethnic identities and ethnic groups have developed in this context with strong, seemingly unbreakable connections to indigenous and autochthonous identities, particularly in the last hundred years, and particularly through the establishment and sustenance of ethnic homelands. The abstract thought experiment of imagining a Kenyan political community made up of ethnic groups who do not identify themselves or each-other as either indigenous or autochthonous is so abstract it offers little to aid in the endeavour of assessing responses to unjust political hierarchies that exist along these axes today.

Instead, our challenge is then to understand how indigeneity and autochthony can be altered and manipulated in ways that mitigate their negative political potentials. While it may not be possible to deconstruct them entirely, it does seem necessary to detach indigeneity and autochthony from criteria for membership, recognition and distribution. Mamdani (2001a:657) argues for a transformation of politics based on indigeneity, observing that not only in Kenya but in many other African countries indigeneity has become the, “litmus test of rights.” Geschiere (2009:25) agrees, arguing that, “[i]n this continent, where national citizenship still has a very short history, any plea for differentiation will directly subvert the principle that all national citizens should be equal before the law.” In such a scenario ethnic groups may identify themselves and others as indigenous or autochthonous, but those identifications would have no bearing on access to formal membership, on a group’s social or political standing in the wider community, or on their capacity as individuals or a group to exercise their rights.

In the case of the Nubians, there is little suggestion of what a politics that seeks to deconstruct the political salience of indigenous and autochthonous identities might look like. Primarily, as we have seen in the previous chapter, the Nubians seek not to reduce the political salience of indigeneity, but to be themselves considered indigenous. Only in a few rare instances did people talk about indigeneity in ways which are critical of its inherent problems, for example by suggesting that all the communities who were in Kenya at independence should be considered Kenyan, as ‘Fatuma’ (Interview 45a) did,

The government cannot go on denying that we are not a community of this country. Because at independence we were here and different communities came here different times. It doesn’t matter how soon or how... how soon or how late you came into Kenya.

Jaffer (Interview 39) offered a particularly cosmopolitan approach to inclusion, and critique of indigeneity’s role in determining membership in the Kenyan polity, when he said that,

...in Kenya we have people of European descent, we have people who trace their origin to the Middle East and they are all Kenyans, so why discriminate against the Nubians?

However, in practice there are significant limits to this attitude. For example, Jaffer later said

you'll ask yourself why am I being counted as others? Yet we are Africans just like the other communities. We are not like the Indians who people say maybe they are Asians, or maybe the Arabs who ... people say they came from the Middle East, you see. But these ... we are people just in ... we are Africans in the first place, and even if it is immigration, as I told you earlier all the other tribes immigrated from somewhere. And we are people who didn't come from outside the continent

For the more cosmopolitan and inclusive attitudes to take precedence, this latter kind of attitude will need to become less and less acceptable, and that will certainly be a long process. However tentative and rare these inclusive approaches are, though, they offer some vision of what a political community might look like if indigeneity and autochthony were stripped of their political significance. On a normative level it is important to highlight this as a possibility. I now turn to an analysis of the positive potentials for inter-ethnic relations in the absence of indigenous or autochthonous political distinctions.

Moral inter-ethnicity and concrete collective others

Fed up and outraged as Kenyans are with political tribalism, Lonsdale (2004:81) raises the question of whether moral ethnicity carries the potential for significant social and political change in Kenya. Perhaps the most promising kind of interaction that would fall into the category of moderately transformative responses to misrecognition and maldistribution based on ethnicity is what Werbner calls moral inter-ethnicity. Extending Lonsdale's formulation of moral ethnicity, Werbner (2002a:734) points to cases in Botswana of permeable ethnicities, where ethnic groups with long histories of inter-marriage and blending cultures extend the moral aspects of their ethnic relations to members of these other ethnic groups. Werbner sometimes explains this as confidence in a 'trans-ethnic public arena' (Werbner 2002a:752), drawing on Berman (1998), who sees such a scenario as the antithesis of 'uncivil nationalism'. However, placing the emphasis on actual mixing of ethnicities misses the utility of the term Werbner coins. Insofar as it emphasises a shared past (even if underneath a more complex recent past and relations of inequality), Werbner's apparent approach to moral inter-ethnicity is not that different from trans-ethnicity, or even homogenisation. In fact, Werbner seems slightly confused as to whether he means to endorse the transcendence of ethnicity in public affairs, or the ongoing but moderately transformed salience of ethnicity in the polity.

I think the notion of moral inter-ethnicity retains a greater degree of utility and originality if it is used to refer not to tribes who acknowledge a shared and mixed history, or a *trans-*

ethnic public arena, but rather an *inter-ethnic* public arena, where people relate (positively) to others not as tribeless individuals, or individuals who ultimately share a common past, but as people with an ethnicity that may or may not have historical and/or social overlap with the ethnicities of others, where difference is central to the relation. While *trans-ethnic* solidarity is radically transformative in that it renders ethnicity irrelevant, *inter-ethnic* solidarity retains the salience of ethnicity, but entails the extension of communal norms to relations *between*, not only *within* groups. In this sense it is *moderately transformative* of the nature of the distinction, rather than eliminative of the distinction itself. Moral inter-ethnicity is in operation when individuals or groups relate to each-other in solidaristic, respectful, trustful, accountable ways, *as* members of particular groups. Where trans-ethnic solidarity occurs between two Kenyans, inter-ethnic solidarity occurs between, for example, a Nubian and a Kikuyu. Recognising instances of moral inter-ethnicity requires attention to, “areas of cooperation, inclusion, coalition-building and trust, and not merely competition, exclusion and conflict” (Werbner 2002b:678).¹²⁷

This scenario can be understood as a community of concrete collective others (Fraser 1986). A Habermasian or Rawlsian view of justice and political community emphasises relations between *generalised* others, but Benhabib (1985), Fraser (1986) and Young (1990:106) argue that in fact we cannot, and should not, approach that kind of an impartiality in democratic politics. Instead, we must appreciate that in real life, we relate to *concrete* individuals (Benhabib 1985) and groups (Fraser 1986), each of whom bring their own views and interests to public debates. Young (1990:106) suggests that the dichotomy between egoism and impartiality implied by Habermas and Rawls is false. Abandoning impartiality does not necessarily imply that we turn to the pursuit of our own interests with an attitude of indifference to the interests of others. Rather, we can adopt what Young calls a ‘moral point of view’, where we don’t shed our identity, we retain the point of view that we have, but we express it in moral terms, and engage in a public spirited way with the moral points of view of others, “in the sense of being open to listening to the claims of others and not being concerned for their [our] own gain alone” (Young 1989:257-258). This practice of engaging with others, all sides respecting and trying to understand the point of view of the other, serves the purpose of teaching us to appeal to standards of justice that are meaningful to others, thereby, at least in theory, preventing the corruption

¹²⁷ Werbner refers to these two broad directions as ‘transcendence’ and ‘friction’, though as discussed here, I prefer to restrict notions of transcendence for discussions of the irrelevance or elimination of ethnicity.

of the public by the particular interests of any one group (Pitkin 1981:347). This kind of negotiation over the standards of political argument is what Lonsdale (1994, 2004) refers to when he speaks of moral ethnicity. Moral inter-ethnicity would have such a scenario extended to negotiations between, not only within, ethnic groups. In fact, it may also be extended, at least in principle, to other groups not defined by ethnicity, for example, groups such as Kenyan Asians who are defined by race.

A public-spirited engagement between concrete collective others governed by moral norms of interaction leads to a less conflict-prone understanding of difference. As Young (1990:171) puts it, “[d]ifference now comes to mean not otherness, exclusive opposition, but specificity, variation, heterogeneity.” When people engage with each-other in these ways, their differences become more solidaristic, or at least respectful, and less conflictual. In what follows I use four examples to demonstrate the potential for this kind of interaction in the case of the Nubians and Kenya: inter-ethnic negotiation; solidarity from non-Nubians with the Nubians’ struggles; hospitality and sanctuary; and cultural exchange.

The first example, inter-ethnic negotiation, most closely resembles the kind of interactions Young talks about. The need for inter-ethnic negotiation has presented itself most clearly in the case of disputes over land. In Kibera, it is sometimes feared that the Nubians would seek to evict all non-Nubians who live there in the event that they receive land title. There are good reasons for people thinking this, as the Nubians have not been as publicly communicative about their desires as they could have been, and nor have they come to any consensus as a community on what would happen to the other residents of Kibera, as discussed in chapter 4. However, all groups in the community who are involved in the land debate have a position in relation to the other communities that entails a degree of negotiation with them, even if these positions differ and some are more developed than others.

Amongst the leadership groups, as discussed in chapter 4, two main positions have emerged, the first more developed and involving more compromise and inter-ethnic negotiation than the second. The first position, that of the KLC, is to split the 550 acres of Kibera, giving 250 acres to the government for slum upgrading for other residents, and retaining 300 acres as Nubian land. Gore Mohamed (Interview 50), NCC councillor and Chair of the KLC, explained,

[s]o we have to take the other people into consideration and the process to be peaceful. So we agree that we be settled where we are concentrated mostly, and we agreed on a 300 acre piece of land where you find mostly the Nubians are settled. And the other areas in the periphery, another 300 acres we said that the people also who came to Kibera from time to time should benefit, so that we can have a peaceful co-existence and we can settle this matter once and for all.

It is evident in this discussion that the reasoning is based on mutual interest, and is made in a language that appeals to reasons that are meaningful to not only the Nubians, but also to the other residents. The emphasis is on peace, stability, and a sense of resolution and certainty going forward, social goods valuable to all residents of Kibera.

The second position, that of the KNCE, is less developed, in large part because they have only come to work on the land issue in recent years. The KNCE are not willing to sacrifice any of the Kibera land, which they understand to be 780 acres. However, the KNCE are quite clear that though the land would belong to the Nubians, there would be no forced or immediate evictions. Instead, they have a loose idea of how the negotiation around attaining control over the area would work, as the chairman, Issa (Interview 32) explained,

Step one - allocate the land to the Nubian. The 780 acres. Step two - decongest. Decongest. Don't throw anybody out. Don't clobber people out of Kibra and things like that, no. Just decongest into greater Nairobi, you know a nice properly thought out project.

The Secretary, Yusuf Diab (Interview 2b), explained further,

... we have always said one thing, that if . . . we know we have lived with people from many other communities for many years. We cannot sort of have a tribal cleansing sort of activity that we don't want any other community to live here. No we do not want to be like that. A lot of people from other communities will still be able to live here, and trade here and ah . . . day to day transactions or relationships with each other will continue because this is a, you know, sort of a cosmopolitan area and we live with other people, but all we are saying is that we must have the right to our land.

In the KNCE's proposition there is clearly much more potential for conflict and ethnic exclusivity, and the mechanisms for working with other communities are quite unclear. Nevertheless, again we can see a genuine consideration for the interests of others, and a recognition that their rights will be affected, and that at some point a solution will have to be arrived at that is satisfactory to all parties.

Neither of these positions or strategies have been endorsed by a clear majority of the community, though it seems that many of the more vocal members of the community side

with the KNCE and refuse to give up a single acre of what is left of Kibera. The failure of either the KNCE or the KLC to command the support of the whole, or close to the whole community for their land strategy has resulted in varying opinions from ordinary Nubians about the land issue, and these too demonstrate a willingness to take into account the points of view of others.

To give some examples, Zamzam and her family (Interview 47) expressed that, out of concern for the rights and interests of non-Nubians in Kibera, as well as for the potential conflict that would arise from making Kibera exclusively Nubian, “it is better for us to be given another alternative separately from Kibra.” Jamia (Interview 31) expressed a generic intention to continue to rent to current tenants, explaining,

[w]e will not chase them away. Why? Why should we chase? And maybe that is where I am getting my income. I'll just restructure the place. I'll make it a modern house, and the money will help me also. So the non-Nubians who are there, they'll remain as tenants. You know there is the tenant-landlord association. We will restructure it. We'll just come to an agreement.

It is not clear how these same tenants, presumably on the same income, will be able to live in these ‘modernised’ houses, and this is certainly something that people like Jamia need to take more seriously if they are to enter into genuine negotiations with others. Nevertheless, the general point still stands that there is a desire among the Nubians not to alienate their neighbours, and a concern for their well-being.

These inclinations towards compromise and negotiation, though very nascent and currently insufficient for diffusing inter-ethnic tension over land in Kibera, do suggest potential. If mechanisms that were perceived as fair and accessible by all sides were to be put in place, perhaps something like the *Bunge la Mwananchi*, then it is clear that people are sometimes, on some issues, willing to enter into discussions on these sensitive matters, and take seriously the interests of people from other ethnic groups. Ways in which these attitudes can be fostered are important avenues for future research.

To move to the second example, the Nubians seek and sometimes acquire expressions of solidarity from other Kenyans for their cause. A number of formal forums have been used or established by Nubians for this purpose. Adam Hussein Adam (Interview 42), a Nubian who established Pamoja FM, Kibera’s extremely successful community radio station, explained that they sometimes (though not often, for not wanting to be seen to privilege the Nubians) talk about the land issue and Nubian history on the radio to educate other

communities and to, “make them understand.” Another group of youths have established a website, www.beledianubi.com, for the same purpose, and travel throughout East Africa gathering information about Nubian history and culture to present online to others. Ismail Ramadhan (Interview 49a) has given seminars for the Nairobi Lions’ Club, and written articles for national newspapers about Nubian history and the Nubian land claim in order to raise awareness. A documentary was made and shown at the French cultural centre in Nairobi, attended by Nubians and non-Nubians, an event described by Zamzam (Interview 47) as ‘touching’ because, “[a] lot of people were astonished to know about Nubians, how they came, how they exist, so I mean I felt nice, because now people will start recognising that there is a tribe in Kibera called Nubians, you see?”

In some instances, the Nubians do indeed receive the kind of solidaristic support they seek. The institutional support from CEMIRIDE is the most obvious example, but in less organised and systematic ways, there are others. Makkah (Interview 41a) talked of a Luo man who had been living in America who sponsored students in Kibera, including particularly Nubians. Omar (Interview 18) in Kericho talked about a local chief who used to look out for the interests of the Nubians in relation to ID cards. At the *Bunge la Mwananchi*, one of the convenors judged that, “the idea of Zidu Guwa [Nubian pressure group] is good. Nubians must promote their culture and must know their rights.” Zuhura (Interview 26) reported an encounter at a civil society forum, when another woman said to her, “Look at me! I am a Kikuyu, but I am feeling the pain as if I was a Nubian.” Though these examples are anecdotal, they attest to the possibility of solidarity between people of different ethnicities on the basis of those ethnicities, around struggles that are made necessary by ethnic discrimination, and in which ethnic difference is central.

In a more formal sense, and representing one of the few ways in which the Nubians have had equal opportunities for participation as other Kenyans, a range of Nubian groups have participated in formal politics in the past decade or so through submissions to government commissions, including the Njonjo land commission (which was subsequently dissolved), the Ghai constitutional review commission, and most recently the Truth, Justice and Reconciliation Commission (TJRC). The submission to the Ghai constitutional review was the most successful of these efforts. Professor Ghai recalled a group of Nubians making a compelling presentation and submission (Interview 54), and my research indicated that this was the most sustained and well organised political representation the Nubians have made to date (Interviews 45a, 38a; Nubian community 2000). The TJRC submission, under

development at the time of writing, promises to be similarly well organised. Kenya is often described as experiencing ‘commission fatigue’, and there is certainly good reason to doubt the political effectiveness of many of these commissions and reviews. However, these kinds of political acts, made in a language of rights and justice, appealing for expressions of solidarity from other Kenyans on the basis of both ethnic difference and shared nationality, cannot be discounted in terms of contributing to a culture of moral inter-ethnicity.¹²⁸

Another pertinent example of moral inter-ethnicity presented itself in the history and contemporary practice of offering hospitality, and more specifically sanctuary to people of other ethnicities in times of violence. Offering up an alternative narrative to that of being overtaken in Kibera against their will by other tribes, there is an equally consistent narrative circulating in the community of a tradition of taking in first Kikuyus during the Mau Mau rebellion (and particularly Jomo Kenyatta), then Luos after the assassination of the Luo politician Tom Mboya in 1969 and the subsequent inter-ethnic violence in Nairobi, and in a few cases, taking in vulnerable neighbours during the post-election violence of 2007-2008. ‘Fatuma’s (Interview 45b) narration of the Mau Mau period is typical:

Now positively during the struggle for independence, Kenyatta used to come and hide here. During the emergency period. There’s some families, there’s some women who say he used to come to their farm and because the colonialist trusted the Nubians so much, they didn’t come and look for him here. So even before, even as they were struggling they used to come here in Kibera, the colonist never used to come here, so that was a part in which they contributed towards history.

This is almost certainly a one-dimensional view of the period. As was discussed in chapter 1, at the time of independence at least the older generations of Nubians supported the British in order to maintain their privileged status, and were anti-nationalist. Nevertheless, the younger generation appear to have won the battle over constructing the collective memory of this time, and it is not insignificant that they choose to favour an interpretation of history that entails these important stories of inter-ethnic solidarity.

Similar stories circulate about the influx of Luos into Kibera after the assassination of Tom Mboya. Ismail (Interview 49a) explained,

¹²⁸ While the positive potential of these commissions is great, it should also be noted that an excessive focus on historical injustice and inter-ethnic divisions can also operate to deepen those divisions if not handled appropriately (Lynch 2011c).

So they were being hunted down all over Nairobi, and you know the Luos ... so I'm sorry to talk about this, they don't circumcise their men. So wherever they were their men were being held forcibly and being circumcised, you know, so they started running from all over and they found refuge in Kibera.

Like with the story of hiding Kenyatta and the Mau Mau fighters, there is some ambiguity in the retelling of stories relating to the Luo population of Kibera. While there is widespread agreement that they were offered 'refuge' as Ismail put it, there is also widespread resentment that they then went ahead and 'took over' Kibera, electing 'their own' MP (Raila Odinga) and 'squeezing' out the Nubians. These two aspects of the Nubian understanding of this element of Kibera's history must be considered hand in hand, insofar as they represent both the potential and the limitations of hospitality and sanctuary as acts of moral inter-ethnicity.

Finally, during the post-election violence many families across Kenya took in people of other ethnicities to protect them from ethnically targeted violence. The Nubians, because of their minority status and marginalisation, experienced during this period one of the few advantages of their position: they were not direct targets of violence either in Kibera, or up-country, including in the Rift Valley. As such, they were living in the middle of some of the worst-hit areas, but were not directly affected (in terms of the violence, though of course they were affected by food shortages, sleepless nights, and other ambient difficulties). From this unique position, Nubian families were able to offer sanctuary to neighbours who were much more vulnerable. One Nubian family living on the outskirts of Kibera relayed their story of hiding the most valued possessions of their Kikuyu neighbours, and lying about their ethnicity to Luo gangs who came around the area looking to burn Kikuyu houses (Interview 44). Omar (Interview 18) in Kericho, one of the badly-hit areas in the Rift Valley, explained that, "... during the last election, after the election, the aftermath of the election, affected *all* of the other communities but our people. In fact some of the people were coming to our place for shelter, for assistance and whatever." There are similarities between this kind of hospitality and the solidarity that manifests in shared experiences of severe poverty. However, the important difference here is that the ethnicity of these families and their neighbours is central to their experience, to both the Nubians' ability to offer a safe house, and their neighbours' need for protection. In this sense there is a shared humanity, but it is not *reduced* to a shared humanity, for the experience is also one in which *difference* in the form of ethnicity is centrally important.

The final example of moral inter-ethnicity is the most benign, that is, social and cultural exchange between ethnic groups. It is quite common for Kenyans to speak multiple languages, for example, and particularly Nubians who live up-country are able to speak Kinubi, Swahili, often English, but also the language of the tribe which dominates their area, so Nubians in Kisumu speak Jalu and so on (Interviews 32, 40). In Kibera, for example, many Nubian radio presenters on Pamoja FM are able to speak to their audience in multiple languages, including Jalu and Kikuyu (Interview 51). In the most basic of senses this represents a willingness to engage with others on terms that are meaningful to them.

Frequently Nubians would complain of other Kenyans not being aware of their existence, but often these complaints were accompanied by a much more positive expression of the pride and satisfaction achieved by explaining Nubian culture to new people. For example, 'Amina' (Interview 28) explained,

... there are times that I go to a place and there's no Nubian crowd. Nobody. Okay Muslims, yeah, and then the way I dress ... because at times I feel that this is a very very . . . for this particular function I have to dress like a Nubian. So when I go dressed like a Nubian I get the looks . . .

Interviewer: You wear gurbaba and everything?

Amina: Yeaahhhh! And people start asking questions, like 'who are you? I mean, this is so different from everybody else. Your way of dressing. Just tell us tell us! Tell us!' And I sit down and I start explaining to them. Yeah. I love ... I love, I love, I love meeting people. I love the kind of questions they ask me because I always know I have something to tell them, and in a good way, and at the end of it all I also have questions to ask them.

A reciprocal keen interest in different cultures can serve to mobilise positive and harmonious inter-ethnic sentiment. As Haidar explained (Interview 4), "some of them are like ... they didn't hear this Nubian. 'You came from where?' Some of them are like 'you come from Sudan?' Just like that. Some of them are very eager, they want to know Nubians, how they are living, how they are doing things." Shared enjoyment of other cultures, such as when non-Nubians rave about the excellent food and music at Nubian weddings (Interview 25, 42), or, as happened during my fieldwork, when 50 or so Nubian women pile onto a bus and drive four hours to Ukambani to attend the Kamba side of a Nubian-Kamba wedding, driven by curiosity, and driving back engaging in a lively evaluation of their food and dancing, can be the beginnings of inter-ethnic understanding. As Ramathan (Interview 5) relayed, "I want to learn more and to know about other

people's outside, outside my community or outside the place where we operate. I want to mingle with other people outside." The potential for this mode of moral inter-ethnicity is particularly great in cosmopolitan urban areas like Nairobi, where not only is there a mix of people from different tribes, but they convey experiences from the urban to the rural as part of their ongoing connection with rural homes (cf. Werbner 2002b:680). Again, there are limitations to this form of moral inter-ethnicity. Desires for inter-cultural exchange are often expressed by the same people who express, at different times, a desire for "a perfect Nubian settlement" or not to be tainted by non-Nubian kinds of tradition. Nevertheless, as with the other examples given here, the potential is noteworthy.

Revisiting ethnicity and the nation

Moral inter-ethnicity suggests that ethnicity may be able, under certain conditions, to have a place in politics without deteriorating to tribalism and inter-ethnic competition. Werbner raises the possibility that ethnicity and the moral communal norms associated with it are not *in and of themselves* problematic for national allegiance (Werbner 2002a:741). It may not be necessary to deconstruct ethnicity in public affairs, but rather to transform the *nature* of its salience. To use Werbner's (2002b:677) term, to, "revise the terms of tribal integration" and foster practices of moral inter-ethnicity, where tribes respect each-other, and engage with each-other in relations of equality and with a public spiritedness. Given the unlikelihood of fully transcending ethnicity any time soon, it may be morally and politically worthwhile to focus attention instead on ways in which we can affirm the importance of ethnicity, as it is experienced by people like the Nubians, without affirming tribalism, or hierarchical political distinctions based on indigeneity or autochthony.

If these examples of moral inter-ethnicity are more than anecdotes; if their ambiguities are not so deep as to undermine their civic potential, then they can be understood as expressions of ethnic assertion that facilitate rather than undermine national belonging and allegiances. Werbner (2002a:741) explains the, "apparent paradox of ethnic self-assertion and claim for national belonging" by arguing that identity is linked to claims for respect and equality of difference, but loyalty is transcendent. He gives the example of elite Botswanans equally involved in ethnic associations, such as the Bakalanga students' association, as civic ones, such as the Rotary Club (Werbner 2002a:741). As long as difference does not entail either exclusion, or inferiority, then difference is not intrinsically problematic (Young 1990:156-191; Werbner 2002a:742).

Further than that, however, as Geschiere and Gugler (1998:315) explain, and as we have seen in the discussion in chapter 3 of the importance of recognition for the Nubians, the dynamic between ethnic and national identity can in fact be the very site of agency and participatory citizenship, of democratic action and interaction. Not only is ethnicity not necessarily inherently incompatible with the nation, but practices which explicitly engage ethnicity can contribute to a sense of national allegiance, building upon ethnic identity. There is some evidence in the Nubian case that ethnicity can be used as a platform (perhaps not the only, or even the most desirable) from which to participate in and contribute to the national community.

The current political climate in Kenya, since the departure of Moi from the Presidency, and particularly since the post-election reforms underway since early 2008 offers some, albeit fragile, potential for ethnicity to serve as a springboard for positive political participation. Historically, unlike in Botswana (Werbner 2002b:675) or Uganda (Mamdani 2001a:660) where there have been public debates about the terms on which tribes are integrated into the state, in Kenya, the prevalence of indigeneity and ethnicity as determinants of belonging has been a covert, unacknowledged practice, making it all the more difficult to either contest one's designation as native or stranger (and affirm the prevailing way of doing things), or challenge the grounds of inclusion at all (and transform the way of doing things). However now, for the first time in post-colonial Kenyan history the Agenda 4 reforms and the new constitution have presented the possibility of public debate about the basis of inclusive citizenship in Kenya in terms of membership and rights. It remains to be seen whether the legislation around these issues will inspire such public debate, but if it does, then it is certainly an opportunity for acts of moral inter-ethnicity, as tribes make appeals to each-other in a language of justice, rights and equality.

The claims the Nubians generally make, as outlined in preceding chapters, are wrapped up in the politics of recognition, and such entail appeals to public respect and dignity, translating to rights and demands for, "actual opportunities for participation in citizenship and public life" on an equal basis with the majority (Werbner 2002b:679). Though I have suggested in previous chapters that elements of the Nubians' claims are normatively problematic insofar as they affirm ethnically exclusive approaches to community and especially territory, the final sections of this chapter have also demonstrated that there are ways in which to make claims, when they are for inclusion and access to full citizenship, which appeal in a less problematic way to norms already in operation in ethnic groups in

Kenya, and norms which we have reason to value. As Werbner (2004:191) explains in the case of Botswana,

What they seek as advocates of difference and diversity is not exclusive citizenship by right of birth; nor is it purely ethnic nationalism with its larger mentality closing in against the peril of strangers; rather, it is the rebirth and healthy growth of a more civic nationalism, albeit mixed with an ethnic element. Their demand is for first-class citizenship, in no way ambiguous, partial, or conditional, for more inclusive citizenship, providing both equal individual rights as well as equal group rights.

Conclusion

It is not clear from this research the extent to which a political culture based on moral inter-ethnicity and in which indigeneity and autochthony are disassociated from citizenship, is immediately feasible. Certainly the prevailing political-economic conditions of resource scarcity and patrimonialism work against a flourishing of more positive kinds of inter-ethnic relations. Nevertheless, I hope that the discussion in this chapter at least points to the possibilities for a moderate transformation of Kenyan political culture from one dominated by hierarchies of indigeneity and autochthony, and inter-ethnic competition, to one in which the moral norms that are so powerful within the ethnic community might have inter-ethnic salience as well.

Conclusion

The case of the Nubians of Kenya is unique in many ways: they are a predominantly urban minority community with a particular history of guided migration and military middleman service for the colonial regime, who have self-identified as an ethnic group relatively recently. Nevertheless, their experience of marginalisation from the Kenyan citizenry has echoes in other communities in Kenya, Africa and the world. While it has not been the intention of this thesis to make generalisations about stateless peoples or other kinds of minorities, there are elements of the Nubians' condition, and this analysis of that condition, which can provide lessons for other cases of marginalisation, including those based on ethnic discrimination, non-indigenous or non-autochthonous status, and those related to tribalism and ethnic territorialism. This conclusion brings together the various strands of thought and inquiry of the thesis. It consolidates the most central empirical and normative points, comments on the future of the Nubian community in Kenya, and suggests avenues for future research.

Statelessness is not really the problem.

Insofar as the Nubian community has been able to attract any international attention, it has been from NGOs and other organisations concerned to reduce statelessness, such as Refugees International, OSJI and UNHCR. The Nubians' predicament has therefore predominantly been understood as the deprivation of nationality and associated individual rights, brought about by discrimination with regard to access to ID cards. This thesis has demonstrated that although this is a problem, it is merely one dimension of far more profound exclusion from full citizenship.

Chapter 2 of this thesis outlined the basis of the Nubians' statelessness. Since the mid-1990s, the Nubians have been forced to routinely undergo vetting to determine their right to Kenyan nationality, not on the basis of doubt about their individual nationality, but on the assumption that as a collective these people are or might be foreigners. This vetting process is often unsurmountable, and many Nubians have spent years of their adult lives without an ID card, suffering a host of individual rights deprivations as a result, including an inability to work, participate in commerce, travel, vote or access tertiary education. In

this regard, a liberal approach to citizenship, such as that adopted by the above named NGOs, accurately identifies the deprivation of ID cards as deprivation of citizenship status and a range of individual rights (cf. Stewart 1995).

However, the liberal citizenship tradition falls short of fully capturing the nature of the problems Nubians have with citizenship. By adopting a 'thin' conception of citizenship that is focused on individual rights and status, and which understands the state as the mechanism of rights protection, the liberal tradition fails to account for the other, more meaningful ways in which the Nubians are denied full citizenship in Kenya. Liberalism's conviction that difference blindness is the key to equality through universalism denies us the opportunity to fully come to terms with less formal ways in which inequalities are sustained (cf. Young 1989:253). The liberal critique would be, of course, that Kenya is not sufficiently difference blind, this is why the Nubians suffer discrimination, and Kenyan politics should simply move closer to the liberal model. Such a move would constitute a radical restructuring of Kenyan political culture and relations, one that may not be entirely appropriate in the local context for pragmatic and normative reasons outlined at the beginning of chapter 7. This thesis has therefore focussed instead on improving our understanding of the Nubians' citizenship deficit in a way that is more sensitive to the role of ethnic difference in the political community; and in doing so improve our understanding of the structure of Kenyan political culture, and the possibilities for its reform.

Citizens minus

In order to capture this more nuanced and persistent dynamic of political exclusion, this thesis has adopted a more robust notion of full citizenship, and of citizenship minus, understood as the condition of having equal citizenship in the formal sense, but lacking effective membership, and therefore meaningful rights, measured by the extent to which a citizen attains participatory parity. This understanding of citizenship draws on liberal and civic-republican traditions by including an account of the acquisition of citizenship status and the possession of individual rights (drawn from the liberal tradition), but also takes into account the importance of membership and participation in the political community, and the exercise of rights (drawn from the civic-republican tradition). An analysis of the Nubians' place in the Kenyan political community that goes beyond assessing their status, and looks instead to these other dimensions of citizenship suggests that the Nubians are best considered not stateless, but citizens minus. Even those Nubians who possess an ID

card and are considered, in law, Kenyan citizens, are still seriously lacking in other important aspects of full citizenship compared to other Kenyans.

The Nubians' most fundamental citizenship deficit is in relation to membership. The formal membership that most Nubians do have, in the form of ID cards, is both more difficult to acquire for Nubians than other entitled people, and less secure. This is because the Nubians lack effective membership. They lack the social and political standing that other Kenyans enjoy as a result of having a recognised homeland, and being one of the 42 indigenous tribes of the country. The Nubians are dismembers – not pushed back across the boundary and rendered outsiders (at least for now), but limited to occupying the margins, disconnected from the body politic, and treated as inferior. As such, it is more difficult for the Nubians to exercise their rights, which are just as precarious as the membership itself. The full measure of the Nubians' deprivation of membership and rights is evident in the extent to which the Nubians do not enjoy the objective or intersubjective conditions required for participatory parity, being excluded from opportunities for formal participation, and being deprived of the respect and confidence that other Kenyans enjoy. Prevailing patterns of recognition and distribution render the Nubians structurally marginalised and sidelined from public life in Kenya (cf. Young 1990; Fraser 2003).

The reasons for this citizens minus status relate to the Nubians' ethnic stranger status. Historically, the Nubians have occupied a peculiar position in Kenya, having been brought there by the British, and then establishing their existence as soldiers – a particularly controversial middleman function during the colonial era. As detribalised natives, the colonial authorities were never quite sure how to govern the community, or where to settle them. Happy to take advantage of their military prowess, but unable and unwilling to negotiate a sustainable place for them upon decolonisation, the British left the Nubians in Kenya in the unenviable position of having to secure political membership in a community they helped colonise. The repercussions for their post-colonial condition have been significant. As a subject-race during the colonial period, with a status superior to that of other Africans, the Nubians' relation to these other Africans was turned on its head after independence. Without any privilege upon which to depend, the Nubians found themselves ethnic strangers.

This thesis has demonstrated the insidious role played by indigeneity and autochthony as criteria for inclusion in Kenya as full citizens. The notion that the country is made up of 42

indigenous tribes pervades both the public imagination and political and administrative practice in Kenya. Based on ethnic enumeration in the 1962 and 1969 censuses, these tribes are able to dominate particular administrative and sometimes even electoral units, and thereby influence decision making in relation to policy and development, as well as take advantage of formal and informal quotas in the civil service, armed forces, police, secondary schools, and allocation of educational bursaries. People from non-indigenous ethnic groups are not able to enjoy these forms of power and influence, and are thereby denied access to many rights and benefits that their compatriots are able to take advantage of by virtue of their full citizenship. Rather than operating as a special status, indigeneity in Kenya is quietly constructed as the norm.

These patterns of inclusion and exclusion are at their most extreme in relation to land. In practice, a recognised ethnic territory or homeland operates as the most fundamental precondition of participatory parity. Kenyans with a *shags* do not find either their membership or their rights in question (at least in principle). Insofar as autochthony can be understood as a claim to land based on first occupation, and aims to establish exclusive control over a particular area, it is a norm that is becoming ever more powerful in Kenya, where citizenship is becoming increasingly localised in not only administratively but also (and perhaps more so) territorially defined ethnic enclaves. In the absence of a solution to the Nubians' landlessness the prevailing approach to the Nubians' citizenship problems ID cards, and even formal collective recognition through a census code, are illuminated in this thesis as only piecemeal solutions to the Nubians' citizens minus status.

Both indigeneity and autochthony operate in Kenya in quiet and unacknowledged ways. The informal norms that determine that only people from a particular tribe can enjoy secure tenure in particular parts of the country are more social, political, and cultural than legal. It is not clear what the procedures for being recognised as an indigenous tribe of Kenya are, and, therefore, it is extremely difficult to contest the list of who is, and who is not, indigenous or to more radically undermine indigeneity as a criterion for full citizenship. The rhetoric in Kenya, especially since the post-election violence of 2007-2008, is one of inclusivity and unity in diversity, but the reality is too often one of xenophobic, autochthonous and generally ethnically exclusive approaches to land and citizenship.

Citizenship and ethnicity

The development of the concept of citizens minus in relation to the Nubians constitutes a contribution to the growing literature on the politics of recognition. This literature is fundamentally concerned with harms and injustices that are based on identity rather than deed (who someone is rather than what they have done or could do), and the regimes of rights, powers, recognition and participation that constitute and sustain those injustices. This literature therefore sheds considerable light on the Nubians' situation. . In developing the concept of citizens minus and applying it to the Nubian case, this thesis has identified and criticised the procedural and relational norms and practices embedded in Kenyan political culture which establish and sustain hierarchical distinctions between full indigenous and autochthonous citizens, and stranger citizens minus.

A large part of the significance of applying the politics of recognition literature to the case of the Nubians is that it allows an exploration of the role of recognition in a polity that already recognises diverse identity groups as the norm. In this thesis we have seen that the Kenyan state and Kenyan political culture operate on a fundamental presupposition of the nation being constituted by a large number of different, recognised tribes. This is a significant departure from the mainstream recognition literature which, growing out of the liberal democracies of the global North, presupposes a mainstream, dominant population depriving its minorities of adequate recognition of their difference. Recognition of at least a certain type of difference has been the norm in Kenya since before independence. In such a context, the political, social, economic, cultural and institutional processes that constitute and sustain inequalities are different from those in a polity in which one group dominates.

Processes of both recognition and redistribution are at stake in the relation of inequality analysed here. As Fraser and others (Kiss 1999) point out, both recognition and redistribution must be taken into consideration when trying to understand the genesis of, and remedy of, inequality. The mechanisms that sustain citizens minus in Kenya entail deprivation of both the intersubjective conditions *and* the objective conditions for equal participation with other citizens, that is, they involve both recognition and distribution (cf. Young 1990:15-38; Fraser 1995a, 1995b, 1997). This thesis has primarily demonstrated the ways in which recognition of nationality, indigeneity and autochthony impacts upon material conditions, preceding redistribution of education, employment and development opportunities at the local level. It has also demonstrated that it is not always a one-way

relation. Recognition does not always simply precede redistribution. The discussion in chapter 4 detailed the ways in which land claims *inherently* entail *both* distribution (land title) and recognition (less formally of particular territories as the homeland of particular tribes).

In trying to understand the daily operation of mechanisms of recognition and redistribution for citizens minus in Kenya, this thesis has also tried to come to terms with the ambiguities of these mechanisms, and of the Nubians' aspirations to be included in the prevailing regime, dominated as it is by parochial considerations of not only ethnicity, but also indigeneity and autochthony. The thesis has attempted to understand how and why, when seeking to improve their condition, the Nubians have primarily come to reappropriate and affirm the same means of recognition and distribution that have marginalised them. I have tried to maintain a balance between sympathy for the Nubians and being critical of their potential to marginalise others by affirming the prevailing recognition regime, complete with its exclusionary tendencies.

Fundamentally, the concern of this thesis has been how to understand what equal citizenship means in Kenya, and the reasons why, and mechanisms through which, Nubians (and likely others) are deprived of that equal citizenship. Informed by Li's (2000, 2001) concept of 'spaces of recognition', this thesis has demonstrated in empirical detail the ways in which meta-norms in the political community permeate down to the level of ordinary experience and are reproduced as a means to emerge from marginalisation. By understanding how equality is sustained in Kenya – through recognition of indigeneity and autochthony – it is clear why the Nubian seek that same kind of recognition. The incentive of full citizenship, on offer if the appropriate recognition can be attained, operates as a powerful motivator for the affirmation of ethnicity for the Nubians as they seek to cross the boundary from excluded to included, rather than transform that boundary.

However, the thesis has also attempted to draw out the risks and dangers of working towards inclusion through strategies that entail the affirmation of parochial approaches to ethnicity and political hierarchies based on indigenous and autochthonous identities. Fraser (2003:38) reminds us that when assessing claims for recognition or distribution that appeal to claims for equality (as they should), the claimants must also demonstrate that the act of recognition or distribution they seek will not inhibit the parity of participation – or in the terms of this thesis, full citizenship – of others, either within or outside the group. It is not

clear that some of the claims, especially to exclusive ethnic territory, that the Nubians make satisfy this requirement. This thesis has attempted to draw out the dangers of some of the Nubians' claims for equality on the basis that they are likely to result in inequality for others. Some of the more parochial and exclusionary tendencies that the Nubians have adopted – as a rational evaluation of the prevailing political culture seems to dictate – were discussed in chapter 6, where I explored the tendencies in the community's response to their condition which affirm rather than transform ethnic parochialism and chauvinism. In particular, the inherently exclusive character of indigenous and autochthonous ethnicity as a criterion for membership in the polity, and the tendency of moral obligations negotiated within the ethnic community to compete with civic obligations to the national community, to the point where the latter seem to be almost totally eroded in Kenya, came under criticism here.

However, at the same time I have tentatively tried to respond to the demand for a more nuanced understanding of the role of ethnicity in the polity in Kenya, and its relationship to citizenship. In chapters 6 and 7 I attempted to come to terms with both the pragmatic certainty of an ongoing role for ethnicity in public affairs, and the possibility that there may be some normative reasons to condone that.

In chapter 7 I drew on some of the most advanced work in this regard to understand not only the ways in which ethnicity competes with nationality for loyalties, allegiances and duties from Kenyans, but ways in which the relationship might be reconstructed in less antagonistic ways. Drawing on tentative interpretations of some of my field research, I suggested that moral inter-ethnicity may be a practice to be encouraged to counter some of the more hierarchical, antagonistic and competitive practices that currently prevail in Kenya. Rather than seeking to completely transcend ethnicity, either by eradicating it all together, or by rendering it irrelevant to public interactions, this notion takes seriously the importance of ethnicity to people's culture, sense of ontological security, and moral guidelines, and instead attempts to harness those dimensions of ethnicity and transform them into opportunities for solidaristic inter-ethnic exchanges. In such interactions, difference does not vanish or move to the sidelines, it is rather central to the exchange. Whether or not this notion has theoretical and empirical potential in relation to Kenya requires further research. The political challenge of how to address the empirical intractability of ethnicity in many African nations, while maintaining a principled commitment to civic principles of equality, respect and solidarity, cannot be solved here.

Nevertheless, this thesis should generate some insight into the emotional and political appeal of ethnicity as a publicly salient identity, and will be stimulating for those attempting to respond to such a challenge.

Where to now?

The Nubians

This thesis has highlighted some significant recent gains for the Nubians in terms of accessing full citizenship. The code they received in the 2009 census is promising insofar as the Nubians have now been counted alongside other Kenyans, as Kenyans. The improved access to ID cards in recent years has also been an important step. Nevertheless, as explained in various parts of the thesis, the actual significance of these steps in either including the Nubians in the prevailing recognition regime in Kenya, or undermining the role of ethnicity and indigeneity in those regimes is not yet clear. An important next step for the Nubian community is to seek clarity from the government on these issues.

Regarding ID cards, the establishment of a Kenyan Citizens and Foreign Nationals Management Service in the near future will have significant consequences for the Nubians. If established in the spirit in which it is intended, this body will put an end to arbitrary vetting and enable all Nubians to register as citizens. It will be important for the Nubians and other perceived non-indigenous groups in Kenya seek to influence this body to ensure it works for their needs. It will also be important that the Nubians are either included in the list of tribes that registrars use for coding applications, or that such a list of tribes is abolished all together. Given the significant support directed towards the elimination of statelessness by CEMIRDE, OSJI, OSIEA and to a lesser extent UNHCR, it seems likely that there will be successes on many, if not all, of these fronts in coming years. However, these organisations and the Nubian and other similar communities must continue to press the government to abolish the distinction between citizens by birth and citizens by registration, thereby abolishing a category of second-class citizenship that should have no place in Kenya or elsewhere.

Regarding collective recognition, the case is much less clear. As a first step, it is imperative that the Nubians seek clarification of the process required for acquiring official recognition as a tribe of Kenya, and the rights that follow from that in terms of any redrawing of administrative or electoral boundaries (which is unlikely), inclusion in quotas for employment and/or education, and/or any other special provisions available to

minorities in the 2010 constitution. The most obvious way to go about this would be to partner with other minority or non-indigenous groups and an NGO, such as CEMIRIDE, and to channel their concerns through a body such as the NCIC or the TJRC. Either through one of these bodies or a government gazette, the government must make clear its position on recognition of tribes. Whether or not the Nubians or other groups choose to seek affirmation or transformation of the recognition regime once it is made clear will be a matter for them to decide. Ideally, the issue would become one of public debate as part of the general reform process currently underway in Kenya.

Finally, regarding land, the next step for the Nubians is first and foremost to come together and establish some broad agreement on their goals and their strategy. In doing so, they should prioritise the establishment of a representative body that the government can negotiate with, and they should also take steps to publicly engage with other residents, structure owners and business owners in Kibera about their goals, and about how any transition might occur if they are to receive land title. This kind of activity will be crucial for building the trust and confidence required for any transition to proceed peacefully. If these steps can be undertaken with patience and goodwill, this would constitute a very positive example of moral inter-ethnicity. In the more immediate future, the Nubians, through an agreed representative body, should engage a local NGO such as CEMIRIDE or OSIEA, or legal assistance, such as via the legal aid organisation *Kituo cha Sheria* to seek an injunction on the KENSUP project until the land issue is resolved. In the longer term, the provision in the 2010 constitution for community land, combined with a commitment in the constitution to protecting the legitimate land interests of marginalised communities, if legislated in the spirit the constitutional provisions are intended, may prove helpful in acquiring land title for at least part of Kibera.

More generally, the Nubians and other minority communities must engage in consultations surrounding legislation that give effect to the 2010 constitution, and the development of administrative and other policies relating to counties, which will be the new unit of local government. Specifically, they should seek to influence legislation relating to affirmative action for groups who have been disadvantaged in the past due to discrimination (chapter 4, articles 27 and 56), in relation to participation in state affairs, access to education, the economy, employment, basic needs, and their culture. Special attention should be paid to influencing legislation that relates to legislative representation of ethnic, minority and marginalised communities (article 100), as this will be crucial for a sustainable influence.

In order for any or all of the above goals to be achieved, effort will be required, first and foremost, from the Nubian community to overcome their differences, at least enough to agree on some basic goals (such as whether they want all or part of Kibera), and to form an organisation, or organisations, that can liaise with various kinds of outside groups without being accused of illegitimacy. It is neither possible nor desirable to eliminate all internal group dissensus, however the community would benefit from managing disagreement in less acrimonious and undermining ways. Secondly, effort will be required from civil society and NGOs to work with these organisations, prioritising building their capacity to pursue their rights and interests without formal assistance. CEMIRIDE are a model organisation in this regard.

The research

As with all research projects, there have been significant limitations to this one, and areas of further investigation that have the potential to significantly enrich the analysis put forward here, and extend the various literatures with which this thesis engages.

On an empirical level, research with the rural Nubian settlements in Kenya would represent an important extension of this research. The urban influences on the Nubian community in Kibera, who have been the primary subject of analysis here, render their case unique and distinct from their up-country cousins. The limited amount of research I was able to conduct with up-country Nubians suggested that they share many of the challenges of Nairobi's Nubians (discrimination in access to ID cards, lack of collective recognition, insecurity of land tenure), however, their level of development and capacity to engage local decision makers or civil society appear to be (with the exception of the community in Kisii) even lower than Nubians of Nairobi. Furthermore, rural Nubians are in a different position from Nairobi's Nubians insofar as they live in more ethnically homogenous areas, as opposed to cosmopolitan Nairobi. The implications of these differences on the analysis presented here would be extremely interesting.

Similarly, a comparison of the political lives of Nubians in Kenya with that of Nubians in Uganda could potentially be very illuminating. The Nubians of Uganda, with the exception of the Amin and immediately post Amin period, have been much better integrated into the national community than those in Kenya. They have not had difficulties identifying as Ugandan citizens, and nor have they had problems securing their land tenure. Like Kenyan Nubians, there are large communities living on land that was originally settled by the

KAR, most notably in Bombo. Other studies suggest that Ugandan Nubians have a more flexible identity, retaining greater attachments to the clans or tribes of their Sudanese forefathers, and allowing outsiders in and out of the community with greater ease (Wanji 1971; Kokole 1985, 1995; Leopold 2006). The extent to which the Kenyan Nubians' greater degree of homogenous ethnic identification is related to their more fragile and precarious place in the Kenyan political community would constitute a particularly interesting area for future research in terms of what it can tell us about the effects of different models of recognising ethnic diversity in Kenya and Uganda.

One final area of empirical research that is particularly urgent in the case of Kenyan Nubians is research into models or experiments in land sharing that enable recognition of a unique but not exclusive connection to land. Of all the challenges facing the Nubians the struggle over land in Kibera is the most pressing and the most unlikely to achieve success (perceived as exclusive land title). Ways in which this dilemma could be mitigated by guaranteeing security of tenure for the community, and the symbolic but still important recognition of Kibera as the site of Nubian heritage, ancestry and culture, but without disadvantaging the other vulnerable residents of Kibera are desperately needed.

On a more thematic level, further empirical research into acts of moral inter-ethnicity could shed light on the notion in not only empirical but also conceptual terms. Further investigation into inter-ethnic negotiation, inter-ethnic solidarity, hospitality or sanctuary, and cultural exchange would be useful, and there are sure to be other modes of moral inter-ethnicity. Particular attention should be paid in any such studies to the actual content of what I have called moral communal norms, and the conceptual as well as actual possibility of translation of these norms outside the ethnic community, that is, the theoretical possibility of the translation of parochial communal norms into truly civic norms. The intention should not be to sustain a false dichotomy between civic and ethnic citizenship, but rather to explore the middle ground, retaining an understanding of civic as pertaining to wide communities of relatively abstract shared identity, but without being pejorative about or undervaluing norms of the ethnic community.

Ideally, further research into moral inter-ethnicity could make a valuable contribution to the extension and elaboration of research into the politics of recognition. This field should continue to extend beyond the bounds of liberal democracies of the global North and into other regions where, like in Kenya, recognition of diversity is already part and parcel of

existing political communities. Research that enables us to better understand how the analysis here applies to other democracies in which recognition of diversity is the norm would be helpful in this regard, and would allow the further development of normative political democratic theory as it relates to identity and difference.

In the introduction, I defended the methodological incorporation of empirical research and theory by referring to Charles Taylor (1985:92), who said, “part of what is involved in having a better theory is being able more effectively to cope with the world. We are able to intervene successfully to effect our purposes in a way that we were not before”. The hope of this thesis is that it has generated an understanding of the deficits in the Nubians’ political condition, and some insights into the effectiveness and political and moral desirability of different remedial strategies.

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~Appendix 1~

Methodology

1.0 Data collection

The data used in this thesis was gathered in a number of ways, each of which contributed something different to my general understanding of the Nubians' citizenship in Kenya. The main source of data was interviews and observation with the Nubian community. For details on the interviews, please see further below in this appendix. These interviews were very significantly complemented by a reasonably lengthy period of observation, described in the introduction. I spent seven months in Nairobi in 2009, and another month in 2011, during which time I spent most days in Kibera (while living elsewhere in Nairobi), and attended all the major community events, and many social events such as weddings. The time I spent simply sitting around with friends, youth groups, women's' groups, or wandering through Kibera was extremely illuminating. Without it I would never have come to understand that the land issue is the most important to the Nubians – far more important than their problems with ID cards. Nor would I have been able to establish the relationship required for productive interviews, and the background knowledge to know what questions to ask, and understand the responses. Inevitably there is still much I do not understand, but there would certainly be more without this time I spent 'observing'. These observations were recorded daily in typed field notes, and my more personal reflections on what it all might mean, and how I thought and felt about what I had seen, were recorded in a personal diary. It was in the process of writing these notes and the diary that most of my thinking developed in the field.

In addition to formal interviews, I also met with other relevant actors, including the Kenya National Commission of Human Rights, KHRC, CEMIRIDE, Kituo cha Sheria, the Open Society Justice Initiative (in New York – a phone discussion), and the Open Society Initiative for Eastern Africa (in Nairobi). My discussions with representatives of these organisations significantly informed my understanding of the Nubians' citizenship status, and the more general problems with ID cards facing minority non-indigenous groups

across Kenya. Without the generous input of people from these organisations, especially Korir Sing'Oei from CEMIRIDE, and Adam Hussein Adam and Sebastian Kohn from Open Society, it is likely that I would still be confused on many legal and administrative aspects of the Nubians' statelessness.

2.0 Research ethics

This research – including methods, broad interview questions, sampling, recruitment procedures, and data management - was approved in advance by the Monash University Standing Committee on Ethics in Research Involving Humans (SCERH, approval and project number CF09/0068 – 2009000027). However, I believe the ethical considerations entailed in conducting research with the Nubians go beyond these aspects of research.

The ethical obligations of research and theorising a vulnerable community, or one which is 'Other' to the researcher and of which she may have little understanding at the outset, go beyond the 'do no harm' that was the mantra of research throughout most of the twentieth century. The Nubians constitute a vulnerable community both because of their poverty and because of their powerlessness and marginalisation. Tuhiwai Smith (2005:97) explains the particular ethical obligations inherent in such a situation,

For indigenous and other marginalized communities, research ethics is at a very basic level about establishing, maintaining, and nurturing reciprocal and respectful relationships, not just among people as individuals but also with people as individuals, as collectives, and as members of communities, and with humans who live in and with other entities in the environment.

Similar statements have been made in relation to researching refugees (Jacobsen & Landau 2003; Donà 2007; Mackenzie et al 2007; Hugman et al 2011). Much of this concern stems from the historical experience of researching colonised peoples. Contemporary anthropology, for example, is acutely aware of the role it played as a discipline in preparing and sustaining Other peoples for colonisation and oppression by rendering them knowable (Clifford 1986; Geertz 1988; Tuhiwai Smith 1999, 2005; Davies 2008). The construction of knowledge carries with it responsibility which has historically been abused. This history, common amongst the world's vulnerable populations, combined with the unequal power relations that exist between the researcher and researched in such populations, necessitates a higher level of consideration for the participants and their wider communities during the research process, and a greater amount of reflexivity about the interpretation of the data and the dissemination of the ensuing theory.

This is particularly difficult to achieve, and therefore particularly important if the researched community is ‘Other’ to the researcher and to the more academically powerful and influential global North in general, as is the case with this research. Critically reflecting on the role research played in colonisation, and still plays too often today, Tuhiwai-Smith (1999:5) argues that, “...research is not an innocent or distant academic exercise but an activity that has something at stake and that occurs in a set of political and social conditions.” This stance requires us to take seriously not only our own reflections, but also and more importantly, the concerns of the researched in the interpretation and presentation of the research. Geertz (2000:16) captures the difficulty of ethically researching ‘the Other’ when he says, “To see ourselves as others see us can be eye-opening. To see others as sharing a nature with ourselves is the merest decency.” Geertz is pointing here to both the utility and ethical necessity of recognising not only the differences between us and the ‘Other’, but also the commonalities. To recognise our shared humanity in practice is always context specific, however generally it requires us to take seriously the requirement to respond with integrity to questions such as “whose research is it? Who owns it? Whose interests does it serve? Who will benefit from it? Who has designed its questions and framed its scope? Who will carry it out? Who will write it up? How will its results be disseminated?” (Tuhiwai Smith 1999:10). Practically speaking, this means involving the participants in the planning, conduct, interpretation and dissemination of research as much as possible, and doing so in a context-sensitive manner.

In this research project, I endeavoured to do this in a number of ways. Recognising that the community will inevitably feel broadly represented in the outputs of this project, I sought consent for participation not only from individual participants, but also from community leaders. At all times I attempted to communicate in ways that were meaningful to participants, and I was always forthright and honest about the aims and the possible outcomes of the research, making special effort to respond honestly to expectations in relation to financial assistance or improvements in access to land and citizenship, the major concerns of participants. I also tried to make the research aims, outcomes and process clear to all who were interested by holding a community workshop before leaving Kenya in October 2009, which was attended by about 30 people, and a similar workshop to communicate the preliminary direction of my thesis in April 2011, again attended by about 30 people. I will conduct a similar workshop in January 2012 upon completion of the thesis. Though I cannot claim to have succeeded in making my research clear to all

concerned, I attempted wherever possible to respond to the challenge “to demystify, to decolonize” (Tuhiwai Smith 1999:16).

(continues over page)

3.0 Interviews

3.1 Individual interview data

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
1	14 Apr 2009	Her home, Kibera	Mama Jonuba*	Y	F	80+	Y	Kibera	
2a	21 Apr 2009	KNCE Office, Makina Mosque, Kibera	Yusuf Ibrahim Diab	N	M	60+	Y	Kibera	Secretary of KNCE
2b	19 May 2009	KNCE Office, Makina Mosque, Kibera	Yusuf Ibrahim Diab	As above					
2c	7 Sep 2009	KNCE Office, Makina Mosque, Kibera	Yusuf Ibrahim Diab	As above					
2d	31 Mar 2011	KNCE Office, Makina Mosque, Kibera	Yusuf Ibrahim Diab	As above					
3	26 Apr 2009	Private home, Kibera	Hassan*	N	M	30-40	Y	Kericho	

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
4	28 Apr 2009	Youth group office, Kibera	Haidar	N	M	30-40	Y	Kibera	Aspiring politician, civil society member and local Nubian youth group patron
5	28 Apr 2009	Youth group office, Kibera	Ramathan	N	M	20-30	Y	Kibera	Prominent member of Nubian youth group
6	6 May 2009	Tea shop, Kibera	Hassan	N	M	30-40	Y	Kibera	Prominent member of Nubian youth group
7a	13 May 2009	KLC Office, Kibera	Jamaldin Yahya	N	M	60+	Y	Kibera	Secretary of the KLC
7b	7 Oct 2009	Private home, Kibera	Jamaldin Yahya						
8	14 May 2009	Private home, Nairobi	Charles*	N	M	20-30	N	Kibera	

Interview Number	Date	Location	Name / Pseudonym*	Interpreter⁺	Gender	Age	Nubian	Place of Residence	Other
9	18 May 2009	Tea shop, Kibera	Mohamed*	N	M	60+	Y	Kibera	
10	20 May 2009	Tea shop, Nairobi CBD	Daffalla and Rashid	N	M	20-30	Y	Kibera	Prominent members of Nubian cultural group
11	29 May 2009	Private home, Kibera	Aba Segia	Y	F	80+	Y	Kibera	Activist, prominent member of Nubian activist groups
12	5 Jun 2009	Toi Mosque, Kibera	Amadi	N	M	30-40	Y		
13	6 Jun 2009	Tea shop, Nubian village, Eldama Ravine	Zainab	N	F	20-30	Y		
14	6 Jun 2009	Tea shop, Nubian village, Eldama Ravine	Aziz Juma	N	M	60+	Y	Kericho	

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
15	6 Jun 2009	Private home, Nubian village, Eldama Ravine	Mzee Hamis Juma	Y	M	80+	Y	Eldama Ravine	
16	7 Jun 2009	Tea shop, Nakuru	Abu Bakar Bilal	N	M	40-50	Y	Nakuru	Member of Supreme Council of Kenya Muslims, and local Islamic youth group
17	7 Jun 2009	Mosque, Nakuru	Sheikh Nasoro Hamisi	Y	M	60+	Y	Nakuru	Sheikh at Nakuru mosque
18	8 Jun 2009	His office, Kericho	Omar Nasur	N	M	60+	Y	Kericho	Prominent local leader
19	8 Jun 2009	Private home, Nubian village, Kericho	Amina Omar	Y	F	20-30	Y	Kericho	

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
20	9 Jun 2009	Private home, Nubian village, Kibos	Fatuma Hamis Mzee Mustafa Hamis Halima Adam Toma Ali Saida Abdallah Hadijia Rajab Siyama Hamis Khalsum Bashar Kadimala Ahmed Zuhura Shaban Fatuma Hamis	Y	F M F F F F F F F F F	30 - 80+	Y	Kibos	
21	10 Jun 2009	Nubia Hall, Kisii	Al-Hajj Ramadhnan & approximately 30 other Nubians	Y	M & F	30 – 80+	Y	Kisii	Al-Hajj Ramadhnan is a local religious leader
22	10 Jun 2009	Private home, Kisii	Ismail Ali	Y	M	60+	Y	Kisii	

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
23	19 Jul 2009	Private home, Nakuru	Amina Asmani Yusuf	Y	F	60+	Y	Nakuru	
24	14 Aug 2009	Café, Nairobi	Adam Hussein Adam	N	M	40-60	Y	Nairobi^	Statelessness and Citizenship project officer, OSIEA; co-founder of CEMIRIDE
25	20 Aug 2009	Café, Nairobi	Benjamin Ayimba	N	M	30-40	N	Nairobi	Born and raised in Kibera
26	30 Aug 2009	Mosque, Kibera	Zuhura	N	F	30-40	Y	Kibera	Member of Nubian pressure group
27	31 Aug 2009	NGO office, Kibera	Msera*	N	M	20-30	N	Kibera	Local journalist
28	1 Sep 2009	Private home, Kibera	Amina*	N	F	40-50	Y	Kibera	

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
29	2 Sep 2009	Mosque, Kibera	Abdulkadir*	N	M	20-30	Y	Kibera	
30	3 Sep 2009	Private home, Kibera	Muhidin Ebrahim Doka	N	M	60+	Y	Kibera	
31	5 Sep 2009	Mosque, Kibera	Jamia Abdul Rahim	N	F	40+	Y	Kibera	
32	9 Sep 2009	KNCE Office, Makina mosque, Kibera	Issa Abdul Faraj	N	M	60+	Y	Nairobi	Chairman of KNCE
33	9 Sep 2009	Private home, Kibera	Asha*	Y	F	60+	Y	Kibera	
34	16 Sep 2009	Youth group office, Kibera	Mohamed Abdulahi Mohamed	N	M	20-30	Y	Kibera	Prominent member of Nubian youth group
35	17 Sep 2009	Private home, Kibera	Mariam Yahya	N	F	60+	Y	Kibera	

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
36	18 Sep 2009	Tea shop, Nairobi	Sudi Mohamed Ali	N	M	20-30	Y	Nairobi	Member of local youth group in Kibera
37a	20 Sep 2009	Private home, Kibera	Zaid	N	M	30-40	Y	Kibera & Nairobi	
37b	26 Sep 2009	Private home, Kibera	Zaid				As above		
37c	17 Oct 2009	Private home, Kibera	Zaid				As above		
38a	22 Sep 2009	Private home, Kibera	Ibrahim*	N	M	50-60	Y	Kibera & Nairobi	
38b	26 Sep 2009	Private home, Kibera	Ibrahim*				As above		
38c	3 Oct 2009	Private home, Kibera	Ibrahim*				As above		

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
39	24 Oct 2009	Private home, Kibera	Mohamed Jaffer Jikalo	N	M	30-40	Y	Kibera	
40	25 Sep 2009	Tea shop, Nairobi	Abbas Kenyi Suleiman	N	M	30-40	Y	Peri-urban Nairobi	
41a	27 Sep 2009	Place of employment (retail store), Nairobi	Makkah Yusuf Asman	N	F	20-30	Y	Kibera	
41b	8 Oct 2009	Place of employment (retail store), Nairobi	Makkah Yusuf Asman				As above		
41c	23 Oct 2009	Place of employment (retail store), Nairobi	Makkah Yusuf Asman				As above		
42	27 Sep 2009	Pamoja FM Studio, Kibera	Adam Hussein Adam	N	M	60+	Y	Kibera	Head and founder of Pamoja FM

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
43	30 Sep 2009	Pamoja FM Studio, Kibera	Mohamed F. Ahmed	N	M	20-30	Y	Kibera	Aspiring journalist
44	1 Oct 2009	Private home, Kibera	Zeddy	N	F	50-60	Y	Kibera	
45a	2 Oct 2009	Pamoja FM Studio, Kibera	Fatuma*	N	F	30-40	Y	Nairobi	
45b	9 Oct 2009	Pamoja FM Studio, Kibera	Fatuma*						As above.
45c	23 Oct 2009	Pamoja FM Studio, Kibera	Fatuma*						As above.
46	5 Oct 2009	Café, Nairobi	Fatuma Abdul Rahman (Kuli)	N	F	30-40	Y	Kibera	Activist, prominent member of Nubian activist groups

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
47	6 Oct 2009	Private home, Kibera	Zamzam Yusuf Mariam Yusuf Abdul Marjid Ramadhan	N	F F M	20-30 20-30 50+	Y	Kibera	
48	8 Oct 2009	Place of employment (NGO office), Nairobi	Husna Mabruka hassan	N	F	30+	Y	Nairobi	Member of Haiba Foundation (Nubian NGO)
49a	8 Oct 2009	Café, Nairobi	Ismail Ramadhan	N	M	60+	Y	Kibera & Nairobi	
49b	1 Apr 2011	Café, Nairobi	Ismail Ramadhan						
50	10 Oct 2009	Café, Nairobi	Gore Mohamed	N	M	40-50	Y	Kibera	Elected Nairobi City Councillor for Makina ward
51	21-22 Sep 2009	Pamoja FM Studio, Kibera	Ali Rehan	N	M	50-60	Y	Kibera	Radio presenter (Pamoja FM)
52	29 Mar 2011	District Officer's Office	Ibrahim Doka Abdallah Sebit	N	M M	60+ 60+	Y Y	Kibera Kibera	

Interview Number	Date	Location	Name / Pseudonym*	Interpreter ⁺	Gender	Age	Nubian	Place of Residence	Other
53	15 Apr 2011	City Hall, Nairobi	Alhad Ahmed Adam (Babu)	N	M	30-40	Y	Kibera	Elected Nairobi City Councillor for Lindi Ward
54	18 Apr 2011	Café, Nairobi	Prof Yash Pal Ghai Jill Cotrell Ghai	N	M F	60+	N	Nairobi	Legal and constitutional experts
55a	19 Apr 2011	Café, Nairobi	Ibrahim*	N	M	60+	Y	Nairobi	
55b	21 Apr 2011	Café, Nairobi	Ibrahim*	As above					
56	19 Apr 2011	Private home, Kibera	Abdallah Sebit Said Abdul Rahman	N	M M	75 60+	Y Y	Kibera Kibera	
57	20 Apr 2011	Café, Nairobi	Korir Sing'Oei	N	M	30-40	N	Nairobi	Legal scholar & practitioner; co-founder of CEMIRIDE

*indicates pseudonym. For those without pseudonyms, all names are presented here as given to me, with or without surnames as participants wanted. Titles and other identifying information are also displayed by request of the participants. At some points where I have drawn on particularly sensitive interview material, even if someone has chosen not to use a pseudonym, I have deliberately left certain things anonymous

⁺Where interpreters were used, they were to interpret from an interview participant speaking Kinubi and Kiswahili, to the author as interviewer, speaking predominantly in English, with some Kiswahili. As there are no Kinubi interpreters with formal interpreting qualifications, I trained three interpreters, all male, in two intensive sessions, emphasising accuracy and completeness, but also sensitivity and confidentiality. Direct quotes from these interviews are not used at any point in this thesis, in order to avoid potentially inaccurate wording.

[^]Nairobi refers to any suburb in Nairobi, but outside Kibera.

3.2 Interview data summary

Total number of interviews	75
Total number of interview participants	101
Number of Nubian participants	93
Number of non-Nubian participants	6
Number of participants in rural Kenya*	48
Number of participants who live in Kibera permanently	39
Number of male participants	73
Number of female participants	30
Age [^]	
	18-30 14
	31-60 24
	60+ 22

*This is distorted by a large ‘interview’ with approximately 30 people in Kisii, and another one with 10 people in Kibos

[^]This excludes group interviews in Kibos and Kisii in which I was not able to gather age data. Observation suggests ages of these participants were very mixed, covering all these categories.

4.0 Interview Questions

4.1 Generic Interview Questions

1. Tell me about where you were born and where you grew up.
And what do you do now?
2. How did your family come to Kenya?
3. Does anyone in your family own land?
4. Do you have any documents in your family about land? i.e. from when they first came here?
5. How does this (having title deed / not having title deed) affect your life?
6. What are your desires regarding land?
Probe: collective or individual title?
Probe: To which piece of land?
7. If you get given title deed for Kibera, what will you do with the land?
8. What would Nubian land mean to you?
9. What identity documents do you have?
10. Can you tell me, in detail, the process you went to get these / apply for these?
11. If you had problems:
What effect did not getting documents have on your life?
How did you feel about not getting the documents?
12. If you didn't have problems:
What does having an ID card / passport mean to you?
13. Where is the home of the Nubian community?
14. As a Nubian, how do you feel you fit into Kenyan society?
15. How does the national government see Nubians?
16. Do you feel Nubians are recognized as a tribe of Kenya?
17. How do you feel about Nubians being counted as 'Others' in past censuses?
18. What do you think about Nubians' participation in the 2009 census?
19. Are you aware of how the Nubians were counted in the 2009 census?
How did you find out?
20. How do you feel about this new code for Nubians?
21. Have you ever been involved in any community activities? Activism? Formal politics?
22. IF NOT: what are the reasons for this?
IF SO: How do you feel about doing this?
23. What motivated you to do this?

24. How does being Nubian affect your participation in public activities?
25. How does being Nubian affect your participation in politics?
26. What are your hopes for the future of the community?
27. Is there anything else you would like to talk to me about?

4.2 Identity in-depth interview questions

1. What do you think are the defining characteristics of the Nubian community?
2. How are Nubians different from other communities in Kenya?
3. Can you describe the Nubians' contribution to Kenya?
4. What do Nubians in general want from the Kenyan government?
5. What do Nubians in general want from the Kenyan people?
6. What do other tribes in Kenya have that Nubians don't have?
7. What do you think makes an individual Kenyan?
8. How would you prove it?
9. What makes you feel Kenyan?
10. Are there any official mechanisms that contribute towards being or feeling Kenyan? Can you explain their significance? (Probe - ID cards?)
11. What do you think makes a tribe Kenyan?
How would you prove it?
12. What makes a tribe feel Kenyan?
13. Can you explain why it matters to you that Nubians are considered a Kenyan tribe?
14. Are there any official mechanisms that contribute towards a tribe being or feeling Kenyan? Can you explain their significance? (Probe - Census? Gazette? Land?)

4.3 Land in-depth interview questions

Personal History

1. What land do you currently live on and how did you come to live there?
2. What other pieces of land have you lived on, and how did you come to live there?
3. If own other land – why did you buy other land?
Why did you choose that place?
Can you describe your attachment to that land?

Community land ownership

4. How many Nubians do you think own land in Kibra?
How did they get it?
How do you feel about them having it?
5. How many Nubians do you think own land outside Kibra?
How did they get it?

Where?

Why?

Title Deeds

You said you would want individual / communal title deed.

6. IF COMMUNAL: What is your understanding of how communal title deed would work?

What are the criteria you would want for people who hold the trust?

How would the sub-division of the land be managed? How big do you think each person's / family's portion would be?

Would it be based on existing land use, or blanket equity?

How would disputes be managed?

7. IF INDIVIDUAL: How would you see the future of your plot in terms of ownership? (i.e. sell, or pass on to future generations)

Development

8. How did Kibra come to be a slum? (Can you explain Jenga yangu jenga yako [build mind, build yours]?)

9. Most people say they would build permanent structures once title is received. Can you describe what you would build on your plot?

Where would the funds come from?

How many rooms would you rent out? At what cost? How would you select tenants?

How would you manage existing tenants who cannot afford the new rent?

10. How would you expect the infrastructure to be developed?

11. What public services do you think would emerge? (e.g. schools, clinics, etc.)

How would these emerge? Who would fund them?

How would these public services be managed?

12. Aside from services, are there any other public areas you would like to see in the redevelopment?

Why? How do you think they would be used?

How would it be decided where and how to develop them?

Nubian Land

13. You said Nubian land would mean a lot to you. Aside from the economic benefits, and the security of tenure, are there other reasons for this?

(Probe - Can you explain the significance of having your cemetery here?)

(Probe - Can you explain the significance of land to other tribes in Kenya?)

14. How would you feel about Nubians being settled on alternative land outside Kibera?

15. How would you feel about Nubians being disbursed, either around Nairobi or Kenya?

4.4 Political life in-depth interview questions

1. Describe how you think decisions are made in the community.
How do you feel about this?
Do you participate in decision making? How?
Why / why not?
How do you feel when you participate / when you're excluded?
2. What do you think are the major organizations or groups in the community?
3. Who do you think are the most influential people in the community?
How did they achieve such influence?
What characteristics do they have that other people respect or admire?
4. Can you tell me about Yunus Ali?
Since he passed away, what is the state of the leadership of the community? (who?)
What are the strengths and weaknesses of the current leadership?
Why do you think the current leaders took up these positions?
How is succession managed in the community's leadership? Why is it managed this way?
What role do you think leadership does or should play in the community?
5. How do you consider your personal place in the community?
How do you feel about your place in the community? Are you satisfied with it?
Why/why not?
What enhances (or would enhance) your voice in the community (whether you want that or not)?
6. You are a particularly articulate member of the community. How does the average person in the community involve themselves in the life of the community?
7. Who are the most marginalized people in the community?
Why? What characteristics do they have that make them marginalized?
8. What effect do you think educational levels have on a person's place in the community?
9. Describe the role of women in the Nubian community.
Are women involved in community activities? Decision making? How?
Do you think the place of women in the community is changing? How? Why?

4.5 Interview questions for people of non-Nubian ethnicity

1. Tell me about where you were born and where you grew up.
And what do you do now?
2. What do you know about the history of Kibera?

3. What do you know about the housing situation in Kibera? i.e. who owns and rents the structures?
4. Have you had much contact with the Nubians? What are your impressions of them?
5. What else do you know about the Nubians?
6. When you think about the Nubians, where do you think their home is?
7. Are Nubians involved much in the wider community?
8. Are Nubians involved much in politics?
9. Do you consider Nubians to be Kenyan?
10. How are the Nubians different from other tribes in Kenya?
11. What do you think makes someone Kenyan?
12. How would you prove you are a Kenyan?
13. What do you think makes a tribe Kenyan?
14. How would a tribe prove they are Kenyan?
15. Is there anything else you would like to talk to me about?