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Indigeneity and Kenya's Nubians: seeking equality in difference or sameness?

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ABSTRACT

Recent studies of indigeneity in Africa have highlighted the problematic nature of the concept in a continent where it is difficult to determine which groups have temporal priority in a given location. These studies have suggested, with varying degrees of criticism, that indigeneity in Africa is a strategic identity deployed to attain a special status and associated benefits, often to remedy past harms. This article agrees that indigeneity is an act of positioning, but suggests that in the Kenyan context it can be deployed in another way as well, that is, as an act that seeks *equal* rather than *special* positioning within the dominant population. In this case indigeneity is not a special 'slot' but rather the norm. The article illustrates this by drawing on research with the Nubian community of Nairobi who seek to shed their ethnic stranger status and instead position themselves as indigenous to Nairobi in order to access the same quality of citizenship as that enjoyed by Kenya's '42 tribes'.

The indigenous peoples' movement and academics concerned to ensure their work advances the rights, as well as the social, economic and political position of indigenous groups they work with, commonly consider indigeneity to be a special status. In these circles indigeneity is an identity associated with marginalised groups who have a unique way of life, and who require special protection of that way of life, and of the integrity and survival of their community (Saugestad 2001: 301, 305). Kuper (2003) famously problematised this notion as a patronising, essentialising and anti-democratic fantasy based on factual inaccuracies, suggesting that assertions of indigeneity can be instrumental at best, and divisive at worst. Based on a meaningful engagement with

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indigeneity as a powerful political tool, often used by minorities as a strategy to emerge from marginalisation, few Africanists are willing to concede that indigeneity is meaningless, and for many good reasons (Barnard *et al.* 2006). Nevertheless, there is widespread acknowledgement that it is difficult to determine who is indigenous in the continent, particularly if temporal priority is a criterion. This article explores the challenges this presents for understanding indigeneity in Africa. In doing so this article seeks to shed light on a praxis of indigeneity in Kenya that is different from that which dominates studies of indigeneity in the continent.

In relation to Kenya I argue that indigeneity is not only a *special status* associated with marginalised minorities but can also be, and is more commonly, *the norm*. Ethnic groups cannot enjoy full Kenyan citizenship equally with others unless they are implicitly considered one of the '42 indigenous tribes' (Balaton-Chrimes 2011). As such, this article presents two particular challenges. The article seeks to encourage a more critical approach to indigenous identities and policies that engage them either implicitly or explicitly, an approach more attuned to the anti-democratic potential of such an identity, but without dismissing it as meaningless or entirely undesirable. The second challenge is to scholars of politics and inter-ethnic relations in Kenya. While most attention to ethnicity in Kenya has focused on inter-ethnic tensions and violence, this article seeks to emphasise a more deeply and insidiously divisive identity linked to ethnicity: the divide between indigenous ethnic groups and ethnic strangers.

This article explores this political dynamic through the case of the Nubians in Kenya. The Nubians trace their origins to 18th century quasi-enslaved armies of Egypt and Sudan, having migrated to Kenya in the British colonial armed forces (Parsons 1997; Johnson 2009; De Smedt 2011). They formed the backbone of the early colonial military, a mode of introduction to Kenya which has had long-term consequences for their place in the country. Many Nubians understand themselves as indigenous to Kibera, Nairobi. In their claim to be recognised as the 43rd tribe of Kenya the Nubians assert their (ethnic) difference in order to reinforce their (indigenous) sameness. The Nubians perceive that if they achieve such recognition they will be able to access equal citizenship, including education and employment quotas, administrative and electoral influence, and land. In making these arguments, I emphasise that in Kenya claims for recognition of indigeneity are therefore not only claims for special or different treatment, but can also be claims for equality and sameness (cf. Taylor 1994: 39–43).

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This argument is informed by 8 months of semi-ethnographic observation and over 100 interviews conducted from 2009 to 2011 with Nubians and the non-governmental organisations (NGOs) supporting them. The emphasis in my analysis is on the Nubians' *experience* and *interpretation* of their position in the Kenyan political community. In taking this bottom-up methodological approach I seek to understand ways in which meta-norms and practices are appropriated or rejected by ordinary individuals and communities, thereby contributing a more socially embedded understanding of the meaning of citizenship and indigeneity in people's lives and experiences of politics (cf. Ndegwa 1997: 600). The argument is illustrated by referring to this one pertinent example of the Nubians, but the intention is not to suggest that the Nubians are the only minority or disadvantaged ethnic community in Kenya.

I first explore the prevailing notion of indigeneity in African studies, and then go on to explore the Nubians' status as ethnic strangers in Kenya, elaborating on the citizenship deficit they suffer as a result, and focusing on participation and engagement in politics, as well as access to resources. Finally, I apply the discussion of the Nubians to notions of indigeneity as special status, as opposed to notions of indigeneity as the norm, drawing out the anti-democratic and exclusionary tendencies of this form of indigeneity.

INDIGENEITY

After two United Nations (UN) decades of Indigenous People, and the adoption of the UN Declaration on the Rights of Indigenous Peoples in September 2007, there is still no accepted definition of the term 'indigeneity'. Early in the 1980s, the first UN Decade of Indigenous People, the emphasis within the context of debating a definition was on occupation of an area pre-invasion and ongoing distinction from the mainstream community in terms of way of life and socio-economic condition. 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 a source of contention (Kenrick & Lewis 2004; Igoe 2006).[1] As Africans came to the table with the UN Working Group on Indigenous Populations from the 1990s they sought to shift the definitional emphasis from temporal priority, which was difficult to prove and did little to distinguish between African groups, to self-identification, marginalisation and non-dominance (Saugestad 2001; Hodgson 2002; Sylvain

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2002; Karlsson 2003; Hodgson 2011: 75–6). It is now widely (though not universally) accepted that indigeneity is not an essential(ising) cultural label, but rather a relational concept denoting a particular relationship between marginalised minorities and the state (Saugestad 2001: 306; Barnard 2006; Barnard *et al.* 2006).

The absence of any essential(ised) criteria to determine indigeneity has led to the characterisation of the term as polythetic in nature, meaning there are neither necessary nor sufficient conditions for its use (Saugestad 2001: 306; Barnard 2006: 7; Igoe 2006). This character lends the term well to strategic deployment as marginalised groups seek to improve their position vis-à-vis other citizens and the state. The international indigenous peoples' movement has gained significant momentum and worked with a number of African groups to achieve recognition from international bodies as indigenous, and subsequently grant them access to assistance from international donors and NGOs, and sometimes land rights, development resources and new channels of patronage (Geschiere 2009: 66–96; Hodgson 2011: 63–104; Lynch 2011a: 148). Consequently, the international indigenous movement constitutes an attractive arena for the practice of extraversion, of looking beyond the local and out to the global, actively forging relations of various degrees of beneficial dependence (Bayart 2000; Igoe 2006).

Indigenous status is therefore sometimes characterised as a status entailing 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 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.

This has led Kuper (2003) to criticise the indigenous peoples' movement as the product of ambitious and sometimes self-serving NGOs, and the notion of indigeneity as meaningless.[2]

However, Kuper fails to appreciate that the benefits sought through identification as indigenous can be understood not so much as *superior* to those of other citizens, but rather as remedial. Indigenous identity can

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then be understood, at least in part, as an affirmative action strategy aimed at achieving equality for communities who have typically suffered historical marginalisation and material deprivation. As Kenrick puts it, 'these are not "special rights", only special circumstances' (Barnard *et al.* 2006: 20). Given their historical disadvantage and the increasing benefits associated with indigenous status, it is unsurprising that groups such as the San in Southern Africa (Sylvain 2002; Barnard 2006), Maasai in Tanzania and Kenya (Igoe 2006; Hodgson 2009, 2011), Endorois in Kenya (Sing'Oei 2011; Lynch 2012), or the Mbororo in Cameroon (Pelican 2009) have sought to 'brand' themselves as indigenous in order to access these benefits (Comaroff & Comaroff 2009).

Nevertheless, even when asserted to achieve not prestigious rights or superior status, but to pursue remedy for past injustices, the prevailing understanding of indigeneity in Africa is one that emphasises the politics of *difference*. It is an approach which sets indigenous people up as citizens plus and emphasises the 'special problems, and therefore special needs' of 'a special type of traditional community' (Saugestad 2001: 301, 305).[3] Prevailing studies of indigeneity that endorse the recognition of indigenous identities do so on the basis that equality requires equal recognition of different, authentic identities, as opposed to equality based on the 'dignity' principle, which tends towards a universalising approach to equality, one that resists acknowledging difference for fear it will undermine equality (Taylor 1994: 27).

One way of articulating this approach is through the 'native slot' thesis. This thesis sees self-identifying indigenous groups as reaching out to fill the 'native slot', the space made available by anthropology, and more recently by the international indigenous peoples movement, for people with certain characteristics to obtain a particular status (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 strategic positioning (Li 2000; Hodgson 2011: 4–9).

In Kenya groups like the Maasai, Ogiek and Endorois claim the 'special' indigenous status, connecting themselves to the global indigenous peoples' movement (Wachira 2008; Lynch 2012). The 2010 Kenyan constitution also adopts the 'special' understanding of indigeneity, focusing on protecting cultural and especially ecological rights. Section 260 defines *marginalised communities* as including, among other categories, 'an indigenous community that has retained and maintained

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a traditional lifestyle and livelihood based on a hunter or gatherer economy'.

However, two quite different conceptions of indigeneity are in operation simultaneously in the country. Standing in some tension with the 'special' understanding of the term, there is a second meaning given to indigeneity in Kenya. Indigenous people in Kenya are not only those who are defined by marginalisation, self-ascription or non-dominance. Rather first-occupation in the sense of having been a 'tribe of Kenya' when Kenya as such came into being seems to be the more common requirement for identification as indigenous. Temporal priority, albeit in a quite generalised form, has not vanished from the praxis of indigeneity in Kenya. Consequently *most* (but not all) of the population fall into one of the '42 tribes' and are implicitly considered indigenous.[4] The idea that 'all Africans are indigenous' is often brushed over as only a weapon wielded by African states who are reluctant to grant affirmative action-type rights to minority indigenous groups, when in fact, the implications of this idea for contemporary politics deserve more attention (Hodgson 2009: 18).[5]

There are numerous well-known examples of oppression, violence and even crisis that have their origins in the privileging of indigeneity as a precondition for citizenship in Africa. Groups who are not only ethnically but also racially distinct from the mainstream population typically suffer the most from such a political culture. The expulsion of Asians from Uganda under Idi Amin is only the most dramatic example of the lesser political status of Asians in East Africa, mirrored by similar scenarios for Arabs, and in West Africa for Lebanese, among others (Shack & Skinner 1979; Dorman *et al.* 2007). As this logic has gained momentum, lines of indigeneity are drawn closer and closer to home and used to divide even racially similar groups, usually along ethnic lines. In the Democratic Republic of the Congo and Ivory Coast we witness the exclusion of certain groups at increasingly local levels – the district, the village – and with such severity that those who are not able to prove indigenous (or even autochthonous) descent find their very right to residence under threat, often in the place they were born and raised (Jackson 2006, 2007; Marshall-Fratani 2006).

As in these examples indigeneity in Kenya is more often the norm than the special exception. It is not only a status that entails special rights (certainly not to accommodation akin to self-determination, as Kymlicka observes); nor is it only a status aimed at remedying past injustices by asserting *special* rights and seeking *special* assistance. Rather, it is more commonly a status denoting *equality in sameness* (rather than difference)

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and rightful belonging to the Kenyan nation. Recognition as an indigenous tribe therefore has important repercussions for meaningful access to the rights and benefits enjoyed by the majority of Kenyans. The extent to which this is so is illuminated by an examination of a community who are excluded from this belonging regime. The Nubians are peculiar strangers in that they are racially the same as 'indigenous' Kenyans – black African – while many of the more iconic strangers are racially different (Asians, Arabs). Nevertheless, the political problems the Nubians experience, and their responses to them, are still demonstrative of a broader political culture in which indigeneity is a precondition for belonging and equal citizenship.

ETHNIC STRANGERS: THE NUBIANS AS NON-INDIGENOUS OTHERS

The distinction between settler and 'native', citizen and subject, is often talked about as the paradigmatic distinction of colonial African history (Mamdani 1998, 2001). White settlers were governed by civil law as civic citizens, while Africans were governed by customary authorities, differentiated horizontally on the basis of ethnicity. Africans were ethnic citizens, but in the civic sphere only subjects (Mamdani 1996). However, this is a binary order in which a number of African communities, including 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 nor were they straightforward 'natives', subjugated where they were found. He calls them subject races (Mamdani 1998, 2001).

Subject races were those who were, under colonial law, hierarchically inferior to white settlers, but superior to Africans. They were colonised, not coloniser. In this category Mamdani (2001: 656–7) 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 often through theories of racial superiority (for example 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. In Kenya, while Africans in reserves were subject to despotic customary authorities, according to Mamdani subject races were homeless, rootless and, though governed by civil laws, lacking in both civil *and* ethnic rights, notably customary rights to land (Mamdani 1998: 5–6). In the post-colonial era, with their legal

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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 post-colony (Mamdani 1998: 5; Manby 2009a: 37–95).

Nubians can be considered something like a subject race turned ethnic stranger.[6] A proper extension of the category of subject race to the Nubians requires some further explanation. Mamdani (2001: 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. Through the first half of the 20th century Sudanese soldiers (as they were called then) who had completed their military service 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. It is an area which is now one of Kenya's most notorious informal settlements, the majority of whose present inhabitants are non-Nubian. The Nubians' particularly controversial military role exacerbated the contradictions of their status. As such they are a more distinctive 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; Dorman *et al.* 2007). During the colonial era there was some degree of preferential legal and economic treatment, but they were not subject to civil law exclusively – Nubians in Kibera were first subject to military regulation, and only came under civil rule in 1928. Even then they were categorised as 'detribalised natives', subject to *ad hoc* locality-specific native by-laws (cf. Burton 2001, 2003; Ocobock 2006). 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 had 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. 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, the Nubians were in a particularly difficult category

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(cf. 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 strategies by which other, racially different kinds of strangers got by (cf. Skinner 1979: 285).[7] It is this distinction between stranger and indigenous that has most coloured the Nubians' experience and interpretation of political exclusion and social isolation.

The Nubians interpret the political, social and economic disadvantages described in what follows as being on-going cause and effect of their perceived non-indigenous status. Furthermore, it is the Nubians' glaring ethnic stranger status that makes this case different from others in Kenya where claims for indigenous status have been of a different nature. Claims to an indigenous identity by groups like the Endorois, Ogiek and Maasai are not to combat perceptions that these groups do not belong in Kenya, perceptions of foreignness. They are *special status* claims by groups seeking to mark themselves as *distinct* from a larger group like the Kalenjin, who are 'indigenous' in the *normal* sense rather than the special sense. In contrast the Nubian case illuminates the profound reach of notions of indigeneity as the norm, as a criterion for membership in the national political community.

NUBIANS' PERCEIVED DISADVANTAGE

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 alongside passports, as they are required to go through additional vetting processes (Kenya National Commission of Human Rights 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, via an *ad hoc* arrangement with the Minister for Immigration and Registration of Persons whereby Nubian elders are now involved in the vetting. This has improved Nubians' access to citizenship, and a recent study found that 87% of Nubians now have ID cards (Open Society Justice Initiative (OSJI) 2011c). However, as long as this arrangement is *ad hoc* and more importantly, as long as the Nubians

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continue to be vetted on the basis of their (non-indigenous) ethnicity, discrimination remains and statelessness is still a risk.

The Nubians also lack a recognised homeland of their own, a marker of belonging in Kenya enjoyed by the other tribes. Close to half of the Kenyan Nubian population lives in Kibera, while the others live in smaller settlements, mostly along the railway line which they guarded while in the King's African Rifles. These close-knit communities are largely ethnically homogeneous up-country, and at least dominant in culture and structure ownership (if not numbers) in three of the villages of Kibera. While a few Nubian families own private pieces of land elsewhere, almost no Nubians have legal title in any of these settlements, and none have the communal title they aspire to. Some other Kenyans would describe these settlements as 'Nubian villages', but many are not aware of their Nubian character, and most do not consider the Nubians' rights to land as equivalent to, for example, Luo rights to land in Nyanza, or any other ethnic groups in their customary homeland.

In Kenya, autochthonous principles operate through the largely informal but widely accepted notion that each of the recognised tribes of Kenya has such a 'homeland' (Médard 1996, 2008). These *shags*, as they are colloquially referred to, are 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. Given the prevalence of ethnic clashes over land rights, and the ongoing salience of customary understandings of land tenure in Kenya, as elsewhere in Africa (Shipton 1994: 365), landlessness is a particularly marginalising factor in the lives of Nubians. Lacking both recognised customary and formal rights to the land they live on, the Nubians feel themselves to be in a socially, politically, economically and physically vulnerable position.

In day to day life, the Nubians struggle in the same ways as other Kenyans, but with added disadvantages. During the colonial period the Nubians enjoyed a much higher economic status than other Africans as a result of their military salaries, and the brewing and sale of 'Nubian gin' (De Smedt 2009b), but this privilege has long since disappeared. Although Nubians in Kibera have generally bigger, more solid houses than many other residents of the informal settlement, decades of neglect have left their houses decaying rapidly, a situation mirrored in up-country settlements. Furthermore, almost all houses in Nubian villages are without secure land tenure, and the Nubians feel they would have nowhere else to go, no up-country *shags*, should they be evicted. Discriminated against in education and employment, the Nubians as a

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community lack social mobility. Nearly 50% of Nubian families reportedly have an income of less than 10,000 shillings per month (OSJI 2011b). This limits access to even the most basic material needs including shelter, food and water. Although primary education is now free in Kenya, the quality of state-provided education is poor, and secondary and higher education remain out of reach for many Nubians. Only 2% of Nubians have a tertiary education (OSJI 2011b). While these grim economic conditions are common amongst all Kenyan groups, the Nubians complain that for others, upward mobility is not precluded by their ethnicity in the same ways. At least insofar as discrimination in access to ID cards and passports, and collective landlessness are concerned, the Nubians have reason to complain in this way.[8]

The Nubians also experience their small population as a liability (De Smedt 2011: 189). This is expressed, for example, in a widespread belief amongst the community in an inflated population figure of 100,000–200,000, and a similarly widespread reluctance to accept the more accurate but much lower figure of 20,000–30,000.[9] One of the primary reasons for this is that a centralised state such as Kenya, with a majoritarian voting system, has a great propensity to work against minorities (Ghai 2003). In a context where ethnic voting blocks in parliamentary and city council elections are the norm, and subsequent administrative appointments are characterised by ethnic favouritism, disadvantages for minorities are seemingly inescapable (Hornsby 2001; Lynch 2006; Baras 2011).[10]

The Nubians' have historically had very little representation at any level of government. No Nubians have been elected a Member of Parliament (MP) since 1969. Parliamentary election results for Lang'ata have traditionally reflected the ethnic demographics of Kibera, the constituency's largest informal settlement. Upon the return to multipartyism in 1992 MP Raila Odinga (of the Luo tribe) won the seat, and has maintained it 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; De Smedt 2009a). This lack of representation is not necessarily disproportionate given the Nubians' small population. However, insofar as the Nubians perceive this to result in a lack of concern for issues affecting their community it is a structure we must question. Abbas, a Nubian, 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,

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marginalised' (Abbas 2009 int.). The depths of political emotion which are stirred when Nubians speak about their perceived marginalisation in politics and local administration is in large part explained by what is at stake in having an ethnic representative in parliament or local administration.

The lack of representation the Nubians face is experienced as 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, for example by delivering development goods, such as civil service, army or police positions, educational bursaries, and various kinds of development funding (Haugerud 1995; Berman 1998; Lynch 2006; De Smedt 2011: 219–22). This regime of distribution of social, political and economic goods is best understood not as 'corruption', but as part of the local moral economy, operating, in the words of Mbembe (2001: 47), on the principle that 'every individual was indebted to a collective heritage [... to] the material and identitary infrastructure without which the individual could undertake nothing'. Individuals in power find themselves morally compelled to 'give back' to their communities, and it is sometimes the primary way in which communities get access to power and resources. Ogot (1995: 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'.

The Nubian community, like others, operates on this principle. Gore Mohamed, a Nubian and the Nairobi City Council Councillor for Makina ward at the time of this research, 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, [...] 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' (Gore Mohamed 2009 int.). 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 advancement of the community's interests is strong and significant. In a context where, '... every tribe has got a Godfather, every tribe has got somebody to lean on ...' (Sheikh Nasoro

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Hamisi 2009 int.), a lack of representation is perceived as constituting a serious disadvantage in terms of exercising rights and developing the community.

One way to address these issues would be to establish affirmative action measures for minorities, and in brief episodes since the return to multi-partyism a handful of Nubians have pursued this path. In the 2000–2004 constitutional review process 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 programmes in relation to governance, education, employment, development of culture and language, and access to water, healthcare and infrastructure (Section 56); and special representation in Parliament (Section 100), and County Assemblies (Section 177(c)). Presently it is too early to tell how these provisions will be legislated for, and whether or not the Nubians will (be able to) take advantage of them. What is more significant is that affirmative action or other democratic mechanisms have not been the main focus of the Nubians' attempts to achieve equality with other Kenyans. Rather, the predominant approach has been to assert themselves as indigenous, affirming the prevailing regime of belonging and seeking to be included in it.

A response to their marginalisation which affirms the prevailing belonging regime, and simply seeks inclusion in it, is in a sense understandable. The lack of recognition as rightfully Kenyan that the Nubians have faced, especially over recent decades, has eroded peoples' confidence in their place in Kenya. The feelings associated with being relegated to the category of Other in past censuses, for example, were described as embarrassing or humiliating, 'like the other tribes who are just here by mistake …' (Muhidin 2009 int.) or in other ways somehow lesser, like foreigners, children, vagrants or even animals. Hassan thought the label might be because, 'we used to be called like refugee, they used to refer to come from Sudan' (Hassan 2009 int.), a notion associated with a distant past. In some cases it was even perceived as not being visible or audible at all, for example Jamia 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!' (Jamia 2009 int.).[11]

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

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them as allied with the colonial power and not a legitimate part of Kenya, Nubians seek to position themselves not only as Kenyan, but as indigenous to Nairobi. 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 (Parsons 1997; De Smedt 2011). 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 in Kibera, focused 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, in reference to the land rents that he perceived the government as collecting 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 ('Ibrahim' 2011 int.).

In order to achieve 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, a Nubian, argued that,

> we want to elect our people, we want our region to be known, like Kibera. You see we have Kikuyu constituency, their people, but also we want Nubians' constituency so that we can elect our leaders. They don't know our problems … you see … our MP's not a Nubian, […], he's a Luo from Kisumu (Amadi 2009 int.).

Such a move would also grant the Nubians access to quotas for education and employment. 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. Although there is no official policy, similar principles apply to employment opportunities in the armed forces, police and civil service (Otieno 2010; Baras 2011).

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Muhidin (2009 int.) explained how he thinks a census code for Nubians would facilitate such a scenario, and then Nubians will be equal:

> 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.

The perceptions Nubians have of the nature and cause of their disadvantage, and the strategic advocacy choices made by many groups in the community to remedy this perceived disadvantage are illuminating of greater trends governing belonging and access to equal citizenship in Kenya, and the dual nature of indigeneity in the country, as not only a special status, but more commonly as the norm.

INDIGENOUS SLOT? INDIGENOUS NORM

As discussed above, the literature on indigeneity in Africa has focused 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. 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 colonial armed forces – indigeneity seems on the surface quite a strange identity to claim. The Nubian case suggests that in Kenya indigeneity is not always a 'slot', a niche anthropological or political category that denotes distinction. Rather it can also be, and is perhaps more importantly, the norm. In this 'normal' form, indigeneity is still a relational concept, but the primary relation is between indigenous insiders and stranger outsiders. Claims to indigeneity are still acts of positioning, but they are acts aimed at achieving equality in sameness rather than equality through difference. Equal citizens in Kenya are so because they are quietly considered indigenous. The Nubian case illuminates the extent to which the most common practice of indigeneity in Kenya departs from the understanding and practice described amongst distinct groups such as the Maasai, Endorois or Ogiek. These two forms of indigeneity are both in operation but, despite attracting far less political or scholarly attention, it is indigeneity as the norm that is most pervasive.

In Mamdani's conceptual development of the category of ethnic stranger it is precisely this predicament he sets out to address. For Mamdani the postcolonial order is one in which the threat from other races has been supplanted by the 'threat' from stranger ethnicities; and

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rights, resources and power have been withheld from these groups accordingly. Mamdani (2001: 659) explains,

> 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.

In this regard, the strategy of claiming indigeneity can be about nothing more than equal status achieved through assertion of sameness rather than difference. Claims for recognition are not always a case of seeking some kind of distinction, but rather can be, 'to become part of, and thereby transform, the state' (Englund 2004: 3). This renders the nature of indigeneity in Kenya quite distinct from that of countries like North America and Canada, where indigeneity is deployed to secure superior rights such as sovereignty. This more common form of indigeneity is also distinct from the struggle for equality made by 'special status' indigenous groups in Africa. Rather than illuminating cases of marginalisation and material deprivation based on a culturally distinct way of life, this case and this argument point to a different mode of political exclusion, no less serious. This different understanding of indigeneity takes more seriously Kuper's (2003) critique of the concept as inherently undemocratic and exclusionary, without indulging in his easy dismissal of it as meaningless.

THE DANGERS OF INDIGENEITY

The methodological focus of this research has been on understanding individual and community-level interpretations of marginalisation. In the analysis of the Nubians' claims to indigeneity this methodological focus has led to an emphasis on the Nubians' aspirations for equal citizenship. However, it is also necessary to review the implications of this observation for understanding and praxis of indigeneity and citizenship in Kenya (and elsewhere). Three particular problems stand out here.

The first is the *inherently exclusionary tendencies* of indigeneity evident to the extent that it governs access to citizenship. As long as membership in particular indigenous tribes is a precondition for the enjoyment of full and rightful membership in the nation, then certain portions of the existing community and all newcomers will be deprived of equal citizenship, even if they have long-standing and deep connections to the political community, and nowhere else to be considered full and equal citizens. With indigeneity as a precondition for accessing full citizenship

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those who are not recognised as indigenous through the available and prevailing channels of formal and informal recognition may formally be citizens, but they are citizens minus (Balaton-Chrimes 2012). This is Mamdani's point, and so rather than endorse the inclusion of new groups on lists of indigenous tribes, Mamdani (2001: 661) advocates emphasising common residency over indigeneity in determining access to rights.[12]

The second problem is that emphasis on indigeneity *encourages ethnic identifications at ever-closer range*, and with *increasing reference to territory* (Geschiere 2009; Lynch 2012). This trend in self-identification and identification by others *can foster ethnic chauvinism and xenophobia*. Group members increasingly assert their own place in the community and their own rights (especially over land), over those of others, by indulging in beliefs about the superiority of their own ethnic community, or at least their superior rights, and by generating ethnic Others against whom they can assert those rights (Lynch 2011b). This tendency has been most evident in Kenya amongst advocates of *majimboism*, 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. While decentralisation is not necessarily in itself problematic, *majimboism* often has been in practice because it is has arisen within a politics of fear, and has therefore 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 1995: 259; Ghai 2008; Anderson 2010: 29).

This kind of segregation fuels the third problem – *inter-ethnic competition*, a tendency observed in acute proportions in Kenya. In its most sinister form competition is observed between ethnic groups over access to the power and resources of the central state (Lonsdale 1994; Ndegwa 1997). More recently attention has been paid to the less obviously self-serving forms of competition, those that are embedded in local moral economies. This kind of competition is at its most acute in different claims to land rights in ethnically cosmopolitan areas, where often more than one tribe assert their exclusive rights to the same area of land on the basis of (competing) understandings of historical justice and injustice (Lynch 2011b).

While this article has sought to sympathetically understand the Nubians' reach for indigenous status, it would be naïve to suggest that their assertion of indigeneity is ultimately any less dangerous than that of the '42 tribes'. However much we may sympathise with the Nubians'

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plight to emerge from marginalisation, and understand the emotional and strategic appeal of the indigeneity claim in the Kenyan context, we must be wary of condoning it. In the short term it may be that if the Nubians were considered indigenous by the state and other Kenyans that many aspects of their marginalisation would be mitigated. However, if marginalised groups in Kenya see claims to indigeneity as the best (or only) way to secure equal citizenship, this strategy will only exacerbate the three dangers described above. In the medium to longer term, therefore, though the Nubians may find themselves insiders if such recognition were granted (which seems unlikely), others will remain or find themselves newly excluded.

Each of these three problems warrants much more extended discussion in its own right, particularly amongst Kenya's citizens (and non-citizens), where the place and meaning of indigeneity in the political community has not attracted sufficient public attention. Particularly prior to the post-election violence of 2007–2008, the Kenyan state actively promoted a false idea of the country as united by nationality, when in fact Kenya 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 homogeneous or compatible demographic distribution within administrative and electoral units has been discussed primarily during periods of sometimes toxic debate over *majimboism*. The more insidious and fundamental question of who has control over recognition of indigenous groups, and through what processes, was never open to public discussion.

Only in the peace negotiations of early 2008 and the subsequent reforms, and the 2010 constitutional debate, 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 (Korir Sing'Oei 2011 int.). 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.[13] However, as Yash Pal Ghai, the Chairman of the constitutional review, explained, the list was so unwieldy, complex and contradictory that the idea was abandoned (Yash Pal Ghai 2011 int.). 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.

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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 therefore require clarification of the criteria to be considered an ethnic group. The National Cohesion and Integration Commission, 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 ethic relations' may also play a role in this regard, though so far it has uncritically adopted the '42 tribes' discourse and failed to question the principles that underlie it (Kikechi & Jamah 2010; Baras 2011).

If a critical debate can get off the ground, it may open the possibility not of *special* rights and recognition for groups like the Nubians, but rather the possibility of full citizenship *on a par* with other Kenyans. Ideally, such a discussion would lead to a political culture in which the dangers of indigeneity as the norm are mitigated: the benefits associated with indigenous status would become less important to both dominant and marginalised groups as both begin to feel sufficiently secure and equal in their citizenship that they no longer feel compelled to appeal to indigeneity to defend or acquire 'insider' status. To put it overly simply, this could be through a more transparent and accessible process for recognising indigeneity, combined with legal and bureaucratic safeguards for the rights and citizenship of non-indigenous minorities; or through the deconstruction of indigeneity as a criterion for belonging.

CONCLUSION

Studies of indigeneity to date have focused on what I have called here 'special status' indigeneity. Iconic groups such as the San, Maasai and Endorois have positioned themselves as indigenous in order to access special rights and benefits as a remedy for past injustices. Anthropologists and political scientists have rightly problematised this polythetic understanding of indigeneity, at the same time as they also recognise its utility as a political strategy. In this article I have suggested there are yet other grounds on which we should problematise the meaning and political utility of indigeneity. In Kenya, and elsewhere in Africa, indigeneity is not only a special status, but rather, and more commonly, the norm. I have made a modest attempt to respond to a challenge in the literature on indigeneity to find a way of dealing with

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the idea of indigeneity as it is actually used in the real world, without indulging in pretentions of some kind of anthropological or other scholarly dominion in which we can understand the term excised from its political use (Barnard *et al.* 2006).

Drawing on research with the Nubian community, this article has illustrated in detail how the norm of indigeneity pervades the praxis of citizenship in Kenya, including sentiments of belonging or exclusion, as well as more tangible resource distribution, and local and national level politics. The problems this poses for democracy and equality are significant. Though this article has not advocated any particular solution, it has suggested that an open, public and democratic debate must be had amongst the citizens and non-citizens of Kenya not only about inter-ethnic relations (a debate that has been going on in earnest since early 2008), but also about the role of indigeneity in the Kenyan nation.

NOTES

1. Most notably in the late 1990s UN special rapporteur Miguel Alfonso Martínez suggested that groups in Africa and Asia cannot claim indigeneity (Martínez 1999: 15).

2. In a more sophisticated form the term has been criticised as a way of maintaining domination of the marginalised populations usually understood as indigenous. See James Suzman in Kuper (2003: 399).

3. See also Barnard (2006: 8). On the idea of citizens plus see Cairns (2000).

4. Contrary to popular belief there is no list of the '42 tribes'. The number comes from the 1969 census categorisation, which has changed in every census since then (Balaton-Chrimes 2011).

5. Elsewhere Hodgson (2011: 4) appeals that we take the role of the state more seriously when attempting to understand strategic indigenous positionings. I agree, but while Hodgson's (2011: 157–9) case leads her to suggest that the Tanzanian state ultimately made indigenous positioning a weak strategy for the Maasai, the Nubian case suggests that the Kenyan state encourages indigenous positioning, but indigeneity of a different kind.

6. 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 post-colonial period.

7. 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 of being one of the '42 tribes' has not led to material deprivation on the same scale as that experienced by Nubians. 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, nevertheless, still not as secure as the '42 tribes'.

8. Nubians are certainly not the only group whose social mobility is precluded by discriminatory practices. Other groups in Kenya suffering a similar kind of discrimination, linked to ethnic stranger status and manifest in limited access to identity documents, include Kenyan Somalis, particularly in North-Eastern Province and other border areas, and the Galjeel on the Coast of Kenya.

9. This figure is based on slightly inflated figures from the 2009 National census, which counted 15,463 'Nubis', and an Open Society research project that surveyed 18,862 individuals (Kenya National Bureau of Statistics 2010: 397; Open Society Justice Initiative 2011a). Both these surveys reported methodological problems, hence the inflation here, which should only be taken as a rough estimate.

10. The 2010 constitution provides for a more decentralised political structure, but it is too early to tell what effect this will have on Nubians' electoral position.

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11. In the 2009 census the Nubians were counted in their own category for the first time, alongside many other groups. A total of 111 tribes were counted, including quite a number who were sub-tribes of larger umbrella tribes. To date this does not seem to have had any significant effect on the hold of the idea of '42 tribes' on the Kenyan popular imagination, nor has it had any practical consequences in terms of development funding, for which the census is designed to assist planning (Balaton-Chrimes 2011).

12. 'Special status' indigeneity can also be exclusionary. For example, Hodgson (2011: 142–3, 161, 207) describes complaints from both hunter-gatherers and non-indigenous local communities of exclusion from the pastoralist Maasai indigenous agenda in Tanzania.

13. 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 1 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: 55–6).

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