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Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya

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Political liberalization in Africa is a more problematic process than earlier thought. Powerful actors will attempt to maintain patrimonial control by developing creative counter-strategies to change. When faced with declining patronage resources, they will find alternative sources, often amplifying corruption and violence in the process. This paper provides a concrete example of this dynamic through an examination of Kenya's land grabbing—the irregular privatization of public lands. It argues that president Moi and his clients are increasingly and violently turning to public lands, which are less fettered by international scrutiny, as a patronage resource and instrument to maintain control. In response, many Kenyans are resisting this form of corruption and in the process are constructing a notion of the public that challenges the rules of the patrimonial game.

Our greatest asset in Kenya is our land. This is the heritage we received from our forefathers. In land lies our salvation and survival.

—Jomo Kenyatta, 1968¹

If the Attorney General cannot prosecute known land-grabbers and the ordinary citizen lacks the locus standi to take such cases to court, who will save Kenya?

—Dr. Wangari Maathai, 1997²

Introduction

After a decade of political liberalization in Africa, it is clear that this process is far more problematic than previously expected. While there is now greater electoral competition and some expanded political and civil rights, there is also, in a disturbing number of cases, deepening corruption and

escalating violence (Joseph 1998). A historical legacy of despotic institutions and practices helps explain these unsavory outcomes (Mamdani 1996). However, a full explanation involves scrutiny of actors likely to lose in the context of greater political freedom and competition. Privileged state actors *react to liberalization and actively and creatively devise counter-strategies to the problems it poses to their positions of power*. This emphasis on the strategic action of dominant political actors and the counteractions within society creates a basis for explaining some of the patterns of corruption and violence at this historical juncture. Further, an examination of resistance to anti-democratizers draws attention to potential agents and loci of democratic change.

The intensification of irregular allocations of public land to well-connected individuals and land-buying companies in Kenya's "land grabbing mania" is a particularly revealing and underscrutinized case of deepening corruption. I argue that the combined effects of a decline in traditional sources of patronage such as aid, greater international scrutiny of some forms of corruption, and enhanced political competition pose real threats to the Moi government. In such a context, public land, highly accessible and less encumbered by international conditionalities than private property, is an attractive patronage asset. In addition, administration officials fearful that a change in government will end their privileged access to this public resource have accelerated their accumulation of land and rents on land allocations. However, privatization of prominent public sites, including schools, bus stations, roads, parking lots, markets, police stations, forests, mortuaries, cemeteries, and public toilets presents a particularly dramatic display of corruption for most Kenyans, many of whom are mobilizing and fighting back. These dynamics are leading to ever more violent struggles around "land grabbing" with important long term consequences, for both the security of property rights and the prospect for democracy in Kenya.

Theoretical Considerations

While a topic of much discussion and a locus of increasing mobilization in Kenya, deepening corruption around land allocations has largely failed to attract commensurate attention on the part of scholars. This neglect reflects two opposing and equally problematic theoretical tendencies. On the one hand, theorists of "transitions" focus on the formal level of negotiations and political activity largely to the exclusion of the informal maneuvering that plays a critical role in the dynamics of change (Reno 1995; O'Donnell 1996). On the other hand, theorists of neo-patrimonialism view "corruption"³ as par for the course and marginalize resistance. For example, Bayart conceptualizes "corruption and predatoriness . . . as modes of social and political behaviour shared by a plurality of actors on a more or less grand scale" (1993: 238). Similarly, Chabal and Daloz (1999: 28) see

widespread societal complicity in patrimonial practice, with legitimacy primarily a function of who is able to create access to state resources. In these notions Africa lacks any “tradition of the ‘public domain’” and discontent over corruption is explained by hypocrisy where “corruption is as frequently denounced in words as practiced in fact” (Olivier de Sardin 1999: 29, 31). Such conceptions fail to locate and differentiate between privileged political actors, linked to the state, clients who partake in these highly asymmetric power relations for a variety of complex reasons, and *those actors who resist and challenge patron-client politics*.

Both theoretical tendencies fail to sufficiently examine the contestations around the shifting boundary between “private” and “public” and the local idioms through which power relations are challenged and citizenship claims framed. Thus, while land is one particularly important idiom “for establishing or challenging power relations among almost any broader public” in Africa’s predominantly agrarian societies (Shipton 1994: 351), farmer, pastoralist, “squatter” and other groups articulating claims around land rights are largely ignored, as are the land rights programs of urban-based human rights organizations. This is strikingly true in the case of mobilizations around illegal land allocations in Kenya. This form of corruption, and the illegality and exclusions associated with it, are being actively resisted in both rural and urban areas, challenging patrimonial control.

Kenya’s Land-Grabbing Mania in the 1990s

Just as Kenyans were able to utilize new political spaces in the 1990s to articulate grievances and organize around them, shocking instances of irregular privatization of public lands seemed to increase. The emergence of what Kenyans have called the “land grabbing mania” as an issue in the press, parliament and daily conversations is partially a function of a greater degree of freedom. Given the secretive nature of the transactions behind land grabbing, which often take place on paper in the Ministry of Lands, it is difficult if not impossible to document the number of grabs over time and measure whether the generally perceived acceleration is actual or not. Even the latest Controller and Auditor General’s report for fiscal year 1995/6 was not able to attach a clear figure to the magnitude of the funds diverted through irregular privatization of public land. The report did query “the allocation of 576 Government plots (with houses) in Nairobi and other urban centers to private individuals and firms” (Center for Governance and Democracy 1998: 14). Operation Firimbi, an anti-land grabbing project of the Kenyan National Council of NGOs, launched a national awareness campaign through periodic advertisements in the English press. After the first three months of its campaign in 1997, it documented over 250 complaints (Karim 1998). Strikingly evident is a new boldness to the current land grabbing and to the resistance against it. These two promi-

ment but not atypical cases from Nairobi illustrate the dynamics of Kenya's land-grabbing struggles.

The Case of Westlands Market

Westlands market is located in one of Nairobi's posher areas. Surrounded by shopping malls frequented by Kenya's middle and upper classes, it is prime real estate. It is also a thriving multi-ethnic community of small businesses including an open-air auto repair service, a hair salon, a butcher, and a number of carpenters, restaurants and food sellers. In the early 1960s, a delegation of small-scale businesspeople went to the late Jomo Kenyatta and asked for government intervention to create an official marketplace, because "there was high public demand" (Kinuthia 1998). The government bought the land from a settler and granted the plot (No 1870/45/IX-R1782) to the Nairobi city council with the special condition that it be used as a market. The title deed for the plot specifies that it should be used for the public and not be subdivided and sold.

Once the Nairobi city council obtained land in the form of a 99-year lease starting from January 1965, it began to construct stalls to rent out to the market members. On one portion of the land the council built 93 stalls but then, running out of money, it left a portion undeveloped. Those still waiting for stall space were asked to build their own stalls on the remaining portion. In 1974, the city police descended upon the market demolishing the self-made structures. After an appeal to the president on behalf of the market community, he issued an order reversing these actions. In 1983, the market community suffered a fire which destroyed their stalls. They rebuilt immediately and had no other problems until 1994.

In 1994, tranquility was shattered with the arrival of a surveying team. This raised suspicions on the part of the market community sitting on the "undeveloped land." On following up the matter at the Ministry of Lands, some members of the market got a tip that the land was being subdivided in order to give it to "private developers." This was confirmed when Francis Karani, a former Nairobi city commissioner, walked into the market and boldly announced that people had to move because he had been given the land.

The Town Clerk, Wandera, had issued a letter of allotment on April 15, 1994, using Nairobi City Commission stationary even though the Commission no longer existed. This allotment letter gave Karani a 99-year lease under highly favorable conditions. It asked for one million K.sh (approximately \$US 170,000) to be paid out to the Nairobi City Commission as well as an annual rent of 100,000 K.sh (\$US 1700). The cheque to pay for the plot, however, was made out to the Nairobi City Council, and the receipt issued for the money was from the Nairobi City Commission. Through this fraudulent transaction, the "private developers" hoped to acquire the Westlands plot, estimated to be worth sixty million K.sh (\$US 1,000,000) at the going market rate (*Weekly Review* 1998).⁴ Karani was acting as a

broker for Salima Enterprises, which the Registrar General shows is run by the Sadrudin family, including one Canadian and one British citizen. In the hopes of selling the land quickly, Salima Enterprises, through the real estate agency, Lloyd Masika Limited, put an advertisement in the *Daily Nation* on July 22, 1994, asking for only 38 million K.sh (\$US 600,000). In this way a public market found its way onto the real estate market.

The market members appealed to their political representatives to no avail. In the words of market member Karori Muchiri:

We have requested to talk to the president. He refused. We tried to call the PC (Provincial Commissioner) for a meeting. He turned us down. We tried to see Amos Wako (Attorney General). He refused us. We have held a meeting with the city council. All this has not worked. The land grabbers are the same people who fund the government. (1999)

In 1996 Vice-President Saitoti visited the market and vowed to prevent the grabbing when Fred Gumo was running in a by-election in Westlands on a Kenya African National Union Party ticket. This, however, was rhetoric designed to obscure government complicity. Gumo won the election and is now an Assistant Minister, but he also refused to see representatives of the market. The local councilor, Joshua Makeen (KANU), never brought the matter to the city council, where the allocation in theory could have been annulled. Evans Musonye, the Secretary of the Westlands Open Air Market remarked in regard to his councilor's inactivity:

He knows it is a very sensitive matter. We had a lot of demonstrations. We fought the police. Our people have been arrested. We had court cases. So it is not something that you should have to go and call somebody. Somebody somewhere who is representing us should know we have a problem. This is a matter that has reached the point where even the president himself should be aware. People have been beaten here. Things have been demolished in daytime. Shops have been closed in daytime . . . we appealed to the president himself through radio, papers . . . so we are left to fight for ourselves. (1998)

In fact, after trying all legitimate means at their disposal, including an ongoing court battle, and fully aware of where final authority on land allocations rests, the Westlands market activists attempted to demonstrate at the Office of the President—unsuccessfully, as they were waylaid by the police and many of their members arrested. Karani hired police to attack the market. In response, the community organized themselves and met the violence with organized violence of their own. As one market member recalls:

We used street children. We trained them to fight. We made petrol bombs, and we had bows and arrows. We also had catapults. . . . When the police came, we used all those fighting devices apart from bows and arrows. Seven people were injured, three of them died, and this was never reported. (Maina 1999)

The issue at stake for the market community was their very means to exist: their livelihoods. However, the activists and their supporters perceive this concrete material issue as a national issue involving basic principles of inclusion and fairness. Even when faced with powerful Moi agents in the government, the activists continue to hold them to the law and demand accountability. They see themselves acting in an inclusive *public interest*. As Musonye explained:

We are asking the council, if they do sell the plot, we are nearly one hundred people. If one hundred people could raise one million, that's ten thousand each, which if we are told, I am sure we can raise it and pay the council. Then we develop it and have a wide range of public *wananchi* [citizens] benefiting. . . .

Finally, they identify with other anti-land-grabbing struggles all over the country. As Kinuthia writes:

Since our present and future well being depends on this piece of land, we join all other Kenyans in the public of the same predicament in defending public land against brutal action by purported land brokers and grabbers. (1998)

The Westlands case is only one of many attempts at irregular privatization of public markets throughout Kenya.⁵ In urban areas, these markets are centrally located on highly valuable real estate and are filled with small-scale businesses, an important source of employment for the majority of urban dwellers. Reflecting the collaboration of local administration officials and "private developers," a combination of council police (*askaris*), regular police, and private security men carry out violent evictions.

Those already using the market are not given options to buy the land. Hawker activist Harrison Ndungi reaffirms this point:

The government doesn't give the hawkers the option to buy the land despite the fact that they are in a position to do it. The case of Kigali curio market [a popular tourist market that was demolished despite a court order] is a good example. The traders had offered to raise the required down

payment of K.sh 16 million but the local authorities turned down their offer . . . (1999)

Government officials benefiting from these land transactions could potentially, as these cases suggest, sell the plots to those already using them, preventing social strife and the cost of violent evictions. They choose not to do this. This suggests that while there are strong economic motives at work in the form of rents for the Town Clerk, other administrators and councilors, these allocations are embedded in higher level patronage networks. Indeed, local administrators who face intense resistance from local people because of their grabbing are merely rotated or in some cases promoted.

In this case, KANU MP Gumo suspected the predominantly Kiku-yu and class-conscious market community to be his opponents and he would benefit from their removal. In turn, the “grabbers” counted on Gumo’s protection in their attack on the market. This process creates loyalty to KANU among those who depend on the current regime to protect them from future prosecution. Hence, land grabbing creates “incentives for those who have discounted future punishment to block the establishment of any system in which they may be held responsible for their past activities” (Philp 1997: 461).

The Case of Karura Forest

Karura is some of the last remaining indigenous forest area around Nairobi. Covering 1,041 ha of land at the northern edge of the city’s boundary, it was until recently gazetted as a national forest and hence was protected public land. In 1998, as Forestry officials were given “quit notices,” chunks of the forest were chopped down and a fence started to emerge, it came to public attention that 85 ha were excised by the Ministry of Lands in a legal notice LN 97/13.6.1997 and allocated to “private developers” (*Daily Nation* 1998d).

This provoked immediate mobilization. On October 7, 1998, a group of opposition MPs accompanied by activists including the prominent environmentalist Dr. Wangari Maathai went to plant trees in the spaces cut out of the forest, symbolically reclaiming the forest for the public. They broke through the gate and, joined by hundreds of youths from the neighborhood, burned down construction equipment worth hundreds of thousands of dollars. The demonstrators sang songs urging God to protect them “from the hands of the corrupt and greedy” (*Daily Nation* 1998a). This would mark the beginning of a protracted struggle.

The National Council of Churches of Kenya, the Law Society of Kenya, the Architectural Association of Kenya, the Kenya (No. N) Human Rights Commission among many other groups joined a clamor of voices demanding to know to whom the forest had been allocated. Under pressure

by opposition MPs who vociferously demanded that the Minister of Lands and the Attorney General reveal the names of the companies to which the land was allocated, the Minister of Lands tabled an initial list of 67 companies without naming their directors. He further revealed that less than half of the forest remained public land. Following questions from MPs, the Minister admitted, "I do not have the list of the purchasers, as the Ministry is normally not consulted in these transactions" (*Daily Nation* 1998b). Commenting on the Minister's statement for the *Daily Nation*, Mutegi Njau noted that, "for those firms to be allocated the land, someone must have signed a letter of application to him, and all companies have directors listed with the Registrar of Companies" (1998b). However, an attempt by reporters to investigate the individuals who were behind the companies at the Registrar General's office revealed that the files of 21 firms had vanished (*Daily Nation* 1998c).

The pressure on the government intensified. On January 8, 1999, Dr. Maathai and a group of opposition MPs went to plant trees at Karura. They were confronted by 200 security guards and badly beaten (*Daily Nation* 1999a). In March, the National Council of Churches of Kenya and other groups held prayer meetings around the Karura allocation. While this struggle continued, revealing layers of government complicity in the irregular allocation of Karura forest, President Moi was initially silent although a number of top officials stressed that the Karura plots were private property and therefore, as the Police Chief Wachira reiterated, must be protected from the protestors (*Weekly Review* 1999).

After university students marched to Karura to plant seedlings on January 30, 1999, and were repulsed with violence, widescale riots ensued in the capital. When stories of the riots hit the international press, Moi broke his silence in a speech outside of the capital. He blamed the violence on "hatred and tribalism" (*Daily Nation* 1999b). Interestingly, in one of the first national opinion polls carried out by Kenya's *Daily Nation* newspaper, seventy-two percent of respondents from all over the country wanted the government to revoke the Karura allocation.⁶ Despite this attempt by the newspaper to exert public opinion, construction on what was once national forest continues today, as does resistance to the construction.

Besides illustrating the involvement of the higher echelons of the Moi government in land grabbing, what is striking about the Karura case is that, despite the boldness of this appropriation of an important and highly visible public resource, international criticism was widely muted until riots rocked Nairobi in February 1999. At this juncture, the Democratic Development Group of donors, which involves all the major donors except Japan, issued a statement defending freedom of assembly and condemning the destruction of private property and the accompanying violence. Further, "they called upon all parties involved to strive for legal and democratic solutions to the present problems in order to assure transparency and respect for the law in the allocation of public lands in Kenya, including

Karura forest" (*East African Standard* 1999). Detecting a difference in the international reaction to land grabbing compared to other forms of corruption, respected Kenyan economic analyst Robert Shaw remarked, "corruption is corruption whether it is uncustomed sugar or land-grabbing." Further, referring to the Goldenberg banking scandal of 1993, which elicited much donor criticism, he argued that "today's Goldenberg equivalent is Karura" and challenged the recently arrived IMF Representative, Festus Osundsade, to make a statement about the Karura scandal (*Daily Nation* 1999c).⁷ Strikingly, however, while this struggle was raging, the IMF announced that it was pleased with Kenya's performance and the only remaining issue to be resolved was who was to be appointed to Kenya's anti-corruption authority (*Daily Nation* 1999d).

While the corruption around Karura provoked a mild international reaction, it generated much greater and more widespread mobilization in Kenyan society than other corruption scandals.⁸ This illustrates the attraction of public land as a patronage asset for the Moi clique, as well as the costs of encroaching upon such lands. Public land appears to be largely unfettered by international conditionalities or scrutiny. Hence, it is a useful asset in light of increased restrictions intended to limit forms of corruption more familiar to international observers. However, while not as visible or significant to these observers, the irregular allocation of public land encroaches on highly visible public spaces across the country. It constitutes an attack, not only on national resources, but also on the symbolic spaces through which the public is experienced and understood in Kenya. The fact that these resources are in the form of land is highly significant in light of Kenya's history.

Historical Roots of Contemporary Land Grabbing

An understanding of the role of land in Kenya's history clarifies its persisting symbolic importance as a locus of resistance to the form of rule in Kenya. One might say that Kenya was founded by successive acts of land grabbing, and hence, land grabbing is as old as Kenya itself, if not older. As an entity, Kenya began as an East African Protectorate of the British government, which claimed control over territory deemed "waste and unoccupied land" where, it was claimed, "there was no settled form of government and where land had not been appropriated either to the local sovereign or to individuals" (Foreign Jurisdiction Act 1890). This facilitated the transfer of land from Kikuyu and Maasai areas to the state, which in turn sold it to white settlers.

By 1939, most of the remaining high potential land remained as crown land under the direct control of the governor, and native areas, re-categorized as "trust lands," were under the control of land boards accountable to the governor. This highly centralized system of land allocation served as a critical tool in the state struggle to maintain social order.

Land rights were manipulated to pacify vociferous settler demands and buy African support when unrest seemed likely.

Alienation of some of the best agricultural lands, approximately twenty percent of Kenya's land mass, to a relatively small number of white settlers and the resultant economic distress this created among Africans precipitated the Mau Mau movement which exploded into violent conflict in the 1950s. At the heart of this movement were "squatters" who, consistently deprived of land rights by state authorities, linked their economic deprivation to political subordination (Kanogo 1987: 129).

The Mau Mau movement, while helping to precipitate Kenya's transition to independence in 1963, failed in its aims of reclaiming and distributing the land in the fertile white areas. Instead, the post-colonial government of Jomo Kenyatta continued with the Swynnerton Plan of allocating land titles to private holders. This plan worked under the assumption that "land consolidation would create a class of landowners who would refuse to have any truck with nationalist politicians" (Sorenson 1967: 250-51). The result was that those loyal to the colonial government were rewarded and those involved in Mau Mau were punished with loss of their land. Kenyatta used the former settler land as patronage to solidify his support and build alliances, and many former loyalists became prominent in the new KANU government. In this way, the "land question" was transferred to the new context. In brief, in the post-colonial period, access to and property rights in land "remained a function of patronage and political maneuvering (at local and national levels) as well as of ability to pay" (Berry 1993: 125).

The Contemporary Context of Political Liberalization

The dominant political party, Kenya African National Union (KANU), has ruled uninterrupted since independence in 1963 and has fused with the administrative apparatus of the state, which is now essentially an extension of the Office of the President (Widner 1992). As is characteristic of this institutional configuration, the current president, Daniel arap Moi, has wide ranging powers over party and administrative appointments as well as public resources from both internal and external sources. He uses these powers to create clients that support his regime and deliver political, including electoral, support.

Political liberalization was forced onto a highly resistant Kenyan ruling clique by both internal pressures and external conditionalities. Challenges to Moi's rule emerged in the late 1980s, spearheaded by church activists but eventually joined by disaffected politicians who began to agitate for change to a multi-party system. These pressures were largely answered with repression. The major donors, however, were watching events closely. In November 1991 they coordinated their actions to cut off non-humanitarian balance of payments support pending reforms. The importance of this aid in maintaining patrimonial control was reflected in Moi's creative

response to this donor move. In November 1991 the president approached the World Food Program of the United Nations for humanitarian assistance. By “repeatedly exaggerating the numbers of people in need,” the ruling clique, with administrative complicity, successfully continued the supply of aid to Kenya in the wake of the donor suspension (Middleton and O’Keefe 1998: 62).

This, however, was a temporary solution. Ultimately, to restore critical aid flows, Moi capitulated and allowed political liberalization. In early December 1991 he called a meeting of the KANU governing council. To the amazement of his followers, he suggested the repeal of section 2(a) of the constitution banning opposition parties. Even with a resumption of aid, the clique faced a situation of declining aid flows, economic crisis and new international scrutiny (Holmquist and Ford 1992). Further, structural adjustment programs had diminished patronage through the printing of money and appointments to parastatal organizations (Kiai 1998: 187).

The demand for patronage resources to win elections and buy key supporters escalated at precisely the time when these resources were declining. The introduction of competitive electoral arenas altered the patron-client relationships between Moi and his client MPs and local councilors. The ability of dissatisfied clients to “defect” to the opposition gave them greater bargaining power to demand more resources. In light of Moi’s slim margin of control in parliament, there was the need buy the “cooperation” of opposition leaders. On top of this, it was now necessary to solicit votes in order to win the multi-party elections in 1992 and 1997.⁹ It is in part this dynamic that has generated proliferating corruption in the Kenyan case, with the Moi clique increasingly turning to alternative sources of patronage assets, including public lands.

When Moi took over from Kenyatta in 1978, there was much less land to easily allocate. Nevertheless, as the Westlands market case illustrates, there are ways, often violent ways, in which patronage in land may be recycled. By removing former occupants, the evacuated land is then freed for distribution to loyal clients.¹⁰ Kenyans widely talk about “State House squatters.” State house refers to the presidential residence where many illegal allocations are widely believed to be transacted.¹¹ Koigi wa, a former parliamentarian, describes one such encounter with Moi at his home:

President Moi interrupted me to ask whether we still live in town. He knew we did. However, I explained that my parents had no land, we had no choice but to live in town. Then he said, “You see, I have already asked the DC [District Commissioner], Mr. Ogol, to get a good piece of land for you. . . .” (Wamwere 1992: 102)

Further, as available land diminished, the remainder also increased in value. Hence, land remains an essential patronage resource for the Moi government.

A Legitimation Crisis?

An important aspect of KANU's legitimation of its rule is its claim to provide development, often in the form of badly needed services such as schools and clinics. These are perceived as the fruits of independence and through them, the national community, represented by the state, has a presence at the local level. Land grabbing, however, is a striking reversal of KANU claims to represent a national community. It is the pulling apart, often with the visible aid of the provincial administration and councils, of public sites for "private developers" who, like the white settlers before them, use these sites for private accumulation at the expense of local communities. Indeed the parallels are striking, and the symbolism involved in the appropriations powerfully suggests an attack on the gains of independence and the very notion of a national community.

Two examples are particularly illustrative of this symbolic significance. In the case of a Nakuru primary school, the KANU supporter to whom the plot was allocated claimed his new land on Friday. This is the day throughout Kenya when the entire school community gathers to watch the national flag rise and to sing the national anthem. It is a moment of recognition on the part of students as well as staff that they belong to a wider national community and that they are enjoying the fruits of independence. The new owner pulled the flag down and demanded the dispersal of the entire school community. After they were violently evicted, the students themselves demonstrated for over a week, but to no avail. The matter was "ended quietly in court with the vindication of the legal title-holder" (Operation Firimbi 1997).

The attempted appropriation of the Kamukunji grounds, a large public space in Nairobi, rich in historical significance, provides the most dramatic example of the powerful symbolism involved in these struggles. These grounds are where Kenyatta and other nationalist leaders once gave fiery speeches demanding freedom for the newly invented nation of Kenya. This is a place where Kenyans continue to gather in protest and demand political change. In 1996, rumors circulated that some appointed city councilors had been allocated the Kamukunji grounds. The public outrage that followed the story in the press was enough to scare off the would-be "private developers." As the extent of the public fury in this case suggests, grabbing this land was symbolically equivalent to grabbing independence itself.

Resistance and Government Response

This ongoing pilfering of public sites is provoking escalating resistance among a cross-section of society from rural communities, pastoralists, and urban squatters to middle-class Nairobians. Indeed, reports of resistance are now daily occurrences in Kenyan newspapers. As Musonye remarked in regard to the Westlands case:

The government is aware. In fact, there is no one in this whole Republic who doesn't know. I remember traveling to Migori [a small rural town in Nyanza province], and I met someone who congratulated me saying, "I see you are very good fighters and have defended a public plot." This was something national. (1998)

Although many councilors are partaking in land allocations, there are many elected councilors, as well as some KANU-nominated ones, such as former Mombasa mayor Balala, who are engaged in struggles to prevent the irregular privatization of public land.¹² This can be illustrated with a few examples, each from different regions of the country.

In Kakamega, a district in Western Kenya, a row between councilors and the local District Commissioner along with his Town Clerk hit the national news. The councilors, citing their duty to be custodians of the land, took a tough line. "We gave the government 14 days to transfer these two officials due to illegal allocation of government and council houses and plots and 14 acres of industrial development land. The deadline expired last Friday and we are going to forcibly remove them," they told the *Daily Nation* (1997a). This resistance was spawned by local activists who approached the many young men in the informal sector, particularly the "bodabodas" or bicycle riders who ferry passengers short distances and the "matatu touts" who show people which buses or small vehicles (*matatus*) to take to their desired destinations. "These are young men in their twenties who are going to have children someday. I asked them, if all the public land is gone and our schools are overfilled as you see them today, where will your children go to school?" one activist explained (Mmbaala 1998).

Hundreds of people gathered at the town hall threatening the Town Clerk. In a reversal of the norm, the activists sought out the local Special Branch officer, part of the state machinery of terror, and warned him that they would kill the District Commissioner (DC) if they found him. From a safe distance, the DC responded by threatening to arrest the defiant councilors. Eventually, the government transferred the DC, but his reputation followed him. The government tried twice to place him in different parts of the country. Each time he was greeted with demonstrations. Finally, they promoted him to be a Provincial Commissioner, stationed in his home area. Even there he was warned by local people at his first public meeting not to grab any land.

In Kiambu, an opposition councilor, Njoroge wa Wanguthi, discovered that the Gathiga market, a cemetery and a school compound had been grabbed by "local tycoons." The Town Clerk claimed that the plot allocations had passed in a previous council meeting. First, the councilor put a caution on transactions at the Land Registry. Second, he called a council meeting to nullify the allocations. In the interim the grabbers sent an emissary to summon him. When he refused to see the grabbers, the emissary

came back carrying the message, “We have money. We have the power—money power—and you won’t get anywhere.” The councilor told the emissary “Okay they use money power, and I will use people power and we’ll see.” He organized a meeting in the market and the entire village attended. After relating the details of the allocation and what he was doing to fight it, he asked what they wanted;

You know those people were really worked up, so what they said, was OK, you get on with those methods in the council, as for us, what we are saying here and now, is that whoever will come and dig and put a house here or come start bringing building materials here—there are no two ways—we are going to lynch him. (Wanguthi 1998)

The Town Clerk tried to obstruct the council meeting by failing to put the allocation issue on the agenda, but the councilors refused to sit until it was there. The Clerk then argued that the plots had been allocated according to procedure. Wanguthi responded:

There are two things here. The legality does not hinge on procedure alone because even assuming that these plot allocations went through the proper procedure—the question remains were they supposed to be allocated in the first place? The second thing is that the procedure was not followed. By then I had done my research and I produced the minutes from the previous council meeting when the allocation allegedly took place. They didn’t correspond and there was nothing he could do. (Waguthi 1998)

The plot allocations were nullified in the council meeting and the sites remained public.

Besides these as yet uncoordinated local resistance movements, a small group of organizations is emerging to assist the struggle to preserve public property. A defining moment leading to heightened mobilization was the particularly brutal eviction of squatters in 1996 in a shantytown, called appropriately, Soweto. Soweto, a vibrant community of over 7000 people on a patch of a little over one acre of land, was mysteriously razed to the ground. Shortly thereafter, a prominent businessman with KANU connections claimed he owned the land. With nowhere else to go, the Sowetans stood up to a hired gang consisting of policemen from four different stations and private security men (Njoki 1998).¹³ When one security man was cornered and burned to death by angry Sowetans, this was broadcast on the state-controlled television. While the government calculated that Kenyans would be appalled at the violence perpetrated by the Sowetans, instead many Kenyans sympathized with the Sowetans who suffered the brutal attack.

Soweto catalyzed efforts to create a national anti-grabbing network. In 1996, the National Council of NGOs started a project called Operation Firimbi with the aim of developing a network of local organizations “to promote the rule of law and just governance for the management of public land” (*Daily Nation* 1997b). The most active groups in this effort are Kituo cha Sheria, a legal aid organization, the Kenya Human Rights Commission (KHRC) Land Rights Program, and Release Political Prisoners pressure group under the KHRC umbrella.¹⁴ To date, the network is loose and ill formed. This stems from the difficulty of mobilizing in a context of continuing repression, and the need for greater material resources (many of the activists are poor) to link the numerous scattered mobilizations. While people from all over the country turn to Operation Firimbi for assistance as they struggle to preserve their public lands, Kituo cha Sheria is overwhelmed by cases around Nairobi alone and is unable to take all the cases to court. In an attempt at a stopgap measure, the organization is helping to draft legislation for a moratorium on all public land sales in Nairobi (Weru 1998).

As during the times of colonial appropriations of “crown lands,” those most profoundly affected are the growing numbers of squatters in both rural and urban areas. For squatters, access to public land, such as market areas, is a matter of survival. Eviction often means the loss of everything they own and for some their livelihoods. It is hardly surprising then that some of the most vocal resistance is to be found among squatters, who live in slums ringing the city. Currently many areas are organized under an association of slum dwellers. Initially called Community Action Against Forced Eviction and Land Grabbing, now Muungano (Swahili for “association of villagers/slum dwellers”), this group represents eighty-six communities, mostly in Nairobi but with aspirations to “reach out to other slum areas across the republic” (Muungano 1997). The mission statement Muungano expressed in its manifesto launched September 26, 1997, is:

- to end eviction, illegal allocation of land and to promote access to urban land for the urban poor.
- in instances where evictions must be carried out to enable public works that are truly necessary to society’s well-being, then time must be given to enable the victims to leave peacefully for approved alternatives acceptable to the people.
- first preference must be given to genuine urban slum dwellers for permanent settlement before and instead of rich developers.

Muungano is resisting “private developers” with a notion of a public sphere that involves deliberation, participation, respect for legal procedure and principles of justice.

At the same time, Muungano members are also attacking KANU's version of history and hence one of its claims to legitimacy. The launch of the manifesto was filled with cries of "*bado uhuru*" (not yet freedom) and "*bado ukoloni*" (still a colony) that took on class and nationalist overtones. They perceive their struggle as clearly similar to an anti-colonialist struggle. Particularly revealing of this were the following rhetorical questions of: *hapa ni kwako?* (Is this our home/place?) and *Mali ya Kenya ni ya wakenya?* (Is not the wealth of Kenya for Kenyans?) The private developers associated with the KANU government were being seen as colonialists of sorts, as usurpers of the Kenyan national community and of the independence struggle.

Like the squatters in the 1950s, Muungano members see not necessarily land ownership, but access to and some control over land, as their right to subsist and live as members of the Kenyan community. Indeed one of their main slogans is "Land and Shelter is a Right!" While expressing notions of the "rule of law" and the right to fair treatment under this law, the Muungano members are also appealing to notions of class oppression and a "moral economy" that holds the community responsible for all its members including the poor. Wealthy land grabbers, by breaching community obligations, were seen to be behaving like outsiders.

Consequences and Conclusions

Kenya's "land grabbing mania" concretely illustrates how powerful actors, who have a stake in maintaining patrimonial control, will find alternative sources of patronage assets when confronted with constraints on traditional sources such as aid, and in their "reproductive squeeze," "amplify violence, repression and centralization of power" (Watts 1989: 29). This points to a need to reassess the long-term impact of the current form of conditionalities and aid reductions. Allowing Moi to creatively counter the effects of conditionalities by transferring the cost on to the majority of Kenyans in the form of greater dispossession and violence has serious long-term consequences, including greater poverty and the growing instability of property rights in general. Ultimately, only Kenyans can "save Kenya," but donors would do well to think critically about the unintended consequences of their interventions.

While the "reproductive squeeze" facing powerful actors in Kenya intensifies "informalization" of politics, this does not occur without contestation. As the resistance to land grabbing among diverse sectors of the Kenyan population demonstrates, irregular appropriations of public wealth are not always considered acceptable practices of a "politics of the belly." Besides actively working to counter the material conditions which tend to make current constitutional reform largely cosmetic, the Kenya Human Rights Commission, Release Political Prisoners, Kituo cha Sheria and the growing community-based mobilizations they support are raising the is-

sues of how Kenya's land legislation and local authority need to be changed in order to be more accountable to the public.

The struggle on the part of these activists to draw irregular land allocations into the realm of public scrutiny and debate is a direct challenge to the secretive rules of the patrimonial game where patrons are not questioned on the sources of their wealth or on what the consequences of their appropriations and redistributions will be. To the extent that Kenyan land rights activists succeed in constructing a realm of public scrutiny and discussion around land, this is an important step towards challenging the power relations undergirding patrimonial control. It is also an important step towards establishing a more democratic practice in which Kenyans assert their right to inclusion in wider decision-making processes about their national resources.

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NOTES

- 1 This quotation on land is from Jomo Kenyatta's "Back to the Land" speech broadcast on September 11, 1964, on Kenyan television. It is reproduced on page 23 of his book, *Suffering without Bitterness*. Nairobi: East African Publishing House, 1968.
- 2 This quotation from Dr. Wangari Maathai is cited in a Kenyan newspaper article by John Wafula called, "Grabbing of land gets out of hand" which was published in *The Star* on November 1998.
- 3 I define corruption broadly as the abuse of public office for private gain. I understand that corruption is a normative concept and therefore contestable. This is precisely what makes it interesting as a locus where the boundary between "private" and "public" is contested through political struggle. See Philp (1997) for an excellent discussion of the definitional issues around this concept.
- 4 The mayor at the time, John Kin'gori, supported the market community. For one of the civil suits filed before the High Court of Kenya in Nairobi (Civil Case No. 3623 of 1995), he signed an affidavit on March 13, 1996, before the Commissioner of Oaths that "the allotment of plots by the City Council can only be done consequent upon a resolution by the Council" and that "there was no resolution as concerns the allotment of Land Reference 1870/IX/170 which is the subject of this suit."

- 5 Macharia notes that “the worst types of slum clearance were officially authorized in 1990, all too reminiscent of the colonial period” and this left Kenyans “alarmed and puzzled” (1992: 230). Besides settlement areas, such clearances have also involved public markets all over the country. The Westlands case is not unique, except to the degree that the market members have countered the attempt to dislodge them with fierce resistance and careful strategizing.
- 6 Intriguingly, 96 percent of the respondents from the largely pastoralist and largely KANU North Eastern province wanted to see the allocation revoked.
- 7 Between 1992 and 1993, which coincides with the first electoral challenge facing the Moi regime, over \$US 200 million was transferred from the Central Bank of Kenya to Goldenberg International Ltd. purportedly as a subsidy for exports of gold and other precious metals. Finance Minister George Saitoti, the current Vice-President and a key member of the Moi clique, authorized the deals in 1992. It is, in turn, highly likely that Kamlesh Pattni, the proprietor of Goldenberg International contributed to Moi’s campaign fund. No one has yet been prosecuted. This highly visible form of corruption in the banking sector drew immediate international outcries and pressure and contributed to the suspension of an IMF structural adjustment facility loan in July of 1997, just prior to the December 1997 general election.
- 8 Besides the Goldenberg scandal, Kenya’s other major corruption scandals involve major kick-backs for government officials who awarded lucrative contracts to uncompetitive companies at a cost to the Kenyan taxpayer and uncustomed sugar exports that undermined the local industry and cost large sums of government revenues. See Center for Governance and Democracy (1998) for an overview of these and many other scandals.
- 9 There is an emerging questioning of the binding power of presidential largess. For example, I remember striking discussions in both Western Kenya and Nairobi in 1994 over the ethics of eating the money but voting for the opposition. The slogan that was circulating was “*kula kwa KANU, kura kwa Opposition*” or eat from KANU, vote for the Opposition. See also Kanyinga’s important study of Kiambu where the majority rejected local patrons and voted for an “outsider” who they hoped would be strong enough to prevent harassment by state authorities (1994).
- 10 In another work, I show how this dynamic is at work in Kenya’s “ethnic clashes” (Klopp 1999). See also Haugerud (1993: 41–42).
- 11 Part of the facility with which land can be dispensed by the president stems from the current Government Lands Act which regulates the former “crown lands” now known as government lands. This act extends the power of the Commissioner of Lands to lease land within the townships for 99 years and agricultural areas for 999 years, with the power to convert leases into freeholds. The Commissioner of Lands is a presidential appointee, and hence is subject to the president’s orders and approval. As for trust lands (60 percent of the Kenyan land mass) the Kenyan Constitution (section 115) states “each county council shall hold the Trust land vested in it for the benefit of the persons normally resident on that land,” but the Constitution (Section 1180) and the Trust Land Act also give the president the powers to allocate trust lands directly. Presidential allocations are supposed to be for the use of the Government of Kenya and must take place in consultation with the local councils. However, the president violates these stipulations and, often by bypassing local councils, uses his allocative powers to award patronage.
- 12 When the former mayor of Mombasa, Najib Balala, confronted a powerful local “private

developer" nominated as a KANU MP, Sajjad, over illegal allocations, Sajjad quite publicly bought off a majority of councilors who passed a non-confidence vote. Hence he successfully forced Balala's resignation (Kassim 1999).

- 13 For more details on this case that involved part private land and part public land, see *African Rights* (1997).
- 14 All these groups are urban-based, but the KHRC and RPP send representatives into rural areas and hold rural meetings. Further, rural activists periodically come to Nairobi to discuss problems and strategy with RPP and KHRC.

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