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**ELECTORAL DESPOTISM IN KENYA:  
Land, Patronage and Resistance  
in the Multi-Party Context**

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# Abstract

In Africa, the new electoral freedoms of the 1990s often ushered in not less but more violence and corruption. Somewhat paradoxically, democratization appeared to lead to greater despotism. Current theories of democratic transitions fail to adequately explain this negative “fall out”. On the one hand, by focusing on formal institutional change, most transitions theory marginalizes the “informal” politics of patronage and violence. On the other hand, theorists of “informal” politics tend to assume that formal institutional change does not impinge on patrimonial dynamics. This thesis explains how the advent of electoral freedom challenges patrimonialism and, in the process, deepens local despotism. By a careful look at the Kenyan case, this thesis argues that the re-introduction of multiple political parties posed a genuine challenge to highest level patronage networks. This challenge consisted of “patronage inflation”: competitive elections escalated demands for and promises of patronage just as international conditionalities and economic difficulties led to a decline in traditional supplies of patronage. Further, with multiple political parties, voters gained bargaining power to demand both resources and accountability. A critique of patrimonialism emerged into the public realm, particularly from those who had lost out in the spoils system, the growing numbers of poor and landless. These challenges were met by counter-strategies on the part of those most set to lose by a turnover in elections. With the introduction of alternative political parties, President Moi and key patronage bosses instigated localized but electorally beneficial violence in the form of “ethnic clashes”. In their struggle to maintain patrimonial dominance, they also increasingly turned to less internationally scrutinized public lands as a patron-

age resource, leading to increasing and increasingly violent “land grabbing”. This triggered counter mobilizations which aimed at reasserting local control over public lands. Containing schools, clinics, forests, and other public goods, these lands for many represent the “fruits of independence” and the Kenyan nation at a local level. As a result, movements against their appropriation tended to be articulated in a bricolage of class and nationalist terms. By appealing to a Kenyan nation and by demanding local accountability and debate about land, these movements pose a challenge to the material basis, principles, and practice of patrimonialism and present a potential counter-politics to Kenya’s current electoral despotism.

## Précis

Au courant des années 1990, la transition du Kenya vers une plus grande liberté électorale sous forme de système multipartiste a engendré un despotisme plus sévère au niveau local. Ce “despotisme électoral”, lié au maintien du pouvoir malgré la compétition électorale, a causé des “conflits ethniques” (“ethnic clashes”) violents et le “saisissement de terrains” (“land-grabbing”). Les théories sur les transitions démocratiques dans les sociétés patrimoniales n’ont pas réussi à prévoir, ni par la suite expliquer ces conséquences néfastes. Cette lacune est due à la supposition que le multi-partisme n’aurait aucune influence sur la politique de patronage et à l’inattention de la recherche empirique à la politique “informelle”, en particulier au niveau local. Cette étude affirme que la réintroduction de partis politiques multiples a posé un défi important au niveau le plus élevé de la hiérarchie du patronage du Kenya: l’ “inflation du patronage”, c’est-à-dire le processus par lequel l’introduction des élections concurrentielles a intensifié les demandes et les promesses de patronage, alors que la corruption et les difficultés économiques menaient à un déclin des ressources traditionnelles de patronage. De plus, avec le choix de partis politiques, les électeurs ont augmenté leur pouvoir. Simultanément, une critique de patrimonialisme émergeait dans la domaine politique, issue de ceux et celles qui ont historiquement

souffert sous la politique de patronage, en particulier la population croissante de personnes pauvres et démunies de terre. Ceux qui étaient les plus menacés par le risque d'une défaite électorale ont introduit de nouvelles stratégies pour faire face aux défis posés par l'introduction du multipartisme. En particulier, le Président Moi et des chefs de patronage importants ont utilisé leur autorité bureaucratique qui datait de l'époque coloniale, y compris le pouvoir relatif à l'allocation de terres, pour inciter des "conflits ethniques" géographiquement circonscrits dans leur domaines mais importants pour gagner les élections. Aussi, en réaction contre l' "inflation du patronage" les terrains publics, qui n'attiraient peu d'attention internationale, ont été utilisés comme ressource de patronage, ce qui a mené à la multiplication de "saisissements de terrains", c'est-à-dire leur privatisation irrégulière. Ceci a déclenché des mouvements populaires qui visent à réaffirmer le contrôle local des terrains publics. Ces terrains, sur lesquels on retrouve des écoles, des cliniques, des forêts et d'autres biens publics, représentent pour plusieurs la nation kényane au niveau local. En conséquence, les mouvements contre leur appropriation sont souvent conçus en termes nationalistes. En faisant appel à la nation kényane et en exigeant la responsabilité et la discussion locales du sujet de la terre, ces mouvements posent un défi à la base matérielle, aux principes et à la pratique du patrimonialisme, présentent une possibilité de nouvelle politique de lutte contre le despotisme électoral actuel du Kenya.



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# Chapter I

## Motivations and Theoretical Issues

*Governments do not change magically through some “historical radical transformation”, but only through the actual struggles of the time.*

*Wolfe 1974<sup>1</sup>*

Paradoxically, despotism and the corruption and violence associated with it often deepen with the onset of greater political freedom. It is the aim of this thesis to show how and why. In recent times much modern political thought and analysis have engaged in one way or another with the despotism/democracy nexus. However, there has been a predisposition to turn this nexus into a dichotomy. Attention has followed world events, with analysis swinging like a pendulum between a focus on democracy, then despotism, and back again. The horrors of World War II spurred on efforts to understand the origins and workings of authoritarianism. After brief enthusiasm with the de-colonization process that followed, attention in the later Cold War period eventually came to focus on the rise of new and often increasingly despotic regimes in much of the Third World. As newly democratizing regimes emerged in the last three decades, first in Southern Europe, next in Latin America with parts of Africa, Eastern Europe, and Asia to follow, attention shifted to democratization. At this moment, as democratization, in many cases, is “stalling”, “aborting”, becoming “flawed”, or failing to “consolidate”, theories of “transitions” to democracy are now being rethought.

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<sup>1</sup>Cited in Piven and Cloward (1977: 36).

What these oscillations in theorizing underline is that to understand political process beyond the current moment, a focus on democratization requires equal attention to despotic practice and anti-democratization. Despotism and democracy should not be conceptualized as dichotomous but part of continuing social struggles.

Current theorizing about political change in Africa tends to reflect this dichotomy. On the one hand, much transitions theory focuses heavily on signs of democratic change. On the other hand, much neo-patrimonial theory focuses heavily on despotic continuity. Too often transitions theory, by relegating democracy and formal institutional change to the center of analysis, pays insufficient attention to the complex "informal" manoeuvring behind the scenes (O'Donnell 1996, Reno 1995). In contrast, theories of neo-patrimonialism tend to minimize the impact of formal institutional changes. This examination of "electoral despotism" attempts to avoid a conceptualization of change in neo-patrimonial regimes based on a democracy/despotism dichotomy. While recognizing the importance of formal institutional changes for "transitions", it examines how these impinge on the "informal politics" of patronage and violence.

Formal institutional changes such as the rise of competitive, multi-party elections have real impacts on political life, including the politics of clientelism and related identity politics (Horowitz 1985, Firmen-Sellers 1996). Indeed, even procedural aspects of how change is to take place, how to review the constitution, are the subject of intense wrangling and debate. Procedural change, including the need to win multi-party elections to retain power, can profoundly affect the distribution of power.<sup>2</sup> Theorists of neo-patrimonialism *tend to ignore the real impact of formal institutional changes on these informal maneuvers*, conceptualizing them largely as facades (For example, Bayart 1993, Reno 1995, Chabal and Daloz 1999). In this view, the advent of electoral changes that have swept the African continent fails to pose a challenge to neo-patrimonial rule. Multi-party politics, "is nothing more than a fig leaf, covering

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<sup>2</sup>Firmen-Sellers (1996: 93) forcefully makes this point in her discussion of negotiations over Ghana's independence constitution.

up the continuation and even exacerbation of the politics of the belly from the prudish eye of the West” (Bayart 1993: xiii). Further, by assuming a cultural consensus on the rules of the patrimonial game, resistance to patrimonial control, made more likely as bargaining power increases from below, gets side-lined. In general, the details of the interaction between formal institutional change and informal change are ignored (for example, Bratton and van de Walle 1997).

Another major drawback of current thinking about political change is the overemphasis on the politics of the political class, the “high politics” at the national level. This overlooks how national level politics plays itself out in local arenas. However, it is through scrutiny of local spaces that “the paradox of political liberalization” is revealed, where popular support for more accountable systems of rule clashes with continuity of post-colonial logics of power (Eyoh 1998: 355). Most critically, careful examination of the local level reveals how dominant actors, set to lose in genuinely competitive elections, engage in counter strategizing, deepening despotism in the process. A look at how national level politics is locally articulated also brings the heterogeneous poor, traders, and small-scale farmers back into our accounts of change. They play a prominent role in local struggles, but tend to get written out of our current accounts of transitions. Nevertheless, these agents are at the forefront of numerous “hidden” micro-battles against despotism, battles that have a critical cumulative impact on the calculations and strategies of the political class and national level politics as a whole. Finally, strategic deepening of local domination can change national level politics, including, critically, the outcome of elections (Fox 1994b: 107).

To examine how formal institutional change in the form of multi-party elections can, counter-intuitively, actually lead to a deepening of local despotism, manifested as corruption and violence, this dissertation examines the advent of multi-party politics in one important neo-patrimonial regime in East Africa: Kenya. Since the late 1980s, Kenya has followed the trend on the continent. Interacting internal and external pressures pried open political spaces for dissent and mobilization with potential for democratization. Simultaneously, this provoked a politics of reaction by powerful

political actors. The Kenyan case is one vivid example of more open and competitive electoral procedures ushering in greater violence and corruption, much of it severely affecting the poor. Contrary to Huntington's assertion that "liberalized authoritarianism is not a stable equilibrium: the halfway house does not stand" (1991: 137), I underscore how newly liberalized electoral procedures can, in many cases, coexist, albeit in great tension, with despotic practices. I emphasize that such hybrids of electoral regimes and despotic practices need to be analyzed as hybrids rather than from within the simple dichotomy of authoritarianism versus democracy.<sup>3</sup> While hybrid regimes are becoming a focus of attention (see Case 1996, Weffort 1998, and Oxfhorn and Ducatenzeiler 1998), emphasis is on continuity of despotic practice. In contrast, by developing the concept of electoral despotism, I underscore *how and why despotic practice often intensifies under newly competitive electoral regimes*.

This study of electoral despotism provides a more nuanced explanation of the current politics of political liberalization in neo-patrimonial regimes. Using a detailed case study of Kenya, *I explain the negative trends associated with the introduction of multi-party politics by analyzing how formal institutional change is linked to transformations in "informal" political manoeuvring, as powerful actors fight the consequences of these formal changes and less powerful actors try to exploit them and resist the manoeuvres of the anti-democratizers*. In this way, I unravel the "paradox" that political liberalization, in the form of greater electoral competition and expanded formal civil and political rights, has, in many cases, in Africa, as well as in other world regions, exacerbated violence and corruption (Carothers 1997, Zakaria 1997, Joseph 1998). In brief, the broad central question that runs through this dissertation is: *Why, in many cases, have greater political and civil freedoms led, paradoxically, to more despotic practices in the form of corruption and violence?*

To answer this central question, Kenya, once touted as the model for Africa, provides a particularly apt case study. Kenya's current ruling clique, which centers around Daniel arap Moi, has managed to stay in power since the onset of multi-party

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<sup>3</sup>For other criticisms of this dichotomy see Case (1996) and Pye (1990).



politics in 1991. The dominant party, the Kenya African National Union (KANU), won multi-party elections in 1992 and 1997. This period, however, was characterized by escalating corruption and violence. Analysts of Kenya's transition process tended to marginalize these trends, seeing them as obstacles to change, but leaving them largely unscrutinized in any detail. This shift to more extreme tactics of tyranny suggested important challenges to Moi's regime and potentially to neo-patrimonialism itself. However, the nature of this dynamic was largely untheorized. Hence, as the "model for Africa" appeared to be transforming in Western perception into a corrupt, ethnically polarized, and violent regime (Haugerud 1993), current frameworks failed to explain the dynamics underlying this process of change.

## Strategic Action and Social Struggle

Central to this study of electoral despotism is the notion of strategic action. Unlike Przeworski (1991) and Cohen (1994) who focus on strategic choice of national level actors largely disembodied from context and historical process, this work follows Giddens (1984: 288) in conceptualizing actors as drawing upon the historically produced "structural properties of the constitution of social relations" in their strategic conduct. Such structural properties involve complex and interacting hierarchies of class, gender, age, ethnicity, and regionalism that often define axes of struggle. Members of ruling cliques, many of whom share locations within this network of hierarchies, are, contrary to many analyses of transitions, not floating above the economic and social conditions of their societies but are deeply rooted in them. From this viewpoint it would be impossible to argue, as Ottaway (1995: 3) does, that:

if the democratic transformation takes place in the next few years (in Africa) it will have to be as a purely political process, supported by an ideological commitment to democracy by government and opposition leaders, rather than part of a broader process of social change under-pinned by favorable economic and social conditions.

Such a vision suggests that transitions to democracy can be neatly separated from social and economic conditions, or, to use Lonsdale's (1994) distinction, "high politics" from "deep politics" which includes local "bread and butter" issues as well as "discourses of accountability" (Lonsdale 1986, Lonsdale 2000a). "High politics" is connected to "deep politics" through multiple linkages including patron-client networks and a related electoral politics that require leaders to speak to people in their constituencies about their concerns and justify actions or inaction. Indeed, in situations of scarcity, it is often through economic deprivation that political subordination is experienced and resisted. Thus, the structural patterns of inequities linked to a legacy of patrimonial rule become the very basis around which strategies to maintain and amass supporters or clients are made. Structural inequities become campaign issues at a local level. Further, an important part of political strategy among the political class is to channel the struggles these inequities engender in politically profitable ways. In brief, what Giddens (1984: 288) has called the "structural properties in the constitution of social relations" is an integral part of the strategic action of the powerful and often provides the galvanizing issues among those most marginalized within the configuration of power. As such it is at the heart of a process of change, particularly as electoral competition increases the bargaining power of constituents.

To take this more historical and socially embedded approach to the current politics of political liberalization means to grapple head on with the relation between structure and agency within a process of change. Early transitions theory emphasized the political agency of democratizers in opposition parties and movements in a context of fluid uncertainty (Karl 1990). This emphasis on agency produced an advice literature aimed at democratic princes (for example, Di Palma 1990, Huntington 1991 and O'Donnell and Schmitter 1986). A technocratic and, at times, romanticized vision of the new democratizers was often coupled to a structural list of obstacles faced by them.<sup>4</sup> Indeed, as it became increasingly clear that, in the majority of cases, democratization was failing to "consolidate" or institutionalize, structural factors

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<sup>4</sup>Huntington (1991) is most extreme in this disjunction between agency and structure.

came into focus again (Collier forthcoming).

Others, such as Bratton and van de Walle (1997), attempt to navigate between a structure-agency dichotomy through a "structured contingency" approach, focusing on institutions. However, combined with their emphasis on large N statistics, this gives a curiously disembedded approach to institutional change which fails to adequately capture either the dynamics or the structures implicated in African transitions. By shifting attention "from the background of macro-social class interests and ethnic identities to the political foreground of electoral, party, military, parastatal and voluntary organizations through which struggles are actually waged" (1997: 42), these scholars marginalize mobilizations among the poorer segments of society that do not have conventional institutional expression and draw on ethnic languages as well as ethnic languages of class (Lonsdale 1992a: 298). Further, class and ethnicity, far from being "structure" or "in the background", play centrally into the very content and strategizing of contemporary struggles.<sup>5</sup>

To avoid artificially separating agency from structure, the notion of strategy used in this thesis follows Bourdieu (Bourdieu and Wacquant 1992). Agents are conceptualized as responding to a reconfiguration of their "field of power" which is often triggered by contextual factors beyond their control such as changes in geo-politics and economy. According to Bourdieu's (Bourdieu and Wacquant 1992: 97) rather lengthy definition, a "field of power" is:

a network, or a configuration of, objective relations between positions. These positions are objectively defined, in their existence and in the determinations they impose upon their occupants, agents or institutions, by their present and

---

<sup>5</sup>While trying to "bring politics back in" (1997: 276), Bratton and van de Walle end up with a curiously apolitical approach, reflected in their concluding comment that "until elites and citizens alike come to cherish rule by the people and exhibit a willingness to stand up for it, in Africa as elsewhere, there will be no permanent defense against tyranny" (1997: 297). It is as if they believe that the problem boils down to attitudes among "elites" and "citizens" which, if changed, would smooth over the deep, violent, and ongoing struggles around the entrenched interests of elites at the top of the patronage hierarchy!

potential situation (*situs*) in the structure of the distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake in the field, as well as by their objective relation to other positions.

By emphasizing actors' locations within a network of power relations, the metaphor of a field is a useful conceptual device to bridge structure and agency. Agents are able to transform the field, without determining it, but are, at the same time, embedded in it and experience the agencies of others through it. Nevertheless, the field, with its concentrations of force, provides a structure to the constitution of social relations.

More concretely, the current context of political liberalization, defined here as a more open political order in which some civil and political freedoms previously repressed are allowed, involves changes in the "field of power." The context of political liberalization, in most cases in Africa, involves the introduction of new parties, greater political space for dissent and mobilization made possible by limited political reforms, changing policies of donors including the rise of political conditionalities, and the impact of economic decline. Dominant actors strategize in an attempt to maintain or enhance their positions in such a changing context. Such strategizing is necessary, not only because of challenges by disaffected former members of the ruling circles, "outsiders" of the patrimonial system trying to get in (Bratton and van de Walle 1994) but *also because of the resistance and active counter-measures to despotic practices by actors within subordinated groups*. In fact, in a context of "high-political faction fights" triggered by multi-party politics, people who normally have little capacity to act, "may find themselves empowered, and of necessity too, since often there remain no others who can be trusted to protect their lives and livelihoods" (Lonsdale 2000a: 4). In the process of this struggle, subordinate actors challenge existing patterns of power, striving to make them more equitable. This creates conditions for new patterns of more democratic practice to emerge. It also creates new targets of repression.

## The “State in Society” Approach to Electoral Despotism

The institutions of the state are particularly important sites in which to examine the strategic action of dominant actors and their embeddedness in social struggles. This is because the state has important coercive capabilities over a territory, including, as Weber (1964) stressed, a monopoly over the legitimate use of violence. State institutions, particularly in an African context, provide critical access points to resources, which actors draw upon in their contestations and accommodations. Since the state acts as an enforcer and legitimizer of social relations and property rights, privileged access to its institutions facilitates the material and symbolic reproduction of dominant actors' positions. Thus, a “state in society” approach assumes that the state is embedded within societal struggles, and its autonomy is not a static given but is determined by these ongoing social struggles (Migdal 1994, Chandhoke 1995).

Mann (1986) makes a helpful distinction between two types of state power: despotic power and infra-structural power. Despotic power refers to “the range of actions that the ruler and his staff are empowered to attempt to implement without routine, institutionalized negotiation with civil society groups” (Mann 1986: 169-170). Infra-structural power refers to “the capacity to actually penetrate society and to implement logistically political decisions” (Mann 1986: 170). The extent of despotic state power is dependent upon institutional configuration and social struggles that determine whether negotiation and debate, what we understand as central to democratic regimes, are a central part of governing. Further, while despotic power may be strong, in many neo-patrimonial regimes infra-structural power may actually be weak.<sup>6</sup>

In part, as a substitute for missing infra-structural power, actors at the center

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<sup>6</sup>The failure to distinguish between these forms of power has led to a rather futile debate around whether the African state is “strong” or “weak”. The state can have “strong” despotic powers and “weak” infra-structural powers.

rely on local clients and power brokers to assert the dominance of the ruling clique at the center (Migdal 1988). However, lack of infra-structural power does not imply lack of despotic power. In the African context, the form of rule under colonialism involved a “decentralized despotism”. In “decentralized despotism” the institution of the chieftaincy was constructed with judicial, legislative, executive and administrative authority largely fused into one authority which was backed up by the coercive capacities of the administration (Mamdani 1996: 23). Chiefs became clients of the colonial administration and, in return for wide powers, enforced state policy. This allowed the state via the agency of the chief and a constellation of other local administrators, to exert a fused *despotic infra-structural power* on African societies that frequently reached its limits in confrontation with resistance from below.

Here it is important to emphasize that social struggles are not merely against despotic state power. In many struggles, demands are made for state resources, and the provision of entitlements is a welcome extension of the state. An overemphasis on fighting intrusive state action often deflects attention from how people demand state interventions in the form of services. Hence, for example, one surprised researcher in Ethiopia found that her critiques of government driven projects were “greeted with impatient dismissal: ‘yes, there is plenty of corruption, abuse and ineptitude of which we are well aware, but we want schools, clinics and a water supply’ ” (Zarowsky 1999: 49). In other cases, struggle is indeed against state coercion and for a retraction of certain forms of state oppression including what is perceived as the unjust extraction of resources. Hence, not only the extent but the form of the state is shaped by these struggles, including the degree of despotic versus more democratic practice involved in the exercise of state power.

The exercise of despotic power in Africa has centrally involved the bureaucratic apparatus. Transitions theorists tend to focus on institutions such as political parties and parliaments. The role of bureaucracies in politics, including electoral politics, remains less systematically scrutinized (Berman 2000). This is true even though the administrative apparatus, in the case of many African countries, plays a critical

role in the politics of control and is, in many cases, fused with dominant political parties (Mutahaba 1989, Widner 1992). One of the weaknesses of a focus on who gets elected and their negotiations at the formal level is that the “informal” maneuvers of key actors within the institutional nexus of the administration and its contentious boundary with society are largely neglected. This is true even though, as we will see with respect to Kenya, this is a critical locus where despotism is practiced and increasingly challenged.

This oversight may be in part because our theory follows what we can see most clearly—the national level politics of the political class. However, inordinate attention on the formal representative institutions associated with democracy as the measuring stick of the transformation to democracy is problematic. Deviations from expected democratic behaviour and outcomes are then too often attributed to the residual and under-scrutinized structural category of the “authoritarian legacy” or attributed to democratization itself (See Snyder 2000, Zakaria 1997). This denies the possibility that such “deviations” may be evidence of strategic action on the part of dominant actors, action which draws selectively on structural properties of social relations enforced and legitimized by state institutions, including despotic bureaucracies.<sup>7</sup>

“Informal” actions often involve changing and complex patron-client networks and the selective use of violence, implicating state institutions, although increasingly in privatized form.<sup>8</sup> The potential effects of these actions, in the form of violence and proliferating corruption, which I define broadly as the abuse of public office for private gain<sup>9</sup>, are quite visible, albeit hard to measure. However, to study the political

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<sup>7</sup>There are those that draw attention to a corrupt and self-serving elite, for example Ayittey (1992). However, too often in these accounts, the historical institutional patterns of despotism are lost and Africa’s problems are psychologized and problematized as pathology.

<sup>8</sup>An example would be the hiring of police officers or thugs to attack opposition activists or intimidate a competitor who is bidding for a business contract from the state. In an extreme example, Reno (1995) shows how coercive state functions are doled out to private firms like Executive Outcomes which provide security forces.

<sup>9</sup>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 interests” and a “public

dynamic producing forms of violence and corruption and the resistance to them is a challenge for two reasons. First, informal manoeuvres are deliberately masked by those engaged in them and, except for the often dramatic effects, much is, in fact, actively hidden, in part by being acted out at a local level which requires local knowledge to penetrate. Secondly, these manoeuvres involve violence which creates problems for researchers who attempt to explore them. This contributes to the fact that, regardless of the profound significance of violence in political processes, it tends to be under-studied (Keane 1996) or bracketed as “abnormal politics” (Tilly 2000). These practical factors have contributed to a neglect of the theoretical significance of the negative and unintended consequences of liberalization. They remain “flaws”, “deviations” from the democratic standard or obstacles to “consolidation” of democratic practice, but we have not explained them adequately within our current frameworks.

## Neo-Patrimonialism and Facades

Most neo-patrimonial theories of politics grapple head-on with the “informal” politics of patron-client ties and, to a lesser extent, violence. While definitions vary, three defining elements of patron-client relationships are generally stressed:

- 1) a reciprocal exchange of goods and services, often, for example, the exchange of votes for money or goods.
- 2) a personal element or face to face character that lasts for some time.
- 3) an asymmetry in power and status.

These clientelist relations take on diverse forms and are found in a wide number of contexts at many levels in very diverse societies. Indeed, the patron-client relation realm are contested through political struggle. See Philp (1997) for an excellent discussion of the definitional issues around this concept. It is important to distinguish “corruption” from patronage. While “corruption” is often the source of patronage resources, it may or may not be embedded in patron-client networks.



as a concept fits a wide number of relationships (Blok 1969: 36). However, *it is the centralization of authority through the state that creates certain forms of systemic patron-client relations that characterize a neo-patrimonial regime.*

A regime is neo-patrimonial when state authority, exercised through institutions, is dominated by patrons and their vertical networks, and the highest representative of the state in the executive, the president or prime minister, is a paramount patron with wide control over bureaucratic appointments and resources. The very presence of a centralized bureaucratic authority gives rise to particular forms of patron-client relations, particularly those in which the patron plays the role of a broker on behalf of clients that are distant from the administrative power centers (Blok 1969: 369). Here, then, it is not the prevalence or density of diverse patron-client relations in society that characterizes such a regime but rather *the integral role played by patronage in the exercise of state power* (Kaufman 1974).

In neo-patrimonial regimes, the despotic power of the state is central. State repression helps undermine the autonomy of clients who exchange political subordination for material awards and/or protection in an uncertain environment. In such a context clients are not confined to the poorer segments of the population, but include businessmen, university lecturers, labour leaders, and other middle class actors who require state sanction for their activities. Circumscribing freedom of assembly tends to be part of neo-patrimonialism, because clients who are unable to openly deliberate and organize are less able to improve their bargaining power relative to higher level patrons. Indeed, neo-patrimonial regimes involve the deliberate undermining of a “public sphere,” because preserving private power requires keeping conflicts over it out of a public arena where the weak can combine for self-defense (Schattschneider 1975: 122).

While clients are agents and actively negotiate their way into networks, they do this largely because of the absence of physical security and legitimate public authority. In this way contemporary patron-client relations cannot be understood outside the workings of the state with its coercive capacities. It is “the vulnerability of clients

which is most obvious and important, and determines the extent to which they need patrons, and hence the degree of subordination to which they will be willing to subject themselves in order to obtain them" (Clapham 1982: 12). Thus, conceptions which posit a dichotomy between patron-client ties and a "strong" state or bureaucracy ignore how certain bureaucratic institutional configurations and practice undergird and facilitate these networks (for example, Reno 1995). Particularly marginalized are the unaccountable, coercive, and predatory actions of members of the state bureaucracy at a local level, such as chiefs and district commissioners, many of whom owe their positions to higher level patronage bosses for whom they perform policing functions. Further, many coercive institutional practices such as the control of public meetings, products of the colonial period, are, in fact, allowed by law and in this way legitimized by the state as a whole.

A number of scholars argue that patron-client ties are a substitute for coercion (Lemarchand 1972). While it is true that patron-client ties mingle material incentives with coercion, "carrots" with "sticks", the tendency of theories of neo-patrimonialism to portray widespread societal complicity in this form of rule minimizes the role of violence in its various guises in maintaining these relations. This is particularly true if we expand our concept of violence to include "the more basic environmentally endemic, intractable and latent aetiology of violence" (Khan 1978: 837), which involves structured economic inequalities.<sup>10</sup>

While all patron-client relationships produced within the context of neo-patrimonialism are unequal, the extent of this inequality is critical. When the "benefits" decline for clients, this tends to shift the balance between what is considered acceptable behaviour of a patron and what is considered exploitation (Scott 1977). Indeed, when the balance reaches a certain moral threshold, this relationship can turn into "the experience of violence to intuitively presupposed conceptions of justice" which engenders more overt resistance (Honneth 1995: xiv) and questioning of the relationship itself. Thus, the relationship between patrons and clients is not only about material

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<sup>10</sup>For an important work on these forms of violence see Scheper-Hughes (1992).

gain but involves moral understandings and debate, a point convincingly made by Lonsdale (1992a, 1994, 2000a). For example, after land alienation and the imposition of fixed “reserve boundaries”, Kenya’s largely Kikuyu “squatters” in the 1940s and 1950s negotiated a relationship in which they were clients of white farmers in the Rift Valley. This unequal but nevertheless mutually beneficial relationship was preferable to the poverty and powerlessness of proletarianization (Kanogo 1987). Hence, squatters exchanged labour for rights to land in a highly asymmetric relationship. However, ultimately their positions as clients and their wealth garnered through access to land provided in this relationship were threatened by a series of Master and Servants Ordinances, which gave white settlers even more power. This state intervention helped push many “squatters” across a certain moral threshold, and they chose to rebel, some fighting in the Mau Mau movement for the right to their own land and the autonomy and freedom this implied. This illustrates how repressive state interventions backed by the potential threat of violence, in both the direct form and indirect form of material deprivation and exclusion, play a crucial role in facilitating some forms of patron-client relations, and, when these interventions violate prevailing notions of justice, in engendering challenges to these relations.

Patron-client systems generate a basis for moral claims for protection and material assistance on the part of subordinates. However, such systems undermine the basic autonomy necessary for citizenship in democratic polities (Fox 1994a).<sup>11</sup> Citizenship entails a legal order that guarantees rights and entitlements, collective and individual, civil, social, and economic. While not implying economic equality, citizenship demands an approximation to the ideals of equality before the law and the equality to speak and be heard in a public dialogue about principles and practices including the distributions of entitlements. When some groups subvert the “public realm” with their private will to power, the autonomy of the state to articulate and

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<sup>11</sup>Thus, the term “patrimonial democrat” used by Linda Beck (1996) may be an unfortunate one. As she notes, in the case of Senegal such patrons *liberalize in order to stave off democratization* and use patron-client politics to subvert a legal order based on democratic practice.

implement a relatively equitable citizenship regime is undermined and the situation can be described classically by the word *despotes* which means rule in self interest. Such despotism is often critiqued by subordinate groups using moral notions against greed, egotism and exploitation.<sup>12</sup>

## The Public, The Private, and Property Rights

In neo-patrimonial regimes, patronage generates privileged groups with respect to the state, “defies the legal order” (Roniger 1994: 9), and undermines the public realm. This is facilitated by the often colonial legal and institutional order, in which coercive and material power is concentrated. Critically, as the state is the protector of property rights, both public and private, neo-patrimonial regimes provide remarkable opportunities for those at the highest reaches of the patronage hierarchy to manipulate these rights. This explains why taking over the state with its coercive capacities and institutional opportunities tends to become a high stakes, zero-sum struggle within the political class.

Institutions that concentrate power over material resources in the executive blur the boundaries between private and public rights to property. This leads to informal, private negotiations largely over the control of resources, without consideration for constitutionally regulated and grounded rights and entitlements. In such an institutional configuration, it is largely the president/prime minister who is the final arbiter of what constitutes policy, and this is largely dictated by his will to power. When coupled to electoral competition, where rulers can use their concentrated power to perpetuate their rule, such regimes may be most aptly described as *electoral despotisms*. This term emphasizes the subordination of the public to the private interests of the ruler and his clique who are unconstrained by law and can use their power to

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<sup>12</sup>Schaffer (1998: 80) offers a fascinating example of such moral notions among Wolof speakers in Senegal who contrast *politig*- “disruption, discord, exploitation, egoism and greed” with *demokraasi* which takes on not only the standard connotations of elections and multi-partyism but also that of “consensus, evenhandedness and solidarity.”

win newly competitive elections. In brief, persisting neo-patrimonial rule undermines essential elements of democratic rule: *isegoria* -the equality of the right to speak as well as *isonomia* -equality before the law. It also allows for the manipulation of property rights to punish resisters and reward supporters, selectively impoverishing and enriching sectors of the population and in the process playing havoc with economic production and the stability of property rights regimes.

In neo-patrimonial regimes “state power and the interests of the ruling group are the central focus of state policy” (Callaghy 1987: 100) or in Weber’s words, “governing powers and the associated advantage are treated as *private rights*” [emphasis added] (1964: 353). This deliberate blurring of the public/private boundary renders the emergence of resistance to these informal practices and organization in the “public interest” difficult. Too often, however, theorists of neo-patrimonialism assume that because the boundary between public and private wealth is hopelessly blurred, “corruption”, the abuse of public office for private gain, is uncontested within society. “Corruption” is part of the legitimate rewards of the patrimonial game.

This is captured in Bayart’s important book *The State in Africa: The Politics of the Belly*. In this work Bayart draws on a popular Cameroonian proverb “A goat eats where it is tethered” to illustrate his argument that “corruption and predatoriness” are “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 hence 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). Alternatively, public domains, or at least accountable public domains, are entirely localized (Ekeh 1975, Schaffer 1998: 95).

This emphasis tends to rule out resistance to patrimonial practice. While the conventional transitions framework too facilely assumes a private/public boundary

(O'Donnell 1996, Reno 1995), many neo-patrimonial theorists ignore the contestations around the shifting boundary between "private" and "public." When privatized channels of distributing wealth result in dispossession and maldistribution of wealth, as they are wont to do, indigenous notions of justice are often violated, and this forms the basis for challenging power relations and claiming citizenship rights, drawing on local cultural resources. For example, the metaphor of "eating" becomes part of the way to condemn the rapacious behaviour of the political class, and this links local injustice to the national level. An "unschooled resident of the small, poor village of Nguene Cisse" described his sense of marginalization as well as the sense of moral violation under Senegal's neo-patrimonial regime, with a clear awareness of the social stratification it produces:

The government...in place now is like a prostitute. Anyone who pays can have sex with her. The government corrupts people. It is even corrupting our moral leaders [kilifa]. If government leaders give you a million francs, you're obliged to look after their interests only. You can no longer even think about other people. You don't even think about where they got the money from-whether they took it from their supporters or stole it from a bank account belonging to Senegal. This is the money that the people of Senegal earned through hard work.

But look around, every government deputy has money to buy a huge field and transform it into a green garden. He hires people to work for him. He even installs a chicken coop. Then he takes the money he earns and puts it in a foreign bank. He's done nothing to develop the country or help the poor. He has nine, we have one. He should give us two or three to help us. Instead he does all he can to take our one away and add it to his nine.

This government has seen that there are spiritual leaders...who can sway people's opinion. It gives these leaders money to get them to influence how their followers vote. The government does not think of the interests of the farmers... (Schaffer 1998: 93).

While patron-client ties involve some limited redistribution from patrons to clients, the lack of public authority over allocations and decisions about production generates “structural injustices” as the poor farmer from Nguene Cisse is aware. These structural injustices in turn become the axes around which much politics at the local level revolve. These in turn are linked to perceptions of national maldistribution and inequities that proliferate in neo-patrimonial regimes, particularly when such regimes are undergoing a “reproduction squeeze.”<sup>13</sup>

In situations in which neo-patrimonial regimes experience “reproduction squeezes”, regional, ethnic, and class mobilizations (and they are not always distinct) would be expected to increase as deepening grievances are coupled to greater possibilities of expression and organization. To the extent that these grievances can be channelled into societal conflicts as opposed to mobilization against the despotic state, patronage bosses can, in part, manipulate divisions to play a precarious game of survival.<sup>14</sup> In this game, dissenting groups are likely to be attacked and further marginalized by powerful patrons who use ethnic and class divisions as a central focus of their strategies of “divide and conquer.” This reflects, what Schattschneider has called the “most devastating kind of political strategy” -the channeling of conflicts and the successful substitution of one kind of conflict for another more advantageous to dominant political actors (1975: 71). This deliberate attempt to fragment the political community, however, provokes an oppositional politics that draws on nationalist themes. As in the democratic revolutions of the eighteenth century, the struggle against despotism involves calling the nation, as well as the interpreters of nation, into question.

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<sup>13</sup>This expression for the material problems faced by actors attempting to reproduce their domination is from Watts (1989: 29).

<sup>14</sup>I contrast this view with the more simplistic but very prevalent notion that democratization merely thaws out pre-existing conflicts held in check by authoritarian rule.

## Imagined Communities and Patrimonial Politics

The politics of neo-patrimonialism is intricately related to the politics of identity. A multiplicity of identities are at play in African politics. Africans are not only members of imagined ethnic communities,<sup>15</sup> but also citizens, subjects, townsmen, city-dwellers, believers (Ranger 1999: 134), Kenyans or Ugandans, workers, consumers and family members. As we shall see, in the Kenyan case the struggles over patrimonial control implicate various identities within local struggles, often pitting them against each other in concrete contestations over power and recognition. Most African societies, once profoundly local yet fluid, interactive, and aware of inter-dependency, were administratively “containerized”<sup>16</sup> during the colonial period. The result, in part, has been the proliferation of claims based on local identities.

This tendency is exacerbated by the practices of neo-patrimonialism. In struggles over the state and appointments to its bureaucratic apparatus, claims around ethnic community tend to dominate. Within the context of neo-patrimonialism, appointments of certain members of an imagined “ethnic community” to particular positions of influence, particularly plum posts associated with higher level politicians, are often interpreted to confer benefits on a number of clients and sub-clients from that “community” as well as the “community” as a whole. In an electoral context, patrons may use appeals to ethnic solidarity to solicit support, drawing wider or narrower boundaries around “community” depending in part on the effectiveness of uniting people or fomenting divisions as electoral strategy. Subordinates also make claims on those in power, naming them as part of their “community” as a means to claim access to state resources, security and representation at the national level. Thus, ethnicity as

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<sup>15</sup>Here I draw on Benedict Anderson’s (1983: 7) definition of nation as “an imagined political community” and further, follow Lonsdale (1992a: 267) in understanding “tribes” (a term shunned by academics with good reason, but very much part of the African lexicon) essentially as nations without states and hence as “moral arenas of political debate” or “civic republics” (Ndegwa 1997).

<sup>16</sup>I borrow this term from Mamdani (1996). While a great deal of pre-colonial fluidity among African societies existed (Kopytoff 1987), Ambler’s (1988) work shows this coexisted with an intense localism.



it is practiced within patronage politics is flexible, with debates concerning the “real” ethnic identity of patronage appointees.<sup>17</sup>

The categories that arise within ethnic practice are fluid and incorporate multiple sub-identities. This does not imply that the “choices” around ethnicity are either arbitrary or purely instrumental. Rather, they must be understood to be *historically produced* and “are related to the social conditions of their emergence and perpetuation”, including historical institutional context (Carter-Bentley 1987: fn 47). As Gilroy has aptly put it, “identity-making has a history even though its historical character is often systematically concealed” (2000: 100). For example, within Kenya the category of “Kalenjin” subsumes many identities: Tugen, Keiyo, Marakwet, Pokot, Terik, Saboat, Nandi and Kipsigis. Kipkorir (1985) traces the formation of this politically charged category to a 1950s meeting by young educated men within these communities who wanted a more appropriate collective term. Thus, they chose the word “Kalenjin” which means “I say” in all the languages and was a common expression used by John arap Chemalian in his vernacular radio broadcasts during World War II. The extent to which ethnic categories take on different significances is illustrated by the recent declaration by a group of self-defined Marakwet that they are no longer Kalenjin. In this case the affirmation of a Marakwet identity against a Kalenjin identity reflects a growing sense of oppression. Marakwet communities were being attacked by cattle raiding members of another “Kalenjin” group, the Pokot, linked to a powerful cabinet minister. This experience of dispossession and violence created a sense of marginalization even within a regime headed by Moi, a Tugen, and hence supposedly a fellow Kalenjin.<sup>18</sup>

<sup>17</sup>The vice president of Kenya is labelled at times as a Kikuyu and at other times a Maasai. For the political contestation of ethnic identities in Cameroon see Bayart (1993: 41-59). The most condemning attack on a leader is to make claims that he does not even belong to one of the communities within the nation. Hence Kaunda, the former president of Zambia, and Museveni, the current president of Uganda, are denounced as “foreigners” by opponents. Finally, the workers on commercial farms in Zimbabwe are being called “Malawians” and targeted as “outsiders” as part of Mugabe’s electoral struggles (Rutherford 2000).

<sup>18</sup>The cattle raiding itself may be a new form of “patronage”. By declining to secure the cattle

To emphasize that ethnicity is historical is to recognize that it raises moral and political debate over the problems of exclusion, distribution and representation within the “imagined community” of the nation (Yeros 1999: 7). The national community in Africa is most often imagined along communitarian lines as a nation of communities. This places the notion and agenda of liberal citizenship in tension with local ethnic understandings (Ndegwa 1997). Nevertheless, ethnicity is not necessarily pitted against an over-arching nation. Here, Lonsdale’s distinction between “political tribalism” and “moral ethnicity” is a useful one. Political tribalism -the unprincipled competition for access to the state on behalf of leaders who draw support from administratively contained, ethnicized constituencies- should not be confused with “moral ethnicity”-the moral economy at the core of ethnicities “that allocates ‘reputation’ to the means by which people pursue their self-interest” and involves notions of civic virtue that check unbridled and unprincipled self-interest (1994: 138-139). The former is part of domination, the latter has potential to resist domination and, when projected onto the imagined national community, to create the basis for a more accountable national public realm. Depending upon political context, then, ethnic claims can be a form of resistance to marginalization and coercion (Berman 1998, Pieterse 1996, Yashar 1998) and a call for principled political behaviour or, as in the Hutu Power movement in Rwanda, a means to domination. The bottom line is that any analysis of ethnicity must involve scrutiny of which actors are articulating ethnic claims and how this relates to strategy. In other words, ethnicity must be understood as embedded within existing power relations.<sup>19</sup>

and lives of Marakwet, actors in the state allow Pokot clients to use this lack of state authority to accumulate resources (Katumanga 1998). Further, at the time, a popular doctor at Moi University Teaching Hospital identified as a Marakwet was to be replaced by another non-Marakwet Moi client. This removal symbolized Marakwet national exclusion and deepened the sense of grievance.

<sup>19</sup>It follows that large N studies that attempt to find general principles of politics based on the presence of ethnic diversity itself (See Posner (1999) for examples) are overly structuralist and static, while the practice of ethnicity itself is dynamic and can lead to fragmentation or to tolerant cosmopolitanism, a “community of communities” as one Kenyan editorialist put it. Malkki’s remarkable study on Burundese refugees (1995) presents an excellent example of how different political contexts

Neo-patrimonial regimes tend to lead to proliferation of ethnic and regional claims and mobilizations. The highly secretive, “informal” exchanges and the resultant opaque maldistributions of patron-client politics, which often deepen prior inequities, leave room for a multiplication of grievances. With the bureaucracy a most visible manifestation of resource flow and national recognition, many grievances focus on administrative appointments and status (for example, whether an “ethnic community” has its own administrative unit and whether it is adequately represented in the higher echelons of the bureaucratic hierarchy). This, in turn, implicates colonial legacy in two ways. First, during the colonial period administrative units were formed on the basis of constructed ethnic categories, some corresponding to pre-colonial groupings and others more to colonial imagination (Ranger 1993). These boundaries became the basis of contestation and regional and ethnic identity. Second, the uneven colonial penetration of markets and production generated economic differentials across the territory as well as differing degrees of class formation (Berman 1998). Such relations of inequality create the basis for ethnogenesis (Comaroff 1996: 166).

“Political tribalism”, then, is rooted in a failure of representation, which the institutional configuration of neo-patrimonial regimes engenders and which ruling cliques quite intentionally foster. Legislatures, in theory a representational body and a forum of cross-community debate, are hardly autonomous from the paramount patron or president. As a result, debate on national policy tends to be circumscribed as elected members partake in patron-client relations. Poltham’s description of the Ivorian National Assembly as “a patronage mechanism to co-opt would be counter-elites and ensure the loyalty of leaders to the system” (1970: 242) is still applicable in many ways today. Through appointments to ministerial posts, by becoming clients of higher up patrons or by directly soliciting presidential support, MPs access state resources that can then be used to buy support through “development” in their constituencies. In this way, elected representatives, particularly but not exclusively, those in the dominant political party, are often part of cascading patron-client networks centered can lead to significantly divergent formation of ethnic identity.

around the president. These networks are parallel but, at times, overlapping with the patron-client networks that pervade the bureaucracy. As part of these dual systems of networks, MPs engage in an intense competition for access to the president and his power over appointments and allocation of state resources.

Within this struggle over access to the state, particularly the concentrated power of the presidency, the practice of ethnicity becomes an integral part of strategy. In a context of material decline and greater electoral competition, patronage bosses who face a loss of power may refine their support along narrowed ethnicized lines, attempting to exclude and even scapegoat smaller and often dissenting sub-communities within their own multi-ethnic constituencies. In extreme cases, to make up for lack of patronage resources, patrons may use their power to withdraw state protection and allow privileged actors from one group to extract resources from another, buying majority support in part through the fear of retaliation. As Lemarchand stresses from the tragic experience of Burundi “one cannot overestimate the part played by individual actors in defining the nature of the threats posed to their respective communities, framing strategies designed to counter such threats, rallying support for the cause, bringing pressure to bear on key decision-makers, and in short politicizing ethnoregional identities” (1994: 77).

## **Class, Nation, and Ethnicity**

The play on ethnically articulated grievances within a context of neo-patrimonialism deepens social fragmentation and undermines trans-local bonds of trust (Berman 2000). This provokes a central question: Is there a countervailing politics of identity with the potential to unite people across ethnic boundaries? It is often held that patron-client ties, by creating vertical alliances and fomenting factional divisions within classes, defuse class consciousness as a basis for collective action across ethnic boundaries (Scott 1972, Flynn 1974, Clapham 1982). Bayart, for example, argues that to the extent that ethnic mobilization is a means to “source the modern econ-

omy” and hence is a means to accumulation, ethnicity is hopelessly entangled in social stratification, leaving the post-colonial state with an imprecise class structure (1993: 56-59). Nevertheless, even in cases where class structure is thought to be more “precise”, class identities interact in complex ways with other forms of identity. As part of strategy, dominant actors do attempt to ethnicize (or in some cases de-ethnicize) conflict in order to divert struggles into politically useful channels and to quite deliberately deflect attention away from class grievances. For example, in Rwanda, Jefremovas suggests that in the very early stages prior to the onset of full-scale genocide, intensification of the call to exterminate the Tutsis was in part “mounted to deflect and redirect the violence of the poor and young against the Tutsi and away from the rich Hutu elite” (1997: 99). Indeed, I will show that this tactic of diversion is very much part of ruling clique strategy in Kenya. However, the forms of resistance to this diversion take ethnic, nationalist and class forms, often intertwined.<sup>20</sup>

Another aspect of the conceptual confusion surrounding the interconnection between class consciousness, ethnicity and patronage stems from the failure to distinguish between two forms of patron-client ties. The first form involves the ties between a patron and a local community as a whole through the provision of public goods. The second form involves the ties between a patron and select individuals within either the local community or at the national level in the administration.<sup>21</sup> While these forms of clientelism are interlocking, much clarity is to be gained by analytically separating them.<sup>22</sup>

To begin, consider the case of corporate clientelism, represented for example in the relationship of an MP to his or her constituency as a whole. One demand of

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<sup>20</sup>In Kenya part of the reason for this is that expression of an overt class politics has historically provoked some of the greatest repression.

<sup>21</sup>In Rwanda, a country with extensive pre-colonial, colonial and post-colonial patron-client relations at the foundation of its highly centralized state, this distinction was reflected in language. *Umuheto* implied clientelism with respect to a corporate group whereas, *ubuhake* referred to clientelism linking a patron to an individual (Newbury 1988: 75-76).

<sup>22</sup>This roughly corresponds to what Subramanian (1999: 69) has called “populist” and “bureaucratic” clientelism respectively.

constituents, particularly in poorer areas, is for the provision of government services, which are public goods in the form of schools, clinics, or roads. These are legitimate pressures from below for services. However, in neo-patrimonial systems which undermine local autonomy, such legitimate demands are largely "heard" through the intermediary of the patron who uses monopoly powers over provision of services as an explicit political tool (Greenfield 1977). This relationship is reinforced institutionally by preventing autonomous local government. Coupled with historically produced inequities, which were often generated and exacerbated during the colonial period, corporate clientelism creates an erratic and often opaque regional distribution of national resources. Areas with powerful patrons gain access to more resources or more "protection", with those regions associated with the paramount patron perceived as the most privileged. In brief, the erratic nature of corporate clientelism tends to generate or exacerbate regionally based and ethnically articulated grievances. At the same time the services, given the institutional configuration almost necessarily provided through this form of patronage, reflect legitimate demands from constituents on their government for often desperately needed services.

Key patrons, however, also have specific individual clients both within their "community" and at the national level. This is reflected in Vansina's observation that in the former Zaire:

every wealthy person becomes a patron of a number of hanger-ons, who live from his handouts or from positions they owe to his patronage. Corruption is certainly not justified by the needs of poor relatives, as it is sometimes claimed. It is kept in motion by the need to keep, or to increase the number of followers, since patrons are ranked politically by this criteria (Vansina 1982: 60).

At the national level, the often fierce competition between patrons for national resources should not obscure the inter-ethnic cooperation among key patrons and their "hanger-ons". Of course, this is most evident in the multi-ethnic client constellations around the paramount patron and his key patronage bosses who are noticeable for their individual ostentatious wealth. Regardless of perceptions regarding

"trickle down effects", this wealth is not always interpreted as legitimately obtained. As Vansina argues in the extreme case of Mobutu's Zaire, corruption, which quite clearly involved a pillage of public resources, became "so universal, so blatant and so coercive" that it led to clear class differences and consciousness (1982: 60).

These class differences are rooted in large part, but by no means exclusively, in the relative position of social groups with respect to the "productive" capacities of the state-centered patronage pyramid (Diamond 1987, Kasfir 1984). Access to the state is a means to the center of wealth "production" through external linkages, coercive, extractive capacities, and privileged avenues to public resources such as land. A subsistence farmer or urban informal sector worker and a higher level functionary are very clearly positioned differently in this hierarchical scheme and experience and interpret this scheme differently. Actors who have some relative autonomy from the state as a center of wealth and are not benefitting greatly from patron-client ties are more likely to challenge them. Indeed, it is worth reiterating Tripp's point (1997: 12):

for most wage laborers or self-employed people, their occupations do not present opportunities for siphoning off resources or funds from the state, nor do most have relatives in such positions who could, through corruption, obtain resources to divert to family members. Such distinctions suggest the importance of being clear about which classes and which individuals benefits from patronage, especially at the local level.

Small-scale farmers and urban "informal sector" workers, along with the growing numbers of "squatters"<sup>23</sup>, are outside of patronage networks, particularly as material resources to maintain these networks decline. Thus, class consciousness in this context

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<sup>23</sup>The notion of "squatting" originated in South Africa and initially had a derogatory meaning. It referred to Africans who were living on settler land, exchanging labour for access to this land. I take the notion of the "squatter" to be contested, because "squatter" as a term often implies no legal right to land, whereas this is a matter of political contention. However, from here on I drop the quotations as a matter of convenience.

is rooted in the often divergent experiences of “working classes”, in E.P Thompson’s (1966) sense, contrasted to those who access the state in order to amass wealth and coercive power.

In rural areas these “working classes” are small holder farmers, traders, and labourers. In the urban context, the majority of these heterogenous “working classes” may be most appropriately understood via Oxhorn’s notion of “popular sectors”. This category refers to “disadvantaged’ groups in highly segmented, unequal societies” with “limited life chances and consumption possibilities” (1998: 231). Hence, as Oxhorn notes, the notion “popular” thus becomes associated with democracy, and, one might add, nationalism, in the sense that popular interests represent the interests of the vast majority (1998: 232).

This consciousness is not the classic Marxist class consciousness targeted against the bourgeoisie, in part, because so many of those who labour are self-employed, and there is an indigenous respect for wealth, cleverly and morally obtained and properly distributed (Lonsdale 1992b, Shipton 1988). Instead, this bricolage of class and nationalist consciousness is hostile to those who use state power illegitimately, that is, by amassing wealth at the expense of poor who form the majority of the imagined national community.<sup>24</sup> Thus, while class structure may be “imprecise”, the differentiation between those who labour and those who “eat” provides a basis for a cosmopolitan “popular” and nationalist identity. This has the potential to counter political tribalism, corruption and its related ethnic ideology with the notion of an inclusive public authority. Whether this will happen is at the heart of African struggles for transformation.

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<sup>24</sup>For example, when Malian President Moussa Traoré was overthrown in 1991, “centers of high level corruption and embezzlement were systematically burned” while untainted vital economic institutions were spared (Harsch 1993: 31). This reflected discernment between those who were illegitimate accumulators of wealth from those who were not. The author, on asking about a shiny new skyscraper in Nairobi, was told by an informal sector worker that the owner was a “hard worker” compared to those who were siphoning off public resources to build their businesses.



## **Electoral Despotism, External Linkages, and Reconfigurations in the “Field of Power”**

Africa's rulers play out patrimonial politics on three different levels- the local, national, and international- simultaneously. Most African leaders are clients of external patron countries and have complex relationships with bilateral and multi-lateral international lending agents. Thus, there is a critical external dimension of clientelism (Clapham 1996, Edie 1991, Reno 1998). As Rugumamu points out, foreign aid generates new factors of power by providing state actors with much needed resources “to manipulate political environments of their respective countries, to solidify popular support, neutralize enemies and ultimately consolidate their hold on state power” (1997: 10). These external asymmetric links provide economic and military aid essential to the material replication of neo-patrimonial rule. Political favours are exchanged in return for access to these resources. The bargaining power of ruler-clients reached a zenith during the Cold War when diplomatic rivalries enhanced the position of African rulers whose foreign policy, for a large part, consisted of soliciting aid (Clapham 1996: 42). The post Cold war world brought new challenges.

### **Post Cold War Patronage Inflation**

At this historical juncture, many African leaders felt the cumulative impact of a number of material constraints: economic decline, the effects of structural adjustment programs, and, for most countries, an overall diminution of donor aid in the post Cold war world (Dietz and Houtkamp 1998). New anti-corruption conditionalities and greater scrutiny of corruption in general also meant old avenues of accessing resources became more restricted. This led to a contraction in resources available for patronage in many parts of Africa. The consequent loss of patronage resources meant that higher level patrons needed to find new resources to perpetuate the politics of control.

A number of neo-patrimonial theorists have drawn attention to the “criminaliza-

tion of the state" (Bayart, Ellis and Hibou 1999) or the deepening "informalization of politics" on the continent (Chabal and Daloz 1999) stemming from African patrons seeking new, including illicit, forms of wealth. While this work suggests that significant changes are occurring in neo-patrimonial regimes, it largely assumes that the challenges to the reproduction of this form of rule are rooted in material scarcity alone. Most neo-patrimonial theorists tend to ignore the ways in which subordinate actors are *exploiting new political openings* and institutional change to bargain harder and thereby put greater stress on these networks. In fact, the introduction of competitive electoral arenas has altered the relationship between clients and patrons, giving would-be clients more bargaining power over those they elect. Scott's observation of the impact of introducing elections in South East Asia in the 1950s is relevant to the African context in the 1990s; these elections "increased the pressures on regimes for the downward distribution of tangible benefits" (1972: 11-112). However, in the current context, the failure of the government to deliver services, coupled with conspicuous consumption on the part of the upper echelons of ruling cliques, has provoked overt questioning of patrimonialism itself, creating a new volatility and unreliability in patron-client politics.

These combined pressures lead to a complex dynamic, which I call "patronage inflation". Patronage inflation is a situation where demand, and corresponding pledges of patronage resources, increase relative to declining supply of actual material resources. There are more promises of patronage resources than actual resources to be doled out. As we shall see, multi-party politics has the potential to trigger an intensification of "patronage inflation" in a number of ways. Analytically, "patronage inflation" can be broken into two effects, a competition/demand effect and a supply effect.

### **Competition/Demand Effect**

As Bratton and van de Walle (1994) suggest, the opening up of African regimes to multi-party competition often takes the form of intensified struggles between those

who are part of the dominant patronage networks centered on access to state resources and those who are outside of these networks. Alternative political parties intensify this struggle in a number of ways.

First, clients within the dominant political party gain greater bargaining power relative to the higher echelons of the patronage hierarchy as they can always threaten to “defect” to the opposition. Thus, the need for patronage resources to cement the loyalty of disgruntled “insiders” increases. Secondly, in a new parliamentary context, where an opposition can generate public debate on sensitive issues and introduce popular legislation that can induce maverick “insiders” to potentially vote with the opposition, this intensifies the need for greater resources to buy support from both opposition and “insider” MPs, often on an issue by issue basis. Further, MPs are under greater pressure to “deliver” on promises in their constituencies. This becomes particularly problematic for opposition MPs locked out of informal decisions on the distribution of national resources, and often without an independent source of wealth. Hence, opposition party leaders wield their parliamentary power vis-a-vis the dominant political party. They can use their position to act as brokers and negotiate “cooperation”, delivering parliamentary support in exchange for access to state resources and, in the process, expanding the dominant party’s narrow support base. Finally, as elections become truly competitive, even if the playing field is grossly uneven, “money is necessary to hire and train political thugs, to buy votes at national conventions, to bribe electoral officers, the police and other security personnel and to organize a ‘campaign’ around the country” (Ihonvbere 1998b: 62). The net effect of all these changes is that the demand for resources, and hence, “corruption” often tends to escalate in the new context. More competitive elections can intensify patrimonial dynamics, rather than destroy them.

### **Supply Effect**

In many cases, the supply of patronage has declined because of a number of factors. First, international and local scrutiny has made it more difficult to gain patronage

resources through corruption in some sectors in the economy. For example, fiscal austerity imposed through structural adjustment programs monitored by the World Bank and IMF constrains the printing of money by governments (Kiai 1998). The push for privatization of parastatals has also narrowed the possibility of using appointments to these bodies as patronage (Sandbrook 1993).<sup>25</sup> Secondly, aid has also generally declined from donor countries (Action Aid 1997, Griffen 1997). Thirdly, economic decline has, in many cases, also led to a decrease in patronage resources in the form of government revenues. Finally, a growing international censure of corruption is translating into aid conditionalities. These conditionalities put pressures on ruling cliques to eliminate forms of corruption that concern, or are particularly visible, to international observers. Coupled with increasing internal scrutiny and discontent over corruption, this means former avenues of garnering patronage resources through corruption became more problematic. Together, these factors squeeze the supply of traditional patronage resources.

The net effect of this complex set of changes is that there is a gap between demand/patronage pledges and actual supply of patronage resources. A new impetus emerges for ruling cliques to find alternative resources, to solidify networks and avoid "defections". To manage these difficulties, rulers may negotiate new political openings and constitutional concessions. This is the primary focus of transitions theorists. However, the less explored possibility (and they are not mutually exclusive) is that rulers also attempt to find new resources, both external and local, and new strategies to maintain patrimonial control.

In this bid to stay in power, alternative forms of corruption, particularly those forms more hidden from the international gaze, become even more important as avenues to patronage resources. The related corruption generates network cohesion

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<sup>25</sup>However, the resistance to privatization of these parastatals may decline as sales of these entities provide a surge of resources that could be used to maintain power. This is particularly the case when public assets are sold at well below the market rate to "insiders" and clients. As we shall see clearly with the case of public land, irregular privatization can generate significant patronage resources and is, in fact, encouraged by patronage bosses.

which becomes more critical in the new context of “defections”. The “common involvement in misdeeds creates shared interests and loyalties.” Given that “underlings do all the dirty work and are therefore more directly compromised” corruption reinforces leaders’ control over clients (Weyland 1998: 116). Corruption also “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). Finally, patrons often attempt to generate “new resources” through violence. As Hibou (1999: 111) has noted, by “heightening the general feeling of insecurity, violence intensifies the need to seek protection, even in privatized form, of those who wield economic and political power.” Minorities in multi-ethnic constituencies become more vulnerable as targets of violent misappropriation of resources, which are used for redistribution to political followers. However, to the extent that such violence violates moral thresholds and becomes associated with injustice, it may engender resistance, including the use of defensive violence. The net result is an escalation of inter-related corruption, violence, and struggle over patrimonial control itself.

## Land, Violence, and Patronage: The Kenyan Case

This study puts the strategic action of key patronage bosses in the Kenyan regime under the microscope. I argue that, when confronted with a reconfiguration of their field of power, including the dynamics of “patronage inflation”, key actors with the most to lose by an electoral turnover develop new strategies of control and domination. As each patronage boss, including the president or prime minister, is linked to specific regions of support, this necessitates coupling a focus on the international and national level of bargaining to the linkage between local politics and the center, “deep politics” and “high politics”. It also shifts attention away from more traditional political analyses of the national level to more ethnographic approaches. To correct for the invisibility of local articulation of national struggles in our current analyses, I

deliberately incorporate detailed local case studies throughout this work. While this means each region of Kenya cannot be dealt with exhaustively, the aim here is to illuminate how the struggle to maintain patrimonial control is being played out in new ways in local arenas, far from the international gaze.

Emphasizing concrete material and inter-related symbolic struggles, triggered or deepened by the politics of reaction, I examine Kenya's political change through the axis of land politics. Morgenthau's observation that land is "the foundation of power" in a non-industrialized context continues to hold (1962: 305). Land is at the heart of Kenya's agrarian economy and state formation. It continues to be a central factor of production in Kenya's economy with agriculture producing 30 per cent of GDP and employing 70 per cent of the labour force (World Bank 1995: 268). While state control of property rights in land allows "management of populations in accordance with the demands of social stability and the distribution of national resources" (Munro 1998: 32), the other side of this is that land is one critical nexus "for establishing or challenging power relations among almost any broader public" in Africa (Shipton 1994: 351). In Kenya, this has made land "a national obsession" (Kenya Human Rights Commission 1996b). Indeed, "land is a critical substantive issue around which the discourse of ethnicity and citizenship [and I add class] in Kenya converges" (Ndegwa 1997: 612). Thus, unfettered by international conditionalities, land is a critical local resource to which ruling cliques turn. Embedded in complex and "hidden histories" (Schneider 1995), manipulations of land rights have tended to evade critical international scrutiny as well as adequate scholarly attention in recent times (Kanyinga 1998b).

Land is also a central theme in much of the escalating violence and corruption in Kenya and is linked to electoral strategies. Current multi-party politics involves the intensification of manipulation of land rights- both private and public- and hence the deepening politicization of land rights with ambiguous potential outcomes. One dimension of these struggles is encapsulated by the phenomenon Kenyans call the "land grabbing mania"- the irregular privatization of public lands, which is increas-

ingly used to cement dominant party loyalty. Another dimension of these struggles is the rise of “ethnic clashes” which have left thousands dead and half a million displaced, an unprecedented level of violence for Kenya in the post-independence period. In these “ethnic clashes”, hundreds of thousands of people lost their private rights to land as the state deliberately failed to guarantee their security. This work puts these two neglected dimensions of Kenya’s shift to a multi-party context into a framework that demonstrates how they are part of one larger process of a dialectic between counter-democratization and democratization.

The central claims of this work, are that:

(1) Kenyan patronage bosses in the ruling hierarchy confronted “patronage inflation” and faced real challenges to their hold on power.

(2) In response, with the aid of a coercive bureaucracy, increasing violence, and the manipulation of ownership and control of land, key patronage bosses, including the president, sought to “protect themselves”. In this process, they generated “ethnic clashes” in which private rights to land were transferred to lower level clients at the expense of communities of marginalized and more internationally invisible urban “popular sectors” and rural small-holders were likely to vote for the opposition. The clients awarded land in this way became more resistant to change, and this facilitated the ruling clique’s hold on resources necessary to win elections. Further, and very importantly, by generating fears of retaliation and eliminating opposition politics, this violence reinforced local domination in “captured” electoral constituencies. This local domination was critical to winning elections and hence keeping a grip on national power.

(3) Parallel to and, at times, embedded in the “clashes” was a process of “land-grabbing”, the irregular appropriation of public lands by higher level patrons and their clients. I argue that this process has, in fact, accelerated and grown bolder in the decade of multi-party politics, both because of changes in donor pressures and the fears of a transition itself. A highly visible form of corruption around a highly valued local resource, land grabbing provoked resistance among those communities most

adversely affected, particularly the urban and rural poor. In response, dispersed community mobilizations, in fits and starts, moved towards a loose “anti-land grabbing” movement. The accompanying anti-land-grabbing discourse contained a subversive combination of class and nationalist themes that challenged patrimonial control by promoting a vision of more accountable local and national publics. This movement represents some of the greatest potential to challenge electoral despotism.

To substantiate these claims, I have combined a historically sensitive, ethnographic approach with hard-nosed political economy and analysis. My efforts to delve into this highly sensitive aspect of Kenyan politics were facilitated by the new climate of openness ushered in by political liberalization itself. The current more open atmosphere means that formerly hidden transactions are coming to light, and this provides a unique opportunity to examine who is involved and how these transactions work. This study was facilitated by the intense concern for land issues among a large cross section of Kenyans who graciously gave their time in the many interviews I conducted in my fieldwork.

In many ways my initial two years (from 1988-1990) in Kenya as a teacher in Western Kenya provided the necessary cultural immersion and understanding that provided critical skills for this work. It also allowed me to observe the beginning of the multi-party movement from within the country. In 1994, my seven months in Western Kenya on a different project and conversations with “clash” victims at that time also provided valuable insight. The bulk of focussed research was conducted over three shorter trips in 1997, 1998, and 2000. In 1998, I spent two months with Release Political Prisoners, a project of the Kenya Human Rights Commission at the forefront of many land struggles. This gave me access to highly knowledgeable and remarkably generous research assistants and detailed information about a number of cases of “land grabbing” and “ethnic clashes.” Data on these cases were cross-checked by examining newspaper accounts and evidence presented in cases brought before the courts of law and public enquiries. Further, by comparing my interview materials with archival sources, newspapers and legal evidence, as well as the rich number of



human rights reports emerging from within Kenya itself, I was able to reconstruct some of the dynamics behind Kenya's complex and disturbing politics of electoral despotism. This case study approach is a remedy for the generalized and abstracted nature of much current theorizing. It is through careful attention to much of the detail missed in conventional theories of transitions in neo-patrimonial regimes that I attempt to generate some theoretical insight into how patron-client politics and the use of violence may be changing at this historical juncture, insight that could then be used as an alternative theoretical framework to approach other countries and world regions.

The next chapter provides a historical overview of Kenya's state formation with emphasis on the institutional configuration and practice that has facilitated neo-patrimonialism, particularly around land rights. This involves a careful analysis of despotic continuities in the practice of the provincial administration and the institutional mechanisms undergirding the creation of private and public rights to land. Following the "state-in-society" approach, this chapter focuses on the historical social struggles in the nexus between land, society and the state. This is essential for understanding the contemporary context in which agents draw on history as a resource in their struggles. Chapter III moves into the contemporary period, and provides a careful look at the challenges posed to the current regime by the onset of political liberalization at a moment of declining material resources. The aim of this chapter is to combine economic with political analysis to demonstrate how "patronage inflation" works concretely in the Kenyan case. Chapters IV and V then present the rise of "ethnic clashes" and "land grabbing mania" respectively and explain how these complex processes emerge out of the strategic responses of key actors in the Kenyan regime to "patronage inflation." As it is nearly impossible to separate out these strategies from their reverberations in the realm of social struggle, both chapters examine in some detail the resistances and collaborations involved in these violent manipulations of land rights. The final chapter draws out some more general lessons from the Kenya case and reflects on potential avenues out of electoral despotism and towards a more

democratic future.

## Chapter II

# Patrimonialism in Historical Perspective

*Love of gain, a fondness for business careers, the desire to get rich at all costs, a craving for material comfort and easy living quickly become ruling passions under a despotic government.*

*Alexis de Tocqueville 1865 (1955: xiii).*

The persisting significance of historical legacy has been a central theme in the study of African politics. However, what this historical legacy is and what influence, if any, it continues to play in contemporary politics is a matter of much debate. These questions come to the fore in the study of “transitions”. If one is to make assertions about political change, it is critical to first answer rather precisely the question: a change from what? Further, some of the patterns in current political practice appear to be re-emergent ones, never exactly the same as before, but tied into a historical process that stretches over larger time scales than most political analysts recognize. A grasp of this larger historical process is necessary to define the meaning of change for current actors and to shed light on the substantive and symbolic issues at stake in the current confrontation between multi-party politics and patrimonial rule.

This chapter begins with a brief account of the historical origins of patrimonialism. Affirming Mamdani (1996), I illustrate how patrimonialism emerged out of the insti-

tutional configurations and practices of colonial rule. I argue against the view that the colonial conquest state was “patrimonialized” in the post-colonial period through “retraditionalization” of the state (Callaghy 1984: 183) or that patrimonialism is rooted in pre-colonial “peasant rationality” (Throup and Hornsby 1998: 5). Instead, I make a case for the claim that the broad institutional basis for patrimonialism was produced within the colonial context. Further, the nature of the Kenyan transition to independence meant that critical continuities in economy, ideology, and institutions created the conditions for patrimonial practice to flourish well into the post-colonial period and become articulated with electoral practice.

Pre-colonial histories played an important role in shaping the conquest state. However, theorists of patrimonialism often posit too great a “fit” between post-colonial practice and what are commonly taken to be precolonial norms. This emphasis magnifies aspects of African thought and practice transformed through colonial domination and articulated by local collaborators to justify new power relations. Cultural resources that provided, and continue to provide, a basis for resistance against domination, including patrimonial control, are too often given short shrift. The result is that theories of patrimonialism depict a largely uncontested political culture centered around patronage in which poor and rich alike participate equally in a rush for the spoils, and the public sphere is a mere facade for private accumulation, if not pillage (for example Bayart 1993, Chabal and Daloz 1999, Olivier de Sardin 1999). This theoretical tendency is reinforced by a disproportionate focus on the political class as agents of change rather than those who have historically lost out in the spoils system, people who have to labour to survive and see “bitterness” in ill-gotten gains<sup>1</sup>, if not a reflection of their own subordination.

Debates over the nature of patrimonialism and the degree to which it is contested are central to the question of Africa’s current “transitions”. If patrimonial practice is part of a largely unquestioned political culture, then formal institutional change

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<sup>1</sup>See Shipton (1988).

may be largely cosmetic.<sup>2</sup> However, if patrimonial practice is a product of a form of rule, shapes culture but is not culture, and is made up of the nuts and bolts of concrete institutions, laws, and the struggles around them, then it becomes critical to have a clear idea of precisely what these institutions, laws and struggles around them are in order to assess the impact of changes. Indeed, what I will show here and in following chapters is how historical continuities, reflected in repressive colonial ideology, institutions and related practices continue to play a living role in current politics. These continuities define the high stakes involved in change. They also help provide the basis for dominant actors to subvert democratic change within a new electoral context. It may be worth emphasizing that by continuities I do not imply static structure, but rather techniques, ideas, pre-existing narratives, and institutions that are the materials with which dominant actors attempt to reproduce their hold on power and subordinated ones attempt to challenge this hold.

This chapter emphasizes the colonial origins of despotic state institutions. These institutions developed through the efforts of colonial officials to control the African population while, at the same time, providing labour and a related redistribution of land to a highly privileged sector of the population: European settlers and companies engaged in large-scale farming. State actors struggled to construct rights to land through legislation and manipulated these rights for their highly racialized, class, and gender biased vision of "development".<sup>3</sup> The result of this struggle was a "dual policy" which provided secure private rights for settlers and insecure communal or "public" rights for Africans. An examination of this early construction of a highly contentious and manipulable private-public boundary around land helps explain how land became, and continues to be, an essential patronage resource for those with

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<sup>2</sup>This is the position taken by Bayart (1993), Chabal and Daloz (1999), Bayart, Ellis and Hibou (1999). Bayart does suggest that the move towards multi-parties is a "first step" towards change, but he fails to adequately explore the implications of this change for the patrimonialism he vividly describes and analyzes.

<sup>3</sup>In this thesis, I do not even attempt to adequately deal with gender. See the excellent work of Mackenzie (1998).

privileged access to state institutions. This exploration also sheds light on why land is a central locus of resistance for those excluded and marginalized in the current patrimonial order and why intensification of struggles around land has accompanied Kenya's recent transition to a multi-party context.

## The Construction of Kenya: Land, Conquest, and Administration

In 1895, Kenya became an East African protectorate of the British government.<sup>4</sup> To assert authority over this swathe of Eastern Africa with its population at the time of about 3 million people and to link its numerous stateless societies together under one administrative umbrella, the British resorted to a prefectural system.<sup>5</sup> This system, imposed with violence, as well as a network of complex alliances, incorporated diverse local communities into a central authority via collaborating power-brokers at the local level, many of whom were appointed as chiefs.

With the exception of the Wanga in Western Kenya, pre-colonial societies in Kenya had no chiefs. Hence, these new appointees were elevated to the role of a "customary authority" based on British colonial imaginings of "primitive" or ancient societies.<sup>6</sup> Indeed, by 1914 the British realized that the precolonial societies of the Kikuyu of Central Kenya, some of the first interior peoples with whom they came into contact, had no chiefs, but rather were ruled by councils. Despite this new knowledge,

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<sup>4</sup>Kenyan territory was originally of geo-strategic interest to British officials as a passageway to Uganda and hence to Lake Victoria, the source of the Nile. Later, to recover the costs of a railroad, settlement was encouraged.

<sup>5</sup>Berman suggest this prefectural system had deep historical roots in Europe and that British colonial officials were in fact following the French model (1990: 74). Carey Jones (1966) and Heussler (1963) suggest that British officials were influenced by the prefectural system of British public schools.

<sup>6</sup>It may be worth emphasizing this point, because it has been a source of confusion. While it is true that Kenya's chiefs were administrators and not "traditional authorities", this did not prevent them from being vested with legal authority over "custom".

British officials did not alter their administrative system or the pretense that the chief reflected “custom”, for it was expedient to have a sole focal point of responsibility (Tignor 1971: 342).

This creation of the chieftaincy with the concentrated powers of an imagined “customary” authority constituted a decisive break with precolonial politics with profound and lasting implications. Backed by the coercive apparatus of the state, these new appointees had wide-ranging powers over local people and their political and judicial institutions, powers they could use to further their own personal purposes. As long as they kept “law and order”, collected taxes<sup>7</sup> and provided labour for the colonial economy, predatory activities were ignored and, judging by the meager salaries of chiefs, expected.

Many chiefs took advantage of opportunities created by their positions as clients of the colonial administration. For example, Ochieng describes the first acts of a new colonial chief, Angwenyi, in Kitutu, Western Kenya as follows:

Immediately after the District Commissioner handed him a rifle and *askaris* [police] and left, Angwenyi ordered his *askaris* to follow him to east Kitutu, the domain of the Mwanyakundi, the clan that had rivaled his clan, Mwagichana, in the pre-colonial period. Upon arriving with his escort he began to shoot his way about, capturing cattle and sheep. What saved the people of east Kitutu was Angwenyi's inexperience with the rifle. Every time he fired, he shot a granary or a tree (1975: 125).

These realignments in the local field of power tended to produce larger inequities and deepen social divisions.<sup>8</sup>

The position of chief was filled with tensions. As mediators between the colonial

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<sup>7</sup>Chiefs collected taxes from 1901 when hut taxes were first introduced up until 1911. These taxes generated revenues while also creating pressures for poorer Africans to labour on settler farms and in the colonial economy more generally. After 1911 chiefs continued to play an important role in assessment and collection of taxes (Tignor 1971: 346).

<sup>8</sup>There were, of course, important pre-colonial inequities (Iliffe 1987).

administration and local communities, chiefs had to find ways to be credible to both. The use of coercion alone was not always effective for it provoked resistance and, in extreme cases, revolt. In this context, a new form of clientelistic politics, predicated on the chief's potential recourse to state violence, thrived. Coercion coupled with selective access to resources for lower-level clients worked to generate support or at least compliance among the population.

This new "system" seriously weakened the force of indigenous legal institutions over critical resources such as forests and land more generally. The colonial state conferred upon chiefs state backed custodial powers over land administration, transforming the nature of precolonial negotiations over land rights. "Native chiefs" as a 1912 report to the British parliament underscored, were "tenants under the Government of the areas occupied by their people" (Command Paper 68 of 1912-13, cited in Lugard 1965: 328). This arrangement meant that:

... rights in land were seen as flowing downward. Whatever they were, they were derived from the political authority, rather than residing in the peasantry.... The authority of the chiefs was maintained by their role as allocators of land, and so was the dependency of their subjects (Chanock 1991a: 64).

This concentration of power in the hands of administrators altered the often fluid nature of local lineage-based community negotiations around access to land.<sup>9</sup> Access to land and other benefits now depended on political allegiance to a new state authority through the mediating institution of the chieftaincy and later native tribunals, in which many chiefs played a critical part.<sup>10</sup>

This transformation also impacted local patron-client relations. In precolonial times, a client performed labour, paid tribute, and pledged loyalty and, in turn,

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<sup>9</sup>This experience was quite different for many pastoralist peoples, who occupied large parts of the Rift Valley and Northern arid regions of the country. Their nomadic lifestyle meant that early on they were able to more easily avoid the local administration, but not the impact of land alienation.

<sup>10</sup>The 1913 Native Tribunal Rules permitted the creation of native tribunals to deal with local disputes including land disputes. The 1930 Native Tribunals Ordinance, provided the right to appeal Native Tribunal decisions to the provincial administration (Coldham 1984: 60-61).



expected resources such as food, land, seed, and livestock, particularly in times of drought, disease, and famine. Given the often unpredictable nature of precolonial life, in some cases, patrons would change depending upon circumstances, and the poor would move across communities in search of better patrons. Indeed, patrons competed for clients and their labour (Hanson 1999: 5, Lonsdale 1992b: 341). Now, state intervention created a set of chiefs, often drawn from wealthy lineages as well as from ambitious upstarts<sup>11</sup>, who were not compelled to respect societal norms of reciprocity and, in fact, were prone to arbitrary extraction of labour and resources (Clough 1990: 14, Berman and Lonsdale 1992: 87).

In fact, it is important to emphasize that indigenous norms of reciprocity and gift-giving were often violated rather than merely grafted onto the colonial state. In order to avoid conscripted labour, taxes, or arbitrary abuse, or to gain access to land, people now paid bribes to the chief, who in this way amassed wealth through his position in the bureaucracy (Tignor 1971). Political allegiance to the chief, and thus the colonial state, became an unscrupulous avenue towards amassing wealth, particularly land, wives, and cattle, but also capital to exploit new opportunities provided by the colonial economy (Tignor 1976: 54-55). This process led to the “‘vulgarization’ of state power, i.e. the ability of a growing minority of Africans to use colonial institutions to further their own interest” (Berman 1992: 192).

As a member of the hierarchical provincial administration, the chief was ultimately accountable to the local district officer (DO) and his superior, the district commissioner (DC). The district commissioner, in turn, was accountable to a provincial commissioner (PC). At the top of the apex was the colonial governor, who was an appointee of the British government. Schematically, the hierarchy was as in the diagram below. At the farthest extension of this hierarchy were the sub-chiefs and headmen, assistants to the chief.

While many new parameters of local politics were thus set by the center, as we have

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<sup>11</sup>Some chiefs were selected based on their service to the Imperial British East Africa Company (Clough 1990: 14).

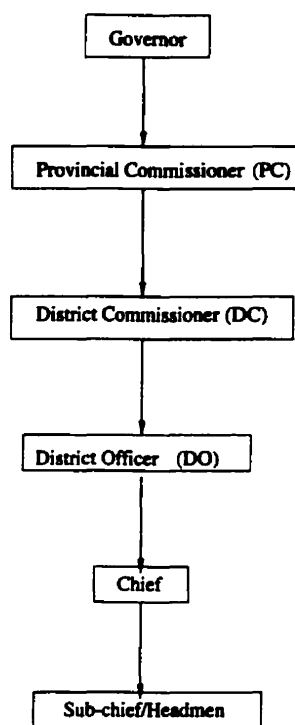


Figure II.1: Provincial Administration Hierarchy

seen, this control worked through “decentralization” by giving wide powers to local brokers who in turn could enrich and empower themselves within these communities.

In *The Origins of Totalitarianism*, Arendt emphasizes that this form of rule was without precedent for ruler and ruled alike. Colonial officers, citizens of Britain, by fulfilling their bureaucratic duties, ended up ruling large foreign populations. In such a context, “informal influence was preferable to a well-defined policy, because it could be altered at any moment’s notice and did not necessarily involve the home government” (Cromer cited in Arendt 1973: 213). This aptly describes the position of the governor in Kenya, as well as his officers “in the field”. While under scrutiny and pressure from the Colonial Office, they exercised considerable latitude in decision-making as the “men on the spot”.

This latitude, which reflected the practical difficulties of control from Britain, was built into institutional design. Appointed by Royal Commission to be “the single and supreme authority...entitled to the obedience, aid and assistance of all military

and civilian officers”, the governor had the powers to appoint and suspend all civil servants, issue warrants for expenditures of money required for public service, and to assent and refuse bills designed by the Legislative Council (Lugard 1965: 124).<sup>12</sup> In turn, the governor relied heavily on the provincial administration, including indigenous allies, particularly the chiefs, to be his eyes and ears and instrument of compliance across the territory.

### **Administrative Rule and the Construction of Land Rights**

Conquest presented a temporary legal quandary: how to legally claim control over the territory of Kenya. This problem was solved by the assertion of jurisdiction over “waste and unoccupied land” where, it was claimed “there was no settled form of government and where land had not been appropriated either to a local sovereign or to individuals” (Foreign Jurisdiction Act 1890). The terms of these appropriations of land for the purposes of colonization were initially set down in the Land Order in Council (1901). On this legislation Lord Hailey remarked:

This measure proceeded on the assumption that land required for disposal must first be brought into the category of Crown property, and it proceeded to characterize Crown property as “public lands” which for the time being were subject to the control of the Crown. The terms used were unfortunately vague. In the use of the strange and inappropriate term “public” as applied to land, the Order in Council seems to have referred by implication to those unoccupied lands over which it is now accepted that the Protectorate has powers of control.

The Order in Council failed to add such provisions as would have guided the Administration in the interpretation to be placed on the extent of its authority

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<sup>12</sup>Early on, the Legislative Council, which had “official” (civil servants) and “unofficial members”, was mostly a consultative body. Settler pressures for more influence in the state led to its creation in 1906, and the first representatives were elected among the European population in 1920. Asian Kenyans were granted 5 seats in 1923. African interests were represented by nominated European members until 1944, when the first African was appointed to the Council.

over “occupied” or “unoccupied” lands (1957: 714).

This legislation transferred ownership of land deemed “waste and unoccupied” to the Crown and in this way extinguished all African rights to land.

The use of the undefined term “public” for such lands “left the door open for massive alienation” (Mackenzie 1998: 67).<sup>13</sup> Africans were pushed into confined areas and large tracts of fertile land transferred to white settlers. The more detailed Crown Lands Ordinance (1902) gave the commissioner of the protectorate the powers to lease or sell freeholds of Crown land to any purchaser in lots not exceeding 1000 acres.<sup>14</sup> This legislation also gave protectorate administrators wide discretionary powers with regards to which land was “waste and unoccupied” and, hence, open for alienation.

This early construction of land law laid the foundations for a persisting practice and ideology around land rights. Most striking was the purposeful duality of the law based on an evolutionary vision that “fit like a grid over events” (Chanock 1991b: 70). Natives had “public” or communal land, while settlers had “private”, “absolute title” freehold, or exclusive leasehold land. Undergirding this dichotomy was a belief in human progression from primitive societies, which held land in common, to societies with more exclusive forms of rights and, finally, to “civilised nations” with private property rights in land. This progression was, of course, highly racialized with Africans in the lower categories and Europeans in the highest category. Indeed, privatizing African communal or “public” land for settler use was more easily justified when this process implied evolutionary progression or “development” with Europeans as its agents. Finally, the refusal to recognize individuals and their families affected by such reallocations meant that there was no need to compensate them or deal with

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<sup>13</sup> “Pacification” campaigns and high military expenditures put pressure on the treasury. Grants to the protectorate tripled in between 1897 and 1913 (Wolff 1974: 50). Berman suggests that the Foreign Office compromised and allowed such vague terms in the legislation under pressure from parliamentary critics of the “annually growing Treasury grants-in-aid to the territory” who were advocating economic self-sufficiency for the Protectorate (1990: 151).

<sup>14</sup> Any sale of larger lots required consent of the Secretary of State, although the Ordinance added “nothing shall invalidate any sale” (Okoth-Ogendo 1991: 13).

the consequences of their displacement. On rare occasions meager compensation was given, not for land, but rather for African improvements on land appropriated by the emerging state.

As we have seen, “public” land occupied by natives was deemed subject to tribal “custom”. Colonial administration, particularly through the institution of the chieftaincy, regulated and controlled “customary” authority in land. While relegating authority over land to chiefs, to avoid instabilities generated by inequities, officials attempted to limit the ability of the chief to sell land (Chanock 1991a: 64). Despite these efforts, inequities were deepening through the accumulation of land by chiefs and their clients, particularly in Central Province. By 1912, for example, Kiambu official reports referred to Chief Kinyanjui’s “enormous landholdings” which he used to reward clients (Kitching 1980: 296).<sup>15</sup> This deepening of economic differentiation was accompanied by the rise of claims to private rights on the reserves, although these claims were not officially recognized.

The European vision of land tenure confronted indigenous notions of how to appropriately regulate land. In African conceptions, access to land was mediated through negotiations and membership within a community. Such communities frequently absorbed and welcomed “outsiders”. Kitching described the precolonial situation as follows:

In practice the peoples of East Africa roamed over its empty plains and through its forests in larger kinship units. In the case of the sedentary pastoralist peoples, these were generally lineage units...In pioneering or conquering a stretch of land therefore, leaders of these lineages or sub-clans might allocate different areas of the territory to constituent household heads, and would adjudicate any disputes which arose between such heads over grazing rights, livestock, water

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<sup>15</sup>There was also a great deal of litigation within Native Tribunals. These tribunals consisted of meagerly paid elders. A 1945 investigation noted that “there were signs in some areas that powerful and influential Africans were abusing their position in order to acquire for themselves large ‘estates’ ...” (cited in Berman 1990: 215).

etc. Nonetheless, once allocated its particular stretch of land (which might be roughly demarcated in a number of ways) each household head remained in occupation for as long as he wished, and made land use decisions in a completely independent way (1980: 284).

In a situation of land surplus, the intimate connection between citizenship and land meant that most Africans were more concerned with their standing within the community than with delineating specific rights to land per se. More succinctly, Kenya's agriculturalists conceived of land as property, but property embedded in social relations rather than the market (Lonsdale 1992b: 334). Land was used exclusively, but ultimately, it was "redeemable" for it belonged permanently to the community. Pastoralists, who claimed rights to use land over specific territories, had less use for a notion of land as property (Peron 1995a).

Pre-colonial understandings of land rights were complex and varied. However, a number of basic principles tended to operate. Under most circumstances each member of a political community had a right to access resources of the community's territory in order to support himself and his dependents, with women generally gaining access through marriage and kin. In a land-rich environment, the poor were able to negotiate with patrons for access to land in exchange for labour and tribute. In pastoralist societies, an equivalent form of negotiation occurred around access to cattle. These negotiations over cattle or land relieved the burdens of having to feed the poor, who in this way produced their own sustenance.<sup>16</sup> Although territory was not private property, an individual had a right to anything he or she had created, whether this be a pot, a homestead or a garden. Access to forests, market sites, meeting places, salt licks, mineral deposits, sacred groves and trees, however, were regulated and

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<sup>16</sup>Liffe notes that the Kikuyu had a rich vocabulary to describe the poor, which he defines as those living under the struggle to gain the necessities of life. For example, *ndungata* were dependent herdsmen, *njaguti* roving voluntary servants and *athomi ahoi*, poor who were given access to land as a kind of tenant (1987: 69-70). While the Kikuyu were unusual in the degree to which stratification had occurred prior to colonial rule, poverty was part of pre-colonial life and obligations to the poor were very much part of indigenous debates (Lonsdale 1992b).

enjoyed as a matter of collective or public right (Mackenzie 1998: 27). Finally, the “basic dogma” shared by East African communities was that everyone had the right to land for survival (Gulliver 1961: 17, Onalo 1986: 35, Shipton 1988: 111).

Territorial definition of rights was not necessarily exclusive with respect to adjacent, even culturally distinct, communities. While conflicts over changing territorial boundaries were resolved, at times, through violence, the terms of co-existence were often negotiated and migrants welcomed. Some communities exploiting different ecological niches, such as pastoralists, hunter-gatherers, and agriculturalists, profitably negotiated different rights to land use for the same piece of territory. This fostered trade as well as intermarriage and security. For example, when Maasai faced a cattle disease epidemic, they could stay with Kikuyu farmers. Similarly, when the Kikuyu faced famine, it was not unusual for them to seek out Maasai patrons (Ambler 1988, Waller 1993). This also facilitated absorption, cultural borrowing, and fluid or negotiable identities, but did not preclude struggles, often violent, over territory, particularly among those groups relying on similar ecological zones.

Official interpretations or misinterpretations of “custom” with respect to land differed substantially from indigenous understandings and reflected the importance of using land as a means of colonial control. John Ainsworth, sub-Commissioner for Ukambani region in 1899 put this especially clearly:

Of course, we can stretch such customs to almost any meaning within their reasoning; if we say it means freehold then it becomes a freehold, but in our interpretation of the laws and customs I think it wiser not to recognise any system of freehold: we want some control over non-native holders of land (cited in Sorrenson 1968: 178-9).

Official interpretations of “custom” tended not only to deny private or exclusive use rights for natives<sup>17</sup>, but also to depict African lands as “public.” It followed that

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<sup>17</sup>This issue was debated among district officers closer to African life. However, those officers who supported African claims to exclusive rights did not impact higher level policy.

the state, depicted in colonial ideology as an overarching public authority, could then legitimize using African lands as best fit the "public interest". "Public interest" was defined through a political process in which large immigrant landowners were most influential. This identification of the "public interest" with the private interests of this small but vocal group facilitated the transfer of native "public" land into exclusive freehold titles for white settlers.

In general, the colonial administration, concerned with social stability, did not identify the "public interest" with settler interests. A complex and highly conflictual politics of struggle ensued between the administration and the settlers (Bennett 1963, Gordon 1986, Berman 1990). However, up until the 1950s, most higher level colonial officials were convinced that large-scale agriculture, rather than African small-holder production was the means to economic development.<sup>18</sup> As far as land policy was concerned, settler interests were, to a large extent, identified with the "public interest". This resulted in a tendency to feed the land hunger of settlers and only mitigate inequitable land allocations when social instability was perceived as a threat to the colonial order.

Land allocations which clearly favoured the settler community were ultimately justified by arguing that immigrant settlers and plantations were the engine of growth for the economy, with Africans benefitting from "civilizing" and "trickle down" effects. State policy towards large-scale farmers operated on capitalist principles of land development. By granting exclusive, state-backed rights to land, private initiative was envisioned as the driving force in land development and growth. The state,

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<sup>18</sup>In a number of cases, district officers closer to African life and, at times, sympathetic to African concerns countered the general thrust of this policy by promoting African agriculture and arguing for removal of restrictions preventing Africans from growing cash crops. However, settler pressures generally prevented this from happening, except in remote Meru, Embu and Kisii areas where African cash crop production would not pose serious competition to settler production (Heyer 1981: 103). In the post war period, improving agriculture on the reserves drew more attention. However, this was perceived by most officials as a means to better social control rather than to improve production (Gordon 1986: 87).



however, was expected to intervene with subsidies and taxation policies that would help produce African labour for European farms.<sup>19</sup> Settlers saw the connection between African land hunger and the supply of labour for their farms. For example, in a 1908 settler meeting, Lord Delamere, an influential large landowner, urged that the amount of land natives were to hold "be absolutely limited" to force the native to work (Cited in Bennett 1963: 25). The administration made some attempts to counter settler demands in the interest of social order. Nevertheless, legislation would follow that largely responded to the labour demands of an influential settler lobby. The extent to which this legislation was actually implemented, however, depended on the bargaining strength of African labourers, which, in turn, depended on availability of land (Youé 1988).

This legal context was fashioned by and, in turn, accelerated a speculative scramble for African lands and a redistribution of land to the benefit of large-scale white farms in the highlands region. At first, this land speculation did not always sit well with colonial officials. In 1905, for example, in his recommendations on land policy, W.D. Ellis of the Foreign Office voiced deep concerns over "grabbers". These were "early settlers who accumulated as much land as possible on the easiest terms" in order to speculate rather than farm (Sorrenson 1968: 89). Officials in the Colonial Office, who took over from the Foreign Office on 1 April 1905, echoed Ellis's sentiment. Land speculation was also rife in the growing town of Nairobi. Recent white immigrants to Kenya, the majority of whom in fact did not move into farming, used their influence over the municipal bureaucracy,

to create a climate in which expatriate commerce could flourish and in some cases, to seek personal advantage, as when Mr. Huebner, the first European businessman to be a member of the Township Committee, who was also its authorised agent and banker, applied for four corner blocks and the two end blocks of the new bazaar for his own use (Hake 1977: 36).

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<sup>19</sup>In fact, taxes collected from Africans subsidized services for settler farmers (Berman 1990: 163).

By 1912, twenty percent of alienated land belonged to just five individuals and consortia (Berman 1990: 56).

In 1915, a new Crown Lands Ordinance changed the legal, institutional landscape once again by making all land in the protectorate Crown land and concentrating the power to alienate land in the hands of the governor. The governor, at any time, had the power to sell, lease, or otherwise dispose of this land. He could replace licences to agricultural land with 999 year leases for land up to 5000 acres.<sup>20</sup> This created a "virtual free market" for white settlers in the Highlands (Berman 1990: 56). Further, the governor was given wide powers to create reserves and manipulate their boundaries by canceling or excluding land from a reserve. The governor was also given a veto over any land transaction, and this allowed the state to protect segregation without explicit racially discriminatory legislation.<sup>21</sup> This legislation created the basis for institutionalizing practices that gave the protectorate state wide control over who gained access to and control over land, and by this time, the colonial authorities, in Britain and in Kenya, "had been forced to accept the fact that the Protectorate, at least in its formative years, was a 'big man's country' " (Berman 1990: 56).

In 1921, one year after Kenya was officially annexed as a colony, African land rights were legally deemed extinguished by the Supreme Court ruling of Chief Justice Barth. The case, involving conflicting claims to land rights on the part of two Kikuyu parties, prompted the following interpretation by Justice Barth:

In my view the effect of the Crown Lands Ordinance, 1915 and the Kenya (Annexation) Order-in-Council, 1920 by which no native private rights were reserved, and the Kenya Colony Order-in-Council, 1921...is clearly *inter alia* to vest land reserved for the use of the native tribe in the Crown. If that be so

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<sup>20</sup>This attempt at land ceilings was ineffective as settlers registered land in names of family members and friends, a practice called dummyming.

<sup>21</sup>At the time, settlers were concerned with excluding Indians who were increasing in numbers and influence and further had the Indian Office as a lobby for expanding their rights in Kenya. The 1923 "White Paper" which argued for "the paramountcy of Native interests" appears to have been an effort by colonial officials to dampen the struggle between these two groups.

then all native rights in such reserved land, whatever they were...disappeared and natives in occupation of such Crown Land become tenants at the will of the Crown of the land actually occupied...(Cited in Okoth-Ogendo 1991: 54).

Africans were confirmed in British law as "tenants-at-will" of the Crown, represented by the state.

In a very real sense the relationship between the state as landlord and African communities as tenants could be described as neo-feudal. Use of the term "neo-feudal" does not mean that this construction of a regime of rights took place outside a wider capitalistic context. Rather, by driving down wages and capturing labour, such relationships benefitted accumulation for those white settlers who were able to act as "landlords" sanctioned by the state. However, my aim in using the term "neo-feudal" is to emphasize the duality in the law. While in English common law ultimate right in land rests with the Crown, a residual of the Norman conquest, the gradual transformation, through struggle, of feudal land rights into property rights meant that an elaborate set of restrictions prevented much Crown control over private rights in land (Simpson 1986). In contrast, in Kenya, both settlers and Africans were subject to the authority of the Crown represented by the governor. However, settlers had recourse to property law with leases for up to 999 years, while Africans were subject to neo-feudal rights to land, dependent on the governor and his local administrative representatives who claimed a paternalistic "protective role" over them.

Reflecting the success of settler pressures on colonial administration, this legal nexus around land and the institutions and practice around it, created massive insecurity of African rights to land, an insecurity that grew more acute with time. Colonial officials became obsessed with inequities in landholdings in the reserves, which were perceived as the most important indicators of growing inequalities between African households (Kitching 1980: 281). Inequalities, in turn, were linked to social instability. The growing number of landless or land poor, who left the reserves beginning

in the early 1900s, heightened this fear of social discontent.<sup>22</sup> This production of increasing numbers of landless, a direct result of colonial policy, was also the source of the worst official fears of "instability".

### The Rise of Squatters

Difficult conditions on the reserves, coupled with a demand for African labour, led to "squatting", where Africans were allowed access to European-claimed land to live, farm, and graze in exchange for labour. This arrangement was particularly attractive to the landless and land poor, but also to those who wished to avoid the repression of chiefs and forced conscription into the military. Settlers who obtained large tracts of land without enough capital and, at the beginning, with little knowledge of how to make this land productive, first welcomed squatters as labourers. For many Africans squatting initially offered a prosperous and relatively peaceful existence (Leys 1975: 46-47, Kanogo 1987: 21-25). While settlers feared squatters as tenants with potential claims to the land, in conditions of labour shortages, squatters had enough bargaining power to win relatively good terms of coexistence (Youé 1988).<sup>23</sup> By 1931, estimates suggested that squatters were using one million acres of the land alienated to Europeans in the highlands, two thirds as much as was being used by the settlers themselves (Heyer 1981: 95).

From the very beginning settler and squatter understandings of their relationship differed profoundly. Settlers attempted to transform this relationship into a flexible labour contract by lobbying, successfully, for a series of Resident Native Labour Ordinances. These ordinances put increasingly onerous restrictions on squatters. The

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<sup>22</sup>Not all who left the reserves were landless. In fact, many were looking for ways to earn money to buy commodities and invest in their farms and utilized landless people for labour on their farms as they earned wages elsewhere. Nevertheless, the vast majority of squatters were driven into labour by landlessness (Martin 1947 Cited in Heyer 1981: 95, van Zwanenberg 1975: 226).

<sup>23</sup>In Kiambu, settler fears were warranted as squatters claimed rights to reside and occupy land there under the Crown Land Ordinance on the grounds that they were already settled there at the time of the grant of the lease" (Annual Report on Kikuyu Province 1929 cited in Breen (1976: 35)).

Resident Native Labour Ordinance (1918) required squatters to work at least 180 days out of a year on a farm. This reinforced the Masters and Servants Ordinances of 1906, 1910, and 1916, in which labourers had to pay heavy penalties for negligence or desertion and were legally defined as servants rather than tenants. In 1919, in an attempt to control the movement of labour, a much detested *kipande* system was instituted in which every adult male worker had to register with the administration. The Resident Native Labour Ordinance (1925) included a provision that made labour contracts transferable on the sale of a farm. The Resident Native Labour Ordinance (1937) continued to sanction these restrictions on labour and further transferred control of the squatters from the colonial administration to the settlers through the district councils these settlers controlled (Kanogo 1987: 37-68, Berman 1990: 143-161).

Squatters tended to view such arrangements as unacceptable. Drawing on indigenous notions of land rights, they felt they had a claim to an independent farm and the fruits of their labour. Indeed, they saw their labour as conferring upon them the right to an adequate existence that could not be separated from land. Their conflict with the settlers and the colonial regime that acted on their behest was "a struggle about ...land as household and property, and about being. Being a landless human was a contradiction that was both epistemologically and existentially unacceptable to a 'rational' African" (Atieno-Adhiambo 1995: 28-29). Indeed, access to land was linked to adulthood, to the ability to exercise civic virtue and hence to participation in political community (Lonsdale 1992b: 326-327).

As settlers with their large ranches took over the former Maasai lands in the Rift Valley, squatters, the majority of whom were Kikuyu<sup>24</sup>, interpreted their relationship with the few white settlers as similar to the "moral contracts" of pre-colonial relationships (Furedi 1989: 43,53). In return for use rights to the land, many Kikuyu were willing to pay "tribute" to the settlers in terms of labour. Early on, squatters

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<sup>24</sup>The majority of squatters were Kikuyu because, next to the Maasai who were able to adapt their pastoralist life, they were the most profoundly affected by land alienation. This alienation destroyed the Southern frontier of Kikuyu expansion and settler farms boxed the Kikuyu in. Indeed, Nairobi was built within a settlement area the Kikuyu shared with the Wadorobo and Maasai.

were given a great deal of freedom to pursue their aspirations. They ran independent, and often highly productive farms, on what the state recognized as European land. However, as more squatters moved into the white settlement areas, settlers increased their bargaining power. This was reflected in the growth of increasingly stringent labour controls. In 1925, conditions for squatters progressively deteriorated. Evictions and restrictions on squatter livestock became increasingly common, and "the squatters themselves and through word of mouth, the Kikuyu in the Reserve, learnt that western concepts of land ownership had at their heart the notion of exclusivity" (Kitching 1980: 284-285).

This growing realization of the new rules of the game with respect to land ownership, along with state manipulations of reserve boundaries, led to Kikuyu pressures for land registration and titles which would provide the same legal protection as settlers.<sup>25</sup> In 1930, concern with insecurity of land rights and, hence, the desire for titles were on the list of grievances presented to the Secretary of State for the Colonies by Johnstone Kenyatta for the Kikuyu Central Association.<sup>26</sup> Kenyatta wrote:

It is gratifying to know that Your Lordship considers that no native tribe need have any fear as to the security of its lands. Nevertheless, we recall that heavy pressure was put upon a portion of our tribe only a year or two ago to surrender land in South Nyeri that was wanted by a Mauritius Sugar Company; that we lost some land recently at Kerugoya and Muthangari and that in recent months a certain Maragua-Tana scheme has been discussed in Kenya, under which it is proposed to deprive the Kikuyu Reserve of an important source of water power for ever, in order that it may be used for supplying cheap electric power to

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<sup>25</sup>This would contrast with pastoralists peoples (Peron 1995a, 1995b) and the communities of Western Kenya, particularly Nyanza, which resisted, and, in many ways, continue to resist this process today (Shipton 1988).

<sup>26</sup>In 1922 the Kikuyu Central Association (KCA) emerged to articulate African grievances and was made up of disaffected young *athomi* or educated men. Kenyatta became General Secretary in 1928. The KCA was later supplanted by the Kenya African Union, which formed the basis for the Kenya African National Union.

*private sisal owners (Kikuyu Central Association 1930: 17).*

Not only was the association attacking the notion that African land rights were secure, they were also unmasking the supposed “public interest” behind these appropriations as *private* interests. Claiming private rights became part of the strategy used by Africans, particularly the emerging upper strata, in their struggle over land.<sup>27</sup>

The Kenya Land Commission, appointed in 1932 to look into the contentious question of African land rights, heard claims for inclusion into the white ownership rules unsurprisingly recast into the language of “custom”. The commission, however, refused to recognize African individual or family rights to land, even though it received 400 letters and other documents from Kikuyu concerning such claims (Colony and Protectorate of Kenya 1933: 3). Emphasis on communal rights to land persisted to such an extent that in the rare cases where the commission did recommend compensation for land lost, such compensation was to go through local administrative structures that would give compensation to the tribe as a whole, rather than to the individual, family or local community affected (Breen 1976: 85). Further, the commission reinforced the assumptions of dual policy by constructing Africans as “bad farmers” in need of “protection and security” and, in this manner, provided further justification for existing land policy (Mackenzie 1998: 97).

Not only were individual claims disregarded, but when such claims had a legal basis, the law was changed rather than these claims recognized. Hence, in response to Kiambu squatters who pointed out their legal claim under the Crown Lands Ordinance (1915) to rights to land adjacent to their reserve, the commission, in essence, argued for an amendment to the Ordinance that would terminate all native rights of occupancy outside of the reserves. In 1938, the administration acted on the recommendations through the Native Lands Trust Ordinance. Land in the “native reserves” was recategorized as “native lands” and removed from the Crown Lands Ordinance

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<sup>27</sup>In contrast, in the Gold Coast, where there was no settler class, members of the African political elite used customary claims in their attempt to solidify control over property (Firmen-Sellers 1996).

of 1915.<sup>28</sup> This effectively destroyed the legal basis for the Kiambu claims, but did not destroy the claims.

By the 1940s, the net effect of this institutional, legal, and political process, was increased landlessness and disputes and litigation over land in the reserves. In part, this situation stemmed from increased mechanization on large farms, which displaced labour, and the continuing accumulation of land within the reserves by chiefs and other African administrators of the colonial state. This dynamic was particularly acute in Kiambu District where in 1941 the Commissioner noted:

It is a fact that hundreds possibly even thousands of acres have changed hands by "irredeemable sale" during the past 15 or 16 years and that most of this has gone into the hands of a very few people, including Chiefs, Tribunal Elders, and the Educated minority...(cited in Furedi 1989: 141).

This on-going accumulation from above has led Bates to argue that kinship and lineage systems were transformed from systems of access to systems of accumulation (1989: 38). He comes to this conclusion by looking at the process from the vantage point of the powerful. As we shall see, up until present times, the largely landless poor continue to argue for access to public land as a right based on community ties, while members of the political class, with privileged access to land, argue against these claims by strenuously asserting the need for "respect for a private property" system. In sum, struggles over rights to access and to exclude would be the subject of continual contentious negotiation, struggle, and violence into the post-colonial period (Berry 1993).

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<sup>28</sup>Responsibility for the "native lands" was vested in a Native Lands Trust Board, consisting of the Chief Native Commissioner, one elected European and three Africans. The Highlands Board was also brought into being through this legislation which provided safeguards against any changes to the boundaries of the Highlands.



## Reconfiguring Community

Another critical dimension to the tension-ridden dual land tenure system stemmed from the construction of administrative boundaries. These units, in the form of locations, districts, and provinces, were legally created to correspond to a Russian doll image of descending “tribal units.” These boundaries were policed beginning as far back as 1902, when the Outlying Districts Ordinance movement required Africans to get permits to cross colonial districts. After the 1915 Crown Land Ordinance, allocations to “outsiders” were in theory overseen by land boards, and the new administrative boundaries created barriers to former more fluid interactions including important regional trade.<sup>29</sup> Reserve boundaries

...were not only *externally* exclusive of non-African communities but *internally* restrictive of other African communities as well. An amendment to the Native Authority Ordinance in 1940, for example, gave the Provincial Commissioner the power to order any native found cultivating land outside his reserve to return there (s. 3 of Ordinance No. 20, 1940). Thus, the idea of fixed ethnic boundaries became an essential attribute to land tenure and land relations of African communities in Kenya (Okoth-Ogendo 1991: 61).

At the same time, whenever it was deemed appropriate by officials, “outsiders” were brought in as labourers. In the process, local communities lost control over negotiating the terms of coexistence with “outsiders”, many of whom in the past would have been absorbed with the appropriate rituals. This practice began very early in Kenya’s history. For example, after the famine decimated the Maasai in the late nineteenth century, many became clients of the British, settling in Dagoretti in Central Province, some eventually supporting British efforts to subdue local Kikuyu-speaking communities. On this Maasai settlement Ambler (1988: 112) notes:

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<sup>29</sup>The Maasai were badly impacted when they lost access to Somali traders who provided them with cattle needed for breeding. Swahili traders from the Coast were transplanted, and Kikuyu women traders who traveled throughout Maasailand without fear, faced administrative restrictions, which they no doubt tried to circumvent.

Local agricultural settlements had in any case already absorbed large numbers of Maasai refugees. Nevertheless, to the leaders of the farming communities the creation of a large refugee settlement adjacent to their communities yet *beyond their control* represented an intolerable threat [emphasis added].

Despite restrictions, when conditions on bounded reserves created distress and the colonial economy offered opportunities, people moved across ethnically delineated administrative boundaries to continue regional trading, work, and found new settlements.

These "infiltrations", as colonial officials called them, were a source of administrative headache. In some cases, local meetings would be held to formally initiate the newcomers into local communities. By the 1940s when the Kikuyu were facing very severe land pressures, they came to be considered "notorious infiltrators." A district commissioner's report from South Nyanza describes such an "infiltration":

A Sunday border market at Nyaribari [Kisii]...is like a scene from Kiambu, or more accurately, Lare; all the ingredients of Kikuyu settlement in highland country are there....

The decision to allow these immigrants, save the latest arrivals, to remain is naturally unpopular with the Kisii, who, having possibly profited from their initial entry, now begin to appreciate the extent of the flood they loosed. Pious, if vehement, opinions were expressed by the Local Native Council...that all immigrants must in effect discard their Kikuyu nationality, bow to Kisii custom (and, presumably language), or else must go....These immigrants have no intention of any such metamorphosis....

The problem of the alien minority...continued but showed a tendency to solve itself subsequent to a clear indication by His Excellency, the Governor that these settlers would be obliged to become naturalized Kisii. Political agitation from the Central Province with a view to obtaining general recognition of Kikuyu rights in the Kisii highlands had little effect (Colony and Protectorate of Kenya 1949a: 35-36).

Migrants brought new trading connections and hence new goods and services. They also brought labour and wives which led to intertwined kin networks. In the 1950 Native Affairs report the contradictions involved in local agitation against migrants are well-captured in Maasailand:

At public meetings the Maasai continually demanded expulsion of aliens and the punishment of those who brought them into the District. Individually, however, they did not hesitate to employ Kikuyu and others to cultivated *shambas* [farms] in return for a share of the crop, and to marry Kikuyu wives and allow them to bring a number of male relatives. The Officer-in-Charge concludes by saying, "that it is not remarkable, therefore, that the number of non-Maasai increases every year." (Colony and Protectorate of Kenya 1950: 29).

Policies designed to produce migrant labour accelerated these inter-ethnic movements and this subverted other official attempts to clearly order Africans into neatly self-contained and ethnically defined administrative units.<sup>30</sup>

The dispossession of some sectors of African communities from their land and their movement into labour and settlement was uneven, and this would have far reaching effects on Kenyan politics. While those most dramatically affected were the Maasai, many Maasai found creative means to support themselves in their new environment, although not without hardship.<sup>31</sup> Most significantly for post-colonial politics, the more numerous Kikuyu were profoundly affected by the loss of high potential land. Furedi estimates that by mid 1940s, the Kikuyu squatter population stood at around 250,000 or a quarter of the Kikuyu population (1989: 12). Kikuyu were the majority of labourers on the coffee plantations next to their reserve and, most

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<sup>30</sup>As we shall see, this ethnic substrate to administration created the basis for future exclusionary ideologies around land. These ideologies justify local nationalisms and argue for ethnic purity within these colonially defined administrative borders.

<sup>31</sup>The Maasai lost access to land in the Kaputei Plains, Central Rift Valley, Mau Laikipia, and Uasin Gishu and were forced into the less hospitable lands of the Southern Maasai reserve. In the first "Maasai agreement" of 1904, approximately 11,200 Maasai and over two million stock lost their land to 48 Europeans (Okoth-Ogendo 1991: 30).

importantly, they rapidly formed the majority of squatters concentrated in Nakuru, Navaisha, and Laikipia, former Maasai lands now in the heart of the white highlands in the Rift Valley. The enormous insecurity of the Kikuyu outside the reserve system pushed them into informal business in urban centers all over the country, a niche they exploited with considerable ingenuity.<sup>32</sup>

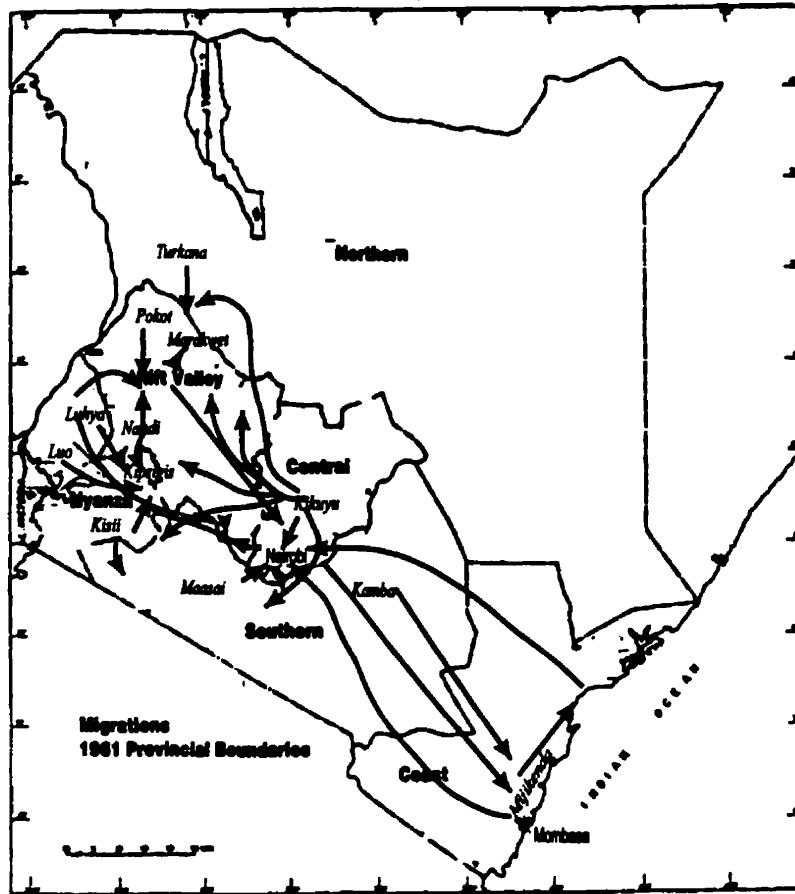


Figure II.2: Migrations

<sup>32</sup>For example, in Nakuru, the largest city in the Rift Valley, Tamarkin noted that in 1947 out of sixty-seven applications for business licences, fifty-seven were Kikuyu. In 1960-61 out of one hundred and seventy applicants, one hundred fifty-eight were Kikuyu (1973: 268). An early study found that Kikuyu owned 5-10 per cent of businesses in Luo, Luhya, Kisii and Kamba markets, while other groups tended to stay within their own ethnic spheres (Marris and Somerset 1971: 70-71: cited in King (1996)). This trend has persisted into the present, and Kikuyu businesses can be found all over the country.

Also of significance, as we shall see in Chapter IV, were the squatters from the Northern Rift Valley. In the Western Highlands, comprising Trans Nzoia, Uasin Gishu, and Nandi areas, the squatters were largely Luhya, Nandi, and Kipsigis. Luo squatters tended to settle in Muhuroni, Koru, and Londiani and Kisii, Luo, and Luhya squatters tended to settle on the Kericho tea estates (Kanogo 1987: 29). These peoples from Western Kenya were also the majority of the casual labourers on the coast and particularly around the urban center of Mombasa.

Kenya's coast was the site of particularly large numbers of squatters. This situation was linked to the particularities of the incorporation of the coast into the colonial state. Prior to British *de facto* rule, the thin 10 mile strip of Kenya's coast was controlled by the Sultan of Zanzibar and was part of a system of clove and grain plantations utilizing slave labour. The British eventually took over jurisdiction of this territory, incorporating it into Kenya Protectorate. In 1907 they banished slavery and substituted it with labour controls in many ways similar to the mainland (Cooper 1995).

One unique aspect of incorporation was that the private property rights of the Sultan and his subjects were respected to the point that slave-holders were compensated for emancipated slaves. The Land Title Ordinance (1908) created opportunities for powerful Arab and Swahili families and former plantation owners to claim rights to land and receive title deeds. All other land, however, reverted to the Crown, as in other parts of the territory (Ghai and McAuslan 1970: 28-29). One profound consequence of this was that even as they moved onto the land and began to farm, indigenous Mijikenda peoples and ex-slaves were excluded from this ownership structure (Cooper 1995: 174-175). In other areas, in order to clear space for white settler farmers, these local peoples were moved off land and put into reserves. In this way, while the coast has a unique history, the plight of Mijikenda squatters was similar to that of Rift Valley squatters. Both sets of squatters faced insecure rights to land and, as a result, precarious access to subsistence.

## **A Squatters' Revolt: Mau Mau and the Beginning of Electoral Reform**

By 1944, land inequities were severe. The amount of land alienated to Europeans was estimated to be 7,000,000 acres of which 864,000 were actually in cultivation.<sup>33</sup> The number of settlers was 2,000, the number of farms 2,700 and the "amount of undeveloped land was so extensive that the Government was considering the necessity of introducing a tax on undeveloped land" (Meek 1949: 79). Nevertheless, these large estates growing coffee, tea, sisal, and pyrethrum were, by 1946, producing seventy-two percent of the value of Kenya's exports and, hence, were deemed essential to the colonial economy (Tignor 1998: 294). At the same time, in the reserves, particularly the Kikuyu reserve, population densities had climbed. If approximately 100,000 Kikuyu squatters in the Rift Valley would return to the reserve the population density "would augment by fifty-seven to the sq. mile a population which had already (in 1932) become so dense as to cause embarrassment" (Meek 1949: 79). In light of this situation, the Land Commission recommended that some alternative land be made available to the reserves and to freehold settlement schemes for Africans (United Kingdom 1934).

Settlement schemes began as a "pressure valve" for the colonial government to deal with landless people. On the coast, with a large population of former slaves, settlement schemes began as early as 1911 (Mbithi and Barnes 1975: 65). The Kenya Ten Year Development Plan 1946-1955 established a settlement board later known as the African Land Development Board (ALDEV) in order to facilitate a transfer of land to African families. Settlement schemes were set up all over the country, but they were not meant to solve the "landless" problem in any meaningful way. Instead, as concern with environmental degradation on badly over-populated reserves mounted, these settlements were designed as models of viable and carefully controlled "stable reserves" (Gordon 1986: 87). The unused land, was generally not the most

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<sup>33</sup>This must be put into perspective. Only around 20 per cent of Kenya's 582,646  $km^2$  (143,971,826.6 acres) of land mass is arable. Therefore, this meant that 24 per cent of all arable land was in the hands of Europeans.

fertile and friendly to humans or cattle, and only a small number of families could be accommodated.<sup>34</sup> Further, the land actually allocated was often inadequate to address the need for basic subsistence and, in some cases, rubbed salt in the wounds of a festering sense of injustice.

In this regard, one famous settlement scheme was Olenguruone. In 1939, 34,700 acres of Maasai reserve land were bought to settle squatters pushed off European farms and some of the Kikuyu “infiltrators” in the Maasai Reserve. The primarily Kikuyu squatters expected compensation for land losses. They were later surprised to learn that they were to be tenants on land *leased* to them by the government. In what became a symbol of anti-colonial resistance, they responded with a series of demonstrations at the governor’s office in Nairobi (Furedi 1989: 80). The head of the Office of the Commissioner for African Land Utilization and Settlement concluded that the settlement, “designed to cater for a very difficult class of person” was a “total failure” (Colony and Protectorate of Kenya 1949b). Another report commented that the Olenguruone settlers were “poor types” who “failed to realise that they were tenants of the Crown” and hence “their resistance became a burning political issue, and they were eventually all expelled” (Colony and Protectorate of Kenya 1956a: 79).

Despite the increasingly evident economic distress among squatters and what many officials recognized as “a problem of first class magnitude” (Meek 1949: 82), Governor Mitchell<sup>35</sup> staunchly supported the highlands settler policy, arguing that the “land we have made is our land by right-by right of achievement” (Tignor 1998: 298). As we have noted, the squatters also had a labour theory of value (Lonsdale 1992b: 333). They too felt that to the extent that they poured labour into the Rift Valley land, they had rights to this land. Settlers, however, continued to press the administration for ever greater controls on their squatter labour and, in the latter half of the 1940s, attempted to eliminate the “squatter peasant option” by clamping down on the amount of cattle they could rear and land they could use for cultivation

<sup>34</sup>Only 6,297 families were settled from 1957 to 1962 (Berman 1990 fn 86: 297).

<sup>35</sup>Governor Mitchell held his position from 1944 until he retired in 1952 and was replaced by Baring who was governor throughout the Emergency period.

(Kanogo 1987: 136). In the process, they violated African norms about rights to the fruits of one's labour. This was, no doubt, made more jarring by expanses of land to which settlers claimed exclusive rights, even though they were not cultivating it.

These conditions provoked squatter politicization and resistance. Squatters occupied unused land and refused to leave, or refused to work for what they considered sub-standard wages. When the state responded to resistance with force, this precipitated the turn to violent struggle called the Mau Mau movement. There are many interpretations of this revolt and continuing lively debates to which this very brief, partial history cannot do justice.<sup>36</sup> However, an outline is essential to understand how the remembering and forgetting of these land struggles enters current politics.

At the heart of this movement were Kikuyu squatters who, consistently deprived of land rights by state authorities, linked their economic distress to their political oppression.<sup>37</sup> Although primarily a movement of the landless, Mau Mau supporters came from a variety of social categories. The young, petty traders, teachers, foremen, forest workers, and even some wealthier businessmen were among Mau Mau sympathizers (Kanogo 1987, Anderson 1999, Castro and Ettenger 1994). A central aim of the Mau Mau movement was to recover lands lost to the settlers. Hence Mau Mau directly challenged the highly skewed racial distribution of land that the regime had attempted to "remove from the arena of political discourse and refashion in what claimed to be a neutral language of legal regimes" (Mackenzie 1998: 17).

As Mau Mau violence escalated against Kikuyu collaborators, and murders of white settlers created a sense of panic, the government declared a State of Emer-

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<sup>36</sup>See Lonsdale 1992a and Clough 1998.

<sup>37</sup>While this was primarily Kikuyu movement, Mau Mau had links and supporters from other parts of Kenya as well (Furedi 1989: 142-143), perhaps including Maasailand (Pavlis 1977). Tamarkin suggests, "Kikuyu militants were not merely tribal chauvinists, they were in fact the only true nationalists". They put forward a Luo candidate for a Nakuru Town seat in the 1961 election against the wishes of the Kikuyu establishment (1973: 273). Although it remained a primarily Kikuyu movement, to the extent that Mau Mau was a struggle about class, albeit couched within ethnic languages (Lonsdale 1992a: 298), it had the potential to reach beyond the Kikuyu.



gency on 20 October 1952 and answered the movement with severe repression. The government imprisoned members of the nationalist organization the Kenya African Union (KAU). While a faction of the KAU was supporting the rebels, the government also arrested Kenyatta, head of the KAU at the time. Kenyatta was widely portrayed as the leader behind Mau Mau even though his involvement was confined to attempts to rein in the rebels. Under trumped up charges, the future president of Kenya was imprisoned for seven years with hard labour, and his release became the focus of nationalist agitation.

In 1954, in Operation Anvil, 30,000 Kikuyu, Embu and Meru, were rounded up in Nairobi and deposited in the reserves in order to break the link between the capital and the rebels in the forests. Forms of collective punishment, from special Mau Mau taxes to villagization targeted largely at the Kikuyu as a troublesome tribe, were common throughout the emergency period. In the process, Kikuyu were characterized as criminal “subversives”, and many colonial officers and settlers expounded a strong anti-Kikuyuism, even as Kikuyu chiefs along with other groups were brought into the hunt for Mau Mau “gangs” (Rosberg and Nottingham 1966: 333). Urban Kikuyu were portrayed by colonial officials as anarchists and criminals, a stereotype that was reinforced by the recruitment of petty criminals into Mau Mau ranks. For example, I. Ryland, Officer-in-Charge for Nairobi in 1954 wrote in his report:

It was evident that the whole weight of the Kikuyu tribe in Nairobi was overbalancing the scale in favour of anarchy and contempt of all law and regulations and that the resources of the the Security Forces and well-intentioned citizens were at the time insufficient to wrest the city from the stranglehold imposed upon it by forces of subversion. Large-scale operations proved ineffective against the weight of number and the City was permeated by gangsters and other undesirables supposedly in employment, but, in fact, free of occupation and exempt from control (Colony and Protectorate of Kenya 1954: 173).

By 1956, colonial control was largely reasserted through “emergency” measures. Around 80,000 Mau Mau sympathizers, including one third of the adult male Kikuyu

population, ended up in “reeducation” camps. A number of these detainees in Hola Detention camp were tortured, and eleven “hard-core” Mau Mau murdered, causing a scandal in British circles (Kyle 1999: 95). As a result of the emergency, Kikuyu squatters in the Rift Valley were dispersed and their labour replaced by that of squatters from Western Kenya. After the Emergency officially ended in 1960, Kikuyu squatters defiantly streamed back to what they perceived as their Rift Valley home.

Mau Mau failed in its aims of reclaiming and redistributing land in the fertile areas. However, it raised the costs of colonial control and pushed the issue of reform to the forefront. Mau Mau prompted concern over how to provide a “politically contented and stable [African] community” (Swynnerton 1954: 8), and the movement drove home to colonial officials the need for institutional changes that would help create such a “stable community”. As the Emergency was in full force, Governor Baring moved to initiate increased but still extremely limited African representation, which would involve highly controlled extension of state privilege, including the franchise, to selected groups and leaders. Other gains from Mau Mau included the Royal Commission on Land and Population which attacked the principle of reservation of land on a racial basis, the East African Salaries Commission, which successfully promoted equal pay for equal work, and the general easing of segregation in public places (Kyle 1999: 87).

The 1954 Lyttleton constitution institutionalized reforms. It established a Council of Ministers- a proto-cabinet which consisted of a mix of administration and elected representatives. Key portfolios were entrusted to civil servants, and an African was given the Community Development portfolio (Kyle 1999: 64). Representation on the Legislative Council- always more of an advisory body than a real legislature because the president of the council, the governor, possessed veto powers- was also expanded. In 1951, the council had 11 Europeans, 5 Indians, 4 Africans and 2 Arabs, with only the European members being elected by settler constituencies. The other members were appointed by the governor, often on the recommendation of the provincial administration (Parker 1951: 14-17). This institutional configuration gave the governor

and his bureaucracy wide powers. As we shall see, these centralized powers to appoint members of legislative and administrative bodies and, further, to privilege administrative over legislative bodies, would survive, albeit in altered forms, as African suffrage emerged and expanded.

The Lyttelton constitution for the first time allowed for election of African Legislative Council members. In 1957, the first exercise of limited African suffrage took place in the shadow of the Emergency, with its highly restrictive conditions. National parties were banned, and district level parties had only been allowed since 1955. Further, the majority of Kikuyu were effectively disenfranchised. Only those with "loyalty certificates" issued by the provincial administration were allowed to vote (Kyle 1999: 75,77). While elite dissent by nominated African Legislative Council members was tolerated as long as no trans-ethnic nationalist movement was in the works, "there was an almost complete cessation of normal political life for Africans" during this time (Bennett and Rosberg 1961: 32).

The first African experience with suffrage was under highly controlled parameters. Uncertain of the power of the vote under such conditions and wary of revealing tax receipts to prove property qualifications, even eligible voters were dissuaded from casting their ballots. Only one third of the roughly 400,000 of those eligible voted (Tignor 1998: 333). Nevertheless, 1957 was a watershed. For the first time African representatives were sanctioned by an electorate. In the shadow of continuing strong administrative power, the new members of the Legislative Council became a critical new link between center and locality. Only one formerly nominated member of the Council retained his seat: a young Kalenjin teacher and politician from the Rift Valley: Daniel arap Moi.

Electoral reform was accompanied by critical changes in land policy. The means to this transformation of land policy was encapsulated in the Swynnerton plan. Effectively, this plan was an attempt to create allies among Africans for the old "development" vision and *against the redistributive claims of the landless*. It heralded a break with the dual policy of private land for settlers and "public" land for na-

tives by extending capitalist principles to the reserves through the mechanism of land registration and consolidation. Focus was on the "African progressive farmer" who:

...must be provided with such security of tenure through an independent title as will encourage him to invest his labour and profits into the development of his farm and as will enable him to offer it as security against such financial credits...(Swynnerton 1954: 9).

Part of this vision was that "progressive farmers", now reconstructed as a non-racial category, would consolidate land through buying the land of others and would reproduce the large-scale and cash crop farming of the white settlers.<sup>38</sup> Explicit in this plan, in direct contradiction to squatter aims and beliefs, was the maintenance of a landless class. Such presumed inequities were justified using the same rationale for privileging white settlers in the first place: merit:

In future, these able, energetic or rich Africans will be able to acquire more land and bad or poor farmers less, creating a landed and landless class. This is the normal step in the evolution of a country (Swynnerton 1954: 10).

This aspect of the plan was emphasized by former Permanent Secretary to the Ministry of Lands in Settlement, Carey Jones (1966: 54):

The Swynnerton Plan implied a complete change in the basis of the economy and the disappearance of the idea that everyone must, or can, have land. It implied a landed and a landless class. In this it recognized forces already at work, particularly among the Kikuyu. It looked farther ahead at the time when the poorer, smaller holdings would be sold and incorporated in larger farming units and a larger scale agriculture would be possible. It further implied that the landless would live (and not merely earn money) by employment.

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<sup>38</sup>The Kenya National Farmer's Union, which began as an association of largely white owners of large-scale farms, would quickly find and articulate a common interest with the emerging large-scale African farmers in maintaining the price of land (*Kenya Weekly News* 1 December 1967).

What this ideology of merit obscured was that the possession of large tracts of land by settlers and an emerging African class of landowners had very little to do with merit, or even potential contribution to production, since much land remained idle and production inefficient. Instead, the position of these landlords "had far more to do with their power to exclude people from the access to the means of production, a power that depended on the actions of the state, the legitimacy of the law and the press of population" (Cooper 1995: 14).

This policy of registration and titling of land intervened in social struggles within the reserves, favouring the rich "progressive farmer" but also, to some extent, "the small man who no longer had to waste his resources in a futile battle in the courts against the big man" (Sorrenson 1967: 250). The losers were the landless, including many of the former Mau Mau guerrillas and sympathizers, who were excluded from the ownership structure altogether.<sup>39</sup> By providing potential security of tenure to peasants, registration helped break their support for the redistributive agenda of the Mau Mau movement and its landless followers (Njonjo 1977: 299). Titling took place in the Kikuyu reserve during the emergency and in the midst of villagization designed to break the supplies to Mau Mau fighters in the forest. Land rights were doled out to those loyal to the colonial state, who, in turn, became dependent on the state to guarantee these rights were upheld. Mbiyu Koinange and Achieng Oneko of the Kenya African Union bitterly complained about the legal basis to this manipulation of land rights (1952: 8):

Section 69 of the Crown Lands Ordinance, another discrimination, permits the Governor (subject to approval by the Secretary of State) to seize the land held or occupied by Africans, "in cases where the offenses of treason or rebellion against His Majesty have been proved to have been committed by any African tribe, groups, family or individual." But there is no such provision for Indians, Arabs or Europeans...

When Mau Mau sympathizers were released from prison, they found themselves land-

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<sup>39</sup>Women also lost out in this process. See Mackenzie (1998).

less. Those who went into Mau Mau with land would often return to find it expropriated and the colonial chiefs still in control (Clough 1998: 217-218).

In this way the colonial state used its institutionally grounded power to generate and distribute private rights to land, as well as to selectively extend the franchise to create allies and punish challengers. In the process, the multitudes of landless remained without access to land and, hence, the civic standing that pre-colonial arrangements had formerly assured them. They remained "surplus" people or squatters. In this way the complex set of struggles called the "land question" was transferred to the new context. The centralized institutional apparatus and its related local form as "decentralized despotism" embedded land in a new form of coercive clientelism and created strong and persisting incentives to use land as patronage into the post-colonial period.

### **Land, KANU, KADU, and the Transition to Universal Suffrage**

Responding to a changed international context and the increasing costs of colonial control, at the 1960 Lancaster Conference in London, the British government agreed to majority rule for Kenya. The issue of power-sharing predominated negotiations, and the critical question of the electoral institutional set-up was left to a Working Group appointed by the governor. This left tremendous power over the election in the hands of the colonial government. The result was that constituencies were designed to fit with administrative, particularly district, boundaries rather than numbers of voters. Sparsely populated pastoralist communities received more constituencies than their numbers merited and the densely populated Kikuyu areas less (Bennett and Rosberg 1961: 48). 20 seats were reserved for communal representation to safeguard minority representation, while 33 seats were open. Qualifications were imposed that discriminated against the poorest segments of the population, particularly the young

landless, many of whom had supported Mau Mau.<sup>40</sup>

With restrictions on national African parties lifted, a number of parties quickly formed. Unsurprisingly, given the fragmentation created through institutionalized restrictions on inter-reserve movement and organization, these parties emerged as coalitions of local powerbrokers or “mere federated ethnic loyalties grouped around individual personalities” (Okoth-Ogendo 1972: 13).<sup>41</sup>

The problem of a national leadership came to the fore. Kenya Africa National Union (KANU) formed with a heavily Luo and Kikuyu leadership. In response to KANU, a number of district-based associations formed an alliance under Masinde Muliro’s Kenya African People’s Party. These local associations/parties, such as Moi’s inter-Kalenjin party, the Kalenjin Political Alliance, along with the Maasai United Front, Coast Africa People’s Union, and Somali National Association, merged to form Kenya African Democratic Union (KADU). Although their platform differed little from KANU’s,<sup>42</sup> they were united by a fear of Kikuyu domination, including in particular, for the Maasai and Kalenjin, Kikuyu encroachment on Rift Valley Land. The highly vocal Kikuyu squatters, who continued to press for take over of Rift Valley land without compensation to white settlers, and the strong Kikuyu presence in KANU reinforced belief about Kikuyu domination. Settlers and former civil servants,

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<sup>40</sup>All people over forty were allowed to vote. Those over twenty one who had at least one of the following characteristics were allowed to vote: literacy, an annual income over 75 pounds, property worth 200 pounds, membership in a Local Authority Council or employment as a sub-chief, tribal police, with the qualifications of the husband transferred to wives (Bennett and Rosberg 1961: 62), in sum, all qualifications more likely to apply to those loyal to the government and excluding those with the deepest grievances.

<sup>41</sup>Pre-colonial politics was intensely local. However, localization of politics was facilitated in the colonial period by restricting African political associations to drawing membership from one “tribe” (Mueller 1984: 403). Okoth-Ogendo also argues that Local Native Councils established in 1924 to give the semblance of African representation (even though they were controlled by district commissioners) had the effect of concentrating African political awareness at a local level (Okoth-Ogendo 1972: 11).

<sup>42</sup>Both parties advocated the abolition of the provincial administration.

fearing the redistributive program of Kikuyu militants, politically and financially supported KADU which was led by powerbrokers from pastoralist and Coast areas.<sup>43</sup> KADU preferred to make an alliance with white farmers against Kikuyu squatters, which, in the eyes of many in KANU, made KADU an anathema. Further KADU failed to recognize or appreciate that the primarily Kikuyu Mau Mau movement was critical in precipitating independence negotiations, and the Kikuyu and related Meru and Embu peoples faced the worst land pressures and suffered the most in the Mau Mau struggle. As Lonsdale has eloquently put it, "the blood of Mau Mau, no matter how particularly ethnic in source and aim, was the seed of Kenya's all African sovereignty" (2000b: 109).

The struggle between KANU and KADU for state power took on the veneer of a fight between mono-partyism and multi-partyism. The struggle for African self-rule created an impetus to fashion a united front against the British in the form of one political party, a position promoted by KANU. KADU, chaired by Daniel arap Moi, was against a single party and "barred" Kenyatta, released from prison in 1961 and head of KANU, from rallies in "KADU areas" as long as he advocated mono-partyism.<sup>44</sup> In this, Moi collaborated with the colonial government which, citing security reasons, denied Kenyatta licences to visit "KADU zones".<sup>45</sup> Kenyatta, in turn, rightly suspected KADU, with its settler constituency, of colluding with the colonial government.

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<sup>43</sup>The Maasai asked for the British to stay in Maasailand after independence and there were movements for autonomy on the part of the Somalis of Northeastern Kenya and the more culturally Arab coastal strip.

<sup>44</sup>In the 1990s, such techniques would be used by Moi's government *against multi-party advocates*. This illustrates how party politics is subordinate to a much deeper struggle over a highly concentrated center of authority, which gives access to the material basis of power.

<sup>45</sup>The Public Order Act (Cap 56.), amended in 1960 by the colonial government in order to control African political organizing, reads "Any person wishing to hold, convene, organize or form a public meeting or public procession shall first make an application for a licence in that behalf to the District Commissioner..." who will issue a licence if he is convinced the meeting is "not likely to prejudice the maintenance of public order or be used for an unlawful or immoral purpose".



KADU wanted guarantees for their vulnerable "minority" constituencies.<sup>46</sup> KANU wanted an immediate transfer of power. The colonial government wanted to maintain economic and political influence, maintain foreign private investment and protect its citizens. The settlers wanted reassurances that their property would be safeguarded and high land prices protected. The "Westminster" constitution that was finally negotiated reflected the strength of the parting British government, and the influence of settlers.

This constitution addressed the fears of the KADU coalition through a policy of "*majimboism*" (regionalism), that is, by imposing restrictions on the central state through devolution of powers over agriculture, education, health, housing, and local government to the regions. It created a bicameral house, with the Senate consisting of a "close approximation of a tribal forum" (Okoth-Ogendo 1972: 15) and a House of Representatives or Assembly. Any amendment, to the Constitution required a remarkable 75 per cent of the vote in the Assembly and 90 per cent of the vote in the Senate. The Bill of Rights assuaged the concerns of liberal settlers, who demanded "not only compensation for any expropriation, but also, interestingly, a strict definition of the 'public purposes' for which the government would expropriate land" (Wasserman 1976: 44). The Bill of Rights, in fact, strongly protected existing private property by a provision against expropriations and compulsory acquisition save under the most rigorous conditions (Okoth-Ogendo 1972: 16).

Settlement schemes in the Rift Valley became the concrete means to a "stable African community" which was also to be the new electorate. Beginning in 1961, the colonial government appointed the Land Development and Settlement Board, mostly made up of administrators and settler representatives, to manage settlement schemes for Africans. Land for the schemes came from settlers who were willing to sell, and the British government and World Bank, eager to preserve a land market and large-

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<sup>46</sup>No ethnic grouping constituted 50 per cent or more of the population. The 1962 Census put the numbers as follows: Kikuyu 1,642,065, Luo 1,148,335, Luhya 1,086,409, Kamba 933,219, Kisii 538,343, Meru 439,921, Mijikenda 414,887, Kipsigis 341,771, Turkana 181,387, Nandi 170,085, Maasai 154,079, Others 1,315,441, Total: 8,365 942.

scale agriculture, provided financing for some of these schemes. Given the obvious influence of settlers on the Board, it is hardly surprising that land was bought at highly inflated prices, with the cost transferred to the post-colonial government, and, indirectly, to the small-scale farmers (Leys 1975: 81).

These schemes were generally divided into high density areas, where land would be available for small farmers, and low density schemes where the wealthy African administrative class could take over white farms along with their large houses intact. The low density schemes were quite intentionally designed as a way to buy the support of the African leadership, and a disproportionate amount of credit and extension support went towards these "progressive farmers" (Leys 1975: 82, 92-102, Leo 1978: 629). In contrast, in the largest such scheme, the Million acre Scheme, official administrative provisions "systematically allocated relatively poor quality land, high prices, and unfavourable budget calculations to the 'non-progressive' settlers" (Leo 1978: 628).<sup>47</sup> However, the cost of buying the settler land was transferred largely to these high density farmers (Leys 1975: 81).

While there was some rhetoric about settling the landless, and, in fact, genuine fear of the threat they posed, the conditions under which land was sold in the high density schemes generally excluded all but the most resourceful of the poorest, who were expected to labour on the new farms. Indeed, in the Rift Valley, new large-scale mixed farmers, which would include the Kenyatta and Moi families, often brought in their own relations to work for them, displacing former labour which moved into shantytowns in urban centers (*Kenya Weekly News*, 29 December 1967). Many of these former squatters, joined by others pushed off over-crowded reserves, would end up in what would eventually be called the "informal sector", forced to rely on themselves and their ingenuity to survive. Some educated themselves, through their

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<sup>47</sup>See also Osolo Nasubo (1977: 9), and a first hand account of the experience from a small-holder in these schemes in *Kenya Weekly News* 5 May 1967. By the 1990s, the Kenya Human Rights Commission noted "it is doubtful whether 35 per cent of the African settlers on the original One Million Acre Scheme have yet obtained title deeds" (1996a: 18). Much of the general bias against small producers still exists (Migot-Adholla 1984, Deininger and Binswanger 1995).

experience as labourers on settler farms and, later, in Indian factories, and developed the beginnings of a manufacturing sector with linkages to the agricultural economy (King 1996). They did this largely without state support, and, in many cases, despite continuing repression.

The new African “progressive farmers” tended to be the same as the new leadership in independent Kenya. In this way colonial land policy bought co-operation among Kenya’s leadership. The settlement schemes provided the means for this leadership to become large landowners and for them to allocate plots as political patronage, much in the manner of colonial chiefs.<sup>48</sup> 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).

Allocation of land in the settlement schemes immediately became a national issue and a source of grievance. The majority allocated land in the largest scheme, the Million acre scheme in the Rift Valley, were Kikuyu. The larger numbers of Kikuyu relative to the rest of the population, the greater degree of displacement, and the proximity of the settlement scheme to the Kikuyu reserve, would suggest this would be a natural outcome.<sup>49</sup> However, land purchases were often carried out in an opaque manner. Very early on, the consequence of patrimonial practice around land aroused suspicions that Kikuyu were being favoured (Ross 1975: 85, Rothchild 1969). Thus, the Rift Valley land question became one very critical focus of distributional grievance. Wolf captures this resentment in his interviews on Kenya’s Coast (1985: 141-142). A typical complaint, offered by a Coast politician, was that:

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<sup>48</sup>Parliamentarian J.M. Kariuki, a vocal critic of this process, complained in the press and parliament that “Cabinet Ministers, Permanent Secretaries, and Provincial Commissioners were being allocated land set aside for experimental farms in Maasailand” (cited in Widner 1992: 90) and settlement schemes in his constituency (J.M. Kariuki 1976: 7-37). He was later killed for his attempt to organize around these exclusions.

<sup>49</sup>Harbeson suggests that 45 per cent of the plots allocated in the Million Acre scheme went to Kikuyu (1971: 243).

...the loan money to buy farms from the Europeans to settle landless Africans—that money was used just for the “Kyuks” [slang for Kikuyu]! Instead of the government taking all the land and allocating it to the landless, a lot of private loans were given out even to people who already had land to buy more and also to start buying properties in Nairobi. There was no British control, so the Kikuyus had all the chance. The president allowed this (Wolf 1985: 142).

Of course, while a disproportionate share of the land went to Kikuyu, a disproportionate number of the marginalized landless were also Kikuyu. However, the perpetuation of communal categories, entrenched in the discourse around patrimonial power, worked to obscure trans-ethnic grievances around landlessness.<sup>50</sup> Kikuyu “radicals” who tried to form nationalist cross-ethnic movements based on common grievances around land inequities were treated most severely by the Kenyatta regime. The most prominent example of this was the brutal assassination of the MP J.M. Kariuki by Kikuyu bosses around Kenyatta.

## **All the President’s Men and Women:**

### **The Provincial Administration and Patrimonial Logics**

In 1961, while still under colonial rule, KANU won the the first multi-party election and, by June 1963, Kenyatta formed the first independent government. It is very significant that KANU essentially came to power with the colonial institutional configuration, particularly in the form of the provincial administration, intact (Gertz 1970, Ghai and McAuslan 1970). With few changes in the socio-economic basis of rule, “the newly independent government did not see much need for overhauling its administrative system” (Mutahaba 1989: 66). While this is one of the reasons for

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<sup>50</sup>The construction of the “Kikuyu community” as an unproblematic unitary actor is reproduced in Throup and Hornsby’s (1993) analysis leading to numerous unexplained anomalies and tensions.

the institutionalization of the Kenyan bureaucracy relative to many African countries, as we shall see, it is also part of the problem of engendering change towards a more democratic polity. Early on, parliamentary debate occurred on how to deal with this bureaucratic apparatus, with some MPs arguing for its abolition. In 1966, KANU introduced a preamble into its constitution and manifesto, making clear that "KANU will govern the country through the established structure of the civil service and administration..." (Wanjohi 1997: 127). Over the next decade, the KANU government, under Jomo Kenyatta, maintained the provincial administration and passed ten constitutional amendments effectively reinstating the broad outlines of colonial rule, including subordination of local government and the public service commission to central control. The Attorney General, Charles Njonjo, justified these changes based on efficiency, cost-effectiveness, and republicanism (Njonjo 1965: 98).

The KANU regime used its grip on the provincial administration, colonial law (Public Order Act) to ban political meetings, and selective patronage incentives to turn Kenya into a de facto one party state. KADU MPs, including Moi, were pressured and bought with patronage. They crossed the floor to join KANU.<sup>51</sup> Regions were transformed back into provinces and regional government whittled away, the rationale being that power should be given back to parliament. By 1968, the Senate was absorbed into the House, and the president was given powers over elected officials, including the powers to nominate 12 MPs.

KANU, always weak, was becoming a mere means to legitimize the use of administrative state power. It served to determine who would be eligible to access the state and its resources. Attempts to form pathways to power outside of KANU through alternative parties were effectively squashed. For example, in 1966, when a faction of KANU, led by the Luo Odinga and the Kikuyu Kaggia, broke from KANU's conservative line to form a new party, the Kenya People's Union (KPU), Kenyatta resorted to the repressive techniques of colonial practice learned through experience (often on the

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<sup>51</sup>For the details see Mueller (1984) and Oyugi (1992). I stress the root of these techniques because they continue to be used against opposition parties in the contemporary period.

receiving end) and legitimized by existing laws. Meetings were banned, registration of district party offices prevented, patronage withdrawn from KPU supporters, and the party ethnicized as Luo. To give credence to this last claim, the KPU was allowed to operate in Luo areas and even elect MPs, but was repressed elsewhere (Mueller 1984: 424). Further, aware of an influential foreign audience supportive of the more conservative tendencies of the Kenyatta regime, Odinga was vilified as a communist threat.<sup>52</sup> By 1969, Kenya was a *de facto* one party state, and KANU, as a party, was considerably weakened and controlled from the executive.

Since this onset of mono-partyism in 1969, electoral contests were held between various KANU candidates at both the local and national level. While in theory, according to the KANU constitution, national level party officials “shall be elected at an Annual Delegates Conference by secret ballot” (KANU 1974: 3), in practice, the president, both Kenyatta and then later Moi, took over the party structures and appointed clients to key positions in the party machine. The lack of general elections and, under Moi, increasing interference in nomination processes, have historically been and continue to be a source of discontent among many KANU party activists as well as a source of party weakness.

This system meant that those MPs who exhibited loyalty to the Party Chairman (the president), and who demonstrated the ability to rally support for KANU by being consistently re-elected, were rewarded with greater access to resources to use as patronage (Barkan 1987). In this way, MPs constituted a critical link between the central government and local constituents, and also acted as mediators between different constituencies. MPs were minimally accountable to their constituents, and provision of services naturally was a key issue for rural electorates in dire need of roads,

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<sup>52</sup>As Attwood, the US Ambassador, noted at the time, while Odinga was getting support from the Chinese (there was a post-Independence scramble for external patrons), “he did not consider himself a Communist and was naive enough to believe that the people that bankrolled him would not expect a return on their investment” (1967: 261) In the 1990s, when Odinga reemerged as a force in multi-party politics, KANU hardliners then accused him of receiving funds from the USA and Germany (Throup and Hornsby 1998: 268).

schools, and clinics. MPs would spend substantial amounts of time “lobbying” the president and his ministers for projects and funds.<sup>53</sup> The executive and bureaucracy used a sub-ordinated parliament to legitimize pre-written legislation, budgets and policy. Patrimonialism was thus entrenched through a combination of institutional design and an active politics of accommodation or repression. It became the “system” through which ambitious politicians worked. One important reward for cooperation was access to land.

### The Advent of President Moi

Transitions in patrimonial systems are fraught with instability. This is because patrimonialism encourages factionalism, and, further, the concentrated and arbitrary power of the apex of the state makes the stakes involved in these factional struggles extremely high. When Kenyatta died in 1978 there was an institutional mechanism for the succession. The constitution stipulated that the vice-president, a presidential appointee, would immediately become president. However, this did not prevent factional struggle, starting as early as 1976, between a clique around Kenyatta which had accumulated a great deal through access to state power and a clique who supported Kenyatta’s Kalenjin vice-presidential appointee, Daniel arap Moi. The most powerful members of the anti-Moi clique consisted of members of Kenyatta’s family from Kiambu.<sup>54</sup> They formed a “Change the Constitution” group to prevent Moi from

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<sup>53</sup>This should not be seen as the only issue that moves the African electorate. Maverick MPs often continue to gain support even though they are not bringing in development funds. Kanyinga (1994) noted, in the case of Kiambu, the issue of state repression was a key electoral concern among constituencies who did not expect much in the way of assistance. Indeed, Maverick MP Martin Shikuku until recently continued to get electoral support in Butere constituency regardless of his poor record with respect to bringing projects into the constituency. In 1994 when I queried people on this, they spoke of his magnetic speeches. One young man said he supported Shikuku “because he told the truth”.

<sup>54</sup>The key members of this “family” consisted of MP and Minister of State Mbiyu Koinange (brother-in-law), MP Njoroge Mungai (nephew), MP Peter Kenyatta (son), Nairobi Mayor Margaret Kenyatta (daughter), MP, Minister of Defense, and Minister for Finance James Gicheru MP, MP

taking the presidency. In their attempt to stay in power they appealed to Kikuyu political tribalism. Through an organization called GEMA (Gikuyu Embu Meru Association) they attempted to mobilize Kikuyu support against Moi. Ultimately, they failed in their machinations and Moi, playing the supporter of the common man, actively and, at the beginning, successfully, courted Kikuyu critics of the Kiambu clique (Karimi and Ochieng 1980, Ogot 1996, Widner 1992: 110-129). This split was reflected in Moi's choice of Kikuyu technocrat Mwai Kibaki as vice-president and Kikuyu Charles Njonjo as Minister of Constitutional Affairs.

After formally taking power, Moi still faced a formidable task with a provincial administration heavily populated by Kenyatta clients. By 1980, all but one PC inherited from Kenyatta were retired from public life and roughly half of the DCs were transferred out of the provincial administration (Barkan and Chege 1989: 439). Moi also turned to KANU as a means to survive. Whereas Kenyatta had left the party weak and ineffectual and used the provincial administration as a primary means of control, Moi fused KANU to the Office of the President and through the party intervened in factional fights at a local level, replacing Kenyatta clients with his own (Barkan and Chege 1989: 447, Widner 1992).

Moi was still faced with the severe economic imbalances arising out of Kenyatta's rule and the need to consolidate a basis of support. This was made more urgent by a coup attempt in August 1982 by disgruntled soldiers which led to the constitutional amendment, section 2(a), making Kenya a de jure one-party state. While, early on, Moi had played the populist card, pledging to end corruption, reduce the gap between rich and poor, and institute land reform, expectations were raised without any concrete actions. This was reflected in urban riots among the poor and jubilant celebrations across the country, when it was believed that Moi had been overthrown. To channel popular disenchantment away from the regime and cut down an increasingly powerful associate, Moi cleverly attacked Charles Njonjo, a powerful patronage boss James Njiru, MP James Kiano, and non-Kikuyu: MP Paul Ngei, MP Jackson Aingaine and MP Jeremiah Nyagah.



who had exploited his position in the state to run extensive businesses. In a speech, undoubtedly sanctioned by Moi, MP Martin Shikuku claimed that “thieves and hyenas” in Moi’s government were exploiting “average people” by not allocating them land and were angry at Moi for not allowing them to revive corruption (Currie and Ray 1984: 575). Njonjo was dismissed from his position of power.

After the coup attempt, Moi also announced a new “District Development Focus”. This new focus, which involved setting up District Development Committees (DDC), was a means for restructuring patron-client ties and funneling resources to other regions in order to build a more secure basis of non- Kikuyu support (Anangwe 1995).<sup>55</sup> While justified by claiming to make local development more participatory, these committees were, in fact, dominated by centrally appointed technocrats who decided which projects were priorities and prepared a budget which was submitted for central approval.<sup>56</sup> This new institutional structure forced MPs to spend more time at a local level at DDC meetings rather than at the center lobbying higher level patrons for more resources. This broke the direct link between MPs and higher level patrons. As a result, the coalitions that emerged at the national level were more fluid and precarious and more open to manipulation from the center (Barkan and Chege 1989). Moi possessed the formidable skills necessary to maintain control from the center.<sup>57</sup>

Moi’s moves to redirect patronage caused a deep sense of grievance among many Kikuyu. Indigenous Kikuyu notions about work, somewhat ironically, melded well

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<sup>55</sup>By 1978, the County Councils in Central Province had 40 per cent of all expenditures in county councils countrywide (Anangwe 1995: 72).

<sup>56</sup>The only local representation on the DDC consisted of one local administrator and one councillor (Smoke 1993: 905).

<sup>57</sup>Unlike many ostentatious leaders, Moi is a secretive person. However, he did take the most unusual step of hiring British journalist Andrew Morton to write an official biography. While clearly a propaganda piece, Morton noted accurately (1998: 111) that “many opponents were fooled by Moi’s silence...mistaking it for inaction. It is one of Moi’s trademarks , as his opponents realized to their cost, that when Moi goes underground he is carefully watching the political landscape and shaping his purposes accordingly.” He is an extremely clever strategist.

with the persisting ideology of merit, and many Kikuyu understood this redistribution of patronage as a move away from merit as a basis of wealth allocation.<sup>58</sup> There was certainly some truth to this assertion in that many Kikuyu, who got a head start in the cash economy, worked very hard to build up their businesses, and Moi initiated policies to undermine the autonomous economic power of small Kikuyu businesses and small-scale tea and coffee farmers in Central Province.<sup>59</sup> Banks denied Kikuyu businesses liquidity and, in 1984, Kikuyu companies fueled by investment of profits from the 1977 coffee boom, were undermined (Nowrojee 1997).<sup>60</sup> The net result was that fear of Kikuyu domination on the part of many non-Kikuyu was now coupled to a very deep sense of grievance among many Kikuyu. At the same time, the “Kiambu family” had allied with the new regime, which, in turn, left their land holdings and property untouched. Once again a political transition was affected with little threat to the private property rights of the political class, regardless of ethnicity. This accommodation reflected another aspect of patrimonialism evident in both the colonial and post-colonial periods: the lack of issue-based politics allowed for remarkably quick accommodations between formerly opposed individuals and factions.

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<sup>58</sup>Many Kikuyu leaders such as Kibaki, now head of the Democratic Party, continue to argue for a return to the “merit system” which many non-Kikuyu read as a return to Kikuyu domination.

<sup>59</sup>Rather than diversify the economy, the government set up a new parastatal, Nyayo Tea Zones, which destroyed a large part of Mt. Kenya forest critical to the survival of Kikuyu farmers and, in fact, a sacred forest in indigenous Kikuyu belief. Nyayo Tea Zones attempted to compete with and undercut Kikuyu tea growers, “flooding tea factories with leaves from new, government-controlled plantations and rendering small-holders’ tea less valuable” (Widner 1992: 184). By the end of the 1990s, environmental damage, a result of cutting down forest land, had precipitated a frost that, in turn, killed the tea leaves. Nyayo Tea Zones land is now being irregularly privatized.

<sup>60</sup>Nowrojee also argued that the Moi regime deliberately blocked maize liberalization that would have helped Kikuyu farmers. This is a debated point. In any case, Kenyatta basically left unchanged colonial regulations on the buying and selling of maize and the transfer of maize across districts which require a permit. Moi continued Kenyatta’s policies. As Mosley (1991: 281) explains, the president, a large-scale maize farmer himself, as are many of his clients, makes profits out of the controls, and the permits are a source of patronage. However, while the controls over movement of maize are clearly discriminatory, Mosley argues that small holders benefit from the high prices set for maize.

### **Land as Patronage in the Moi Period**

On taking the presidency, Moi gained powers over the institutional nexus that is the substrate of patrimonial control, particularly the provincial administration and the related powers to allocate and retract rights to land. By the Moi era, the amount of easily available land to dole out as patronage had declined. However, the remaining land, in a context of scarcity, was increasingly valuable. Kenyans continued to talk about “State House squatters” where state house refers to the presidential residences where many land allocations were widely believed to be transacted. Koigi wa Wamwere, a former parliamentarian and activist, described an encounter with Moi at the president’s home:

President Moi interrupted me to ask whether we still live in town. He knew we did. However, I explained that as 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...(wa Wamwere 1992: 102).

Further, as we shall explore in Chapter V, land as patronage could be violently recycled.

Part of the facility with which land can be dispensed by the president stems from the fact that many of the wide powers over allocation previously possessed by Kenya’s colonial governors have been institutionalized. The colonial categories of land and legislation around their allocation have largely stayed in place (Okoth-Ogendo 1991). Former Crown lands are now Government lands. The current Government Lands Act begins:

The President, in addition to, but without limiting any other right, power or authority vested in him under this Act, may-  
  
subject to any other written law, make grants or dispositions of any estates, interests or rights in or over unalienated government land....

As there is no mechanism to hold the president accountable, it is a relatively easy task to transfer land by asking his appointee, the Commissioner of Lands, to issue a title, which in turn can be used to have the registry changed.

When the Minister of Lands is periodically questioned in parliament about allocations, he is often at a loss to explain how they in fact have occurred and for what public reason. On one memorable occasion, when questioned by an MP on why a public market had been allocated, he banged the table and called the Commissioner of Lands "a different animal that does not listen to anyone" (*Daily Nation* 18 September 1997). Poking fun at this response, the cartoonist in the *Daily Nation* depicted the Commissioner of Lands as an alien being above and beyond the Kenyan community as a whole. In Kenyan political discourse "an order from above" is an elliptical way of saying that the responsibility lay with the president. The identification of the Commissioner of Lands as an alien hints that he is "acting from above" but also that he is acting as an outsider relative to the Kenyan public these allocations are supposed to benefit.

In the case of former "native lands", that is unalienated former reserve land, in theory responsibility is vested in local councils and administered on their behalf by the Commissioner of Lands. As far as these Trust lands are concerned, there is some potential for local accountability in allocations. The Kenyan Constitution (section 115) states, showing clearly its origins in colonial land law, that:

Each county council shall hold the Trust land vested in it for the benefit of the persons ordinarily resident on that land and shall give effect to such rights, interests or other benefits in respect of the land as may, under the African customary law for the time being in force and applicable thereto, be vested in any tribe, group, family or individual.

In theory, then, some public scrutiny is part of the allocation process. Generally, in the rural areas the county council (or in urban areas the municipal council) decides whether an allocation serves the public interest in a series of committee meetings. If



Figure II.3: Land Commissioner Courtesy: *Gado and the Daily Nation*

the council ratifies the allocation, it goes to the District Plot Allocation Committee, which includes the District Commissioner, the Chairman of the County Council, the Town Clerk, the Planning Officer, all, except potentially the council chair, appointees of the central government. The committee is required to publicly advertise the allocation (which it rarely does). The Town Clerk receives all applications for use of the plot and offers letters of allotment to successful applicants. At this stage, the allocation goes to the Commissioner of Lands, and the transaction is made legal through the Registry. As we shall see, such procedures are rarely followed and the lack of accountability of the District Allocation Committee means that misdeeds, such as bypassing the council altogether, if they provoke unrest, may be “punished”, at most, with a transfer to another position in another region of the country.

Another major problem lay in the fact that the Kenyan Constitution (Section 118) and the Trust Land Act (Section 7) give the president powers to allocate Trust lands directly. Such presidential allocations of land are supposed to be for the use of the Government of Kenya and must take place in consultation with the local councils. However, local authorities are either clients of the center or have little recourse, aside from popular mobilization, to counter appropriations from the center.<sup>61</sup>

Lack of autonomy of local councils, which are vested with custodial powers over trust lands, facilitates presidential and central government allocations of land for patronage purposes. This renders Trust lands, about sixty per cent of the Kenyan land mass, vulnerable to erratic and inequitable allocations, as many councillors utilize their position to reward themselves, please their patrons, and gain clients by allocating Trust land against the local public interest. In cases where local councillors have attempted to prevent irregular appropriations which involve higher up patrons, they are often hounded out of office.<sup>62</sup>

Since 1981, the Moi government instituted a number of legislative changes that, by deepening provincial administration involvement in private land disputes, further moved Kenyan land law into an increasingly manipulable state. The 1981 Magistrates' Jurisdiction (Amendment) Act established elders' panels and vested them the power to hear and decide some land cases. These cases involved disputes over beneficial ownership of land, boundaries, claims to the right to occupy and work land and trespass. The chairman of the panel of elders is the district officer or an appointee of the district commissioner. After making a judgment in a dispute, it is filed with

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<sup>61</sup>Some recent legal rulings, bolstered by public pressures around disputed land allocations, have attempted to build a judicial check to these powers by interpreting the law to restrict the president's powers to unalienated government lands only. See Paul Nderitu Ndunga and Two Others vs. Pashito Holdings Ltd (High Court of Kenya at Nairobi Civil Case No. 3036 of 1996).

<sup>62</sup>One dramatic example, involved the former KANU nominated mayor of Mombasa, Najib Balala. When the mayor confronted a powerful local "private developer" and Moi client, nominated MP Sajjad, over illegal allocations, Sajjad quite publicly bought off a majority of councillors who passed a no-confidence vote and successfully forced Balala's resignation (Kassim 1999: 48-50).

the Resident's Magistrate's court, which can reject the decision if there are grounds. This means that the case goes back to a new panel of elders that looks at the dispute again.

The elders have no salary and hence are highly corruptible. The kind of "grabbing" to which this gives rise is illustrated in the case of a poor young farmer in densely populated Maragoli in Western Kenya. One morning he woke up to find that half of his already small farm had been fenced in by a local notable. When taking the issue to the elders' panel, he found that they upheld the right of the notable, even though the poor farmer had all the legal documentation of ownership. Having been bribed, the elders' insisted that the father of the family had told them of his transaction prior to his death (Author's interview with farmer, July 1994). As the elders' panel is appointed by the provincial administration, this was a "new" form of patronage. The elders received "fees" and, of course "bribes" from disputants, which favoured the wealthy over the poor. Further, as one lawyer explained to African Rights (1996: 74):

This messing around with panels of elders and District Officers is clearly political. It is to deny the courts jurisdiction and subvert legality. It means those loyal to the government can decide who can stay on the land, and who gets pushed off.

This, no doubt, has contributed to the deepening inequities regarding land ownership and has further politicized land rights.

### **The Suffocation of Potentially Accountable Local Councils**

Councils are one potential locus of change at a local level. Two-thirds of the councillors are directly elected, and, therefore, in theory, accountable to local people. In continuity with colonial times, when "special interest groups" were rewarded with nominated seats, the rest are appointed.<sup>63</sup> Like the administrative structure they are

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<sup>63</sup>Until the 1997 Inter-Parliamentary Party Group reforms, these councillors were directly appointed by the Minister of Local Government, an appointee of the president, who often filled the

imbricated in, councils also have their origins in the colonial period. They extended the central government into local areas with the "apparent participation" of local authorities (Akivaga, Kilundu-Bitonye and Opi 1985). In 1924, the first local Native councils were brought into the more politically sensitive districts such as Kiambu and then extended to other African areas as a means to counteract "mischievous tendencies" (Berman 1990: 216). However, they had no real authority and were filled with administrative appointees. In 1937, the colonial government allowed election of councillors, subject to approval of the PC. The result was that some councils surprised colonial authorities by their willingness to fund and operate public services (Dilley 1966: 29) and, in some cases, they managed local resources with skill. One such example was the Embu council which successfully ran its own forestry program (Castro 1995a: 124-139). In 1946, the Local Native Councils were replaced with Local African Councils, with increased powers to employ and pay their own staff and raise revenues through taxes, licences and fees (Southall and Wood 1996: 504). Nevertheless, councils were still subjected to heavy administrative control. For example, in 1947 when Fort Hall councillors rejected mandatory labour, they were expelled (Gordon 1986: 90).

At independence, central control was quickly reasserted over local councils.<sup>64</sup> In particular, the 1969 Transfer of Function Act abolished most grants and transferred responsibility for services and tax collection to the central government. This precipitated a sharp decline in resources available for growing demands for local service provision (Stamp 1986, Smoke 1993: 903). Currently, the multi-tiered councils continue to be dependent on the central government. In particular, they are expected to submit to the control and supervision of the Ministry of Local Government and receive rules and directives from above. In 1984, the recruitment and employment of staff was transferred to the Public Service Commission in a move that seriously slots with local clients, many of whom were directly rejected in elections (Oyugi 1983: 128). In the 1997 reforms, rather than destroy the nominated positions, patronage opportunities were shared, so that political parties, in proportion to their vote in the council area, nominated councillors.

<sup>64</sup>For one of the best local accounts of how this took place see Stamp (1981).



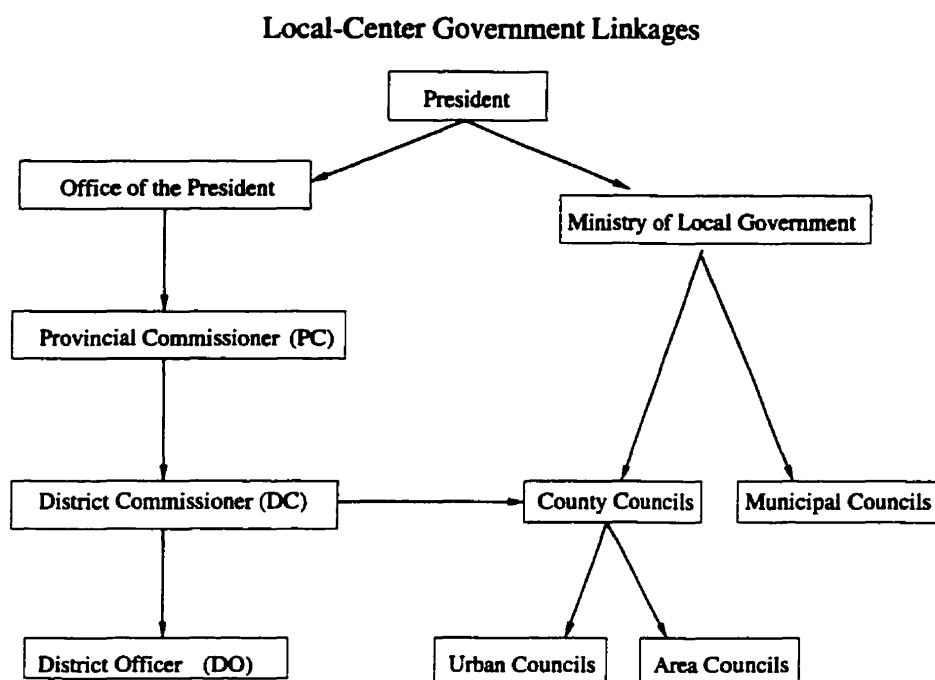


Figure II.4: Local-Central Government Linkages

disempowered councillors (Southall and Wood 1996: 507). The net result of this institutional configuration is that

local government in Kenya is neither local nor government. The authorities are financially weak and as a result have relied heavily on assistance in the form of grants and loan sanctions from the central government. This has increased central government leverage over them, rendering them impotent in decision-making. Hence most of the major policies and operational decisions governing the working of local government in Kenya are centrally determined (Oyugi 1983: 137).

A former councillor summed up the situation:

[Lack of autonomy] is on purpose. It is very intentional because, on the side of the government, you know, once you are financially unstable it is easier to get manipulated (Author Interview with former councillor, June 1998).

The opening up of this system to alternative political parties did not redress these problems. Pro-KANU councils were clearly favoured with resources (Southall and Wood 1996: 516). Here is how one former opposition councillor from Kiambu in Central Kenya described his experience:

Frustrating! Even when you have a little money (and the councils are financially unstable due to interventions from the central government) and maybe the people want something little done- like a bridge. You take the matter to the council and pass the recommendation and you have money- this money you have got, because it is the money they pay for licences, for their trades and that sort of thing- it's their money. But there is what we call the Local Government Act which has taken all the powers from local authorities and kept them entirely in the central government, so you have the money, you have passed in the council that you should do this, but you cannot effect it without the Minister's approval. When the proposal gets to him, he will look at the front and say "it is such and such a place where the opposition are" and (picks up a paper and places it at the far end of the desk where it is to be forgotten) (Author's interview with former councillor, June 1998).

As we shall see in Chapter IV, in the multi-party context, while popular councillors attempting to uphold the public interest often found their hands tied, client councillors, and their access to Trust lands, became increasingly useful in deepening local despotism in order to win elections.

The government has often taken the line that councillors are poorly trained, uneducated and liable to maladministration (Republic of Kenya 1992a). While there is a desperate need for more training, the government has taken very little interest in providing it. As Southall and Wood note, "the autonomy and capacities of local authorities have been so enormously reduced that today's councillors can almost be forgiven for thinking that there is little left for them to do but reap pecuniary reward" (1996: 524). As we shall see in Chapter V, regardless of these difficult handicaps, some councillors are taking their role as custodians of the land seriously. Others,

however, are incorporated into higher level patronage networks and actively facilitate the irregular allocation of Trust land, which has increased in value as a patronage resource. The struggles between these councillors deepened during the transition, with land allocation a source of increasingly fractious and violent dispute.

## **The Patronage Hierarchy and the Provincial Administration**

Currently the highest level clients of the president continue to be elected or nominated members of parliament (MPs) on the dominant party ticket. In most cases, the highest level clients are in the cabinet in important ministerial posts. Barkan (1987: 231) describes the system as follows:

Backbenchers who play by the rules and who are re-elected for the first time are usually appointed as assistant ministers in the beginning of their second term. Assistant ministers who play by the rules and who are re-elected for a third term are usually promoted to cabinet positions. With each step up, one's direct access to state resources increases as well as one's informal access to both public and private resources at the center.

These higher level patrons work through the local administrative structures to gain information about what is happening in their constituencies, and this facilitates attempts to control constituency politics.

Like the colonial governors before him, the president relies heavily on the provincial administration to maintain "law and order". All positions within the provincial administrative are directly or indirectly under the control of the Office of the President and, hence, the president himself. Powers over appointments to this bureaucratic apparatus allow the president the means to reward a coterie of clients. These clients are, in turn, patrons for a constellation of sub-clients at a local level. At the furthest reach are the chiefs and their extremely poorly paid assistants, sub-chiefs and headmen or women. In his study on Vihiga, Nyangira noted that while the sub-chiefs

were officially appointed by the DC, about one quarter of sub-chiefs owed their appointments to former MPs from the constituency who used their influence with the provincial administration to reward them for their work in the KANU Youth Wing (1970: 2).

Currently, the provincial administration continues to play an important surveillance role in Kenya's rural areas, as well as in the old "African areas" in the urban periphery.<sup>65</sup> While there has been debate about the role of the chief, Kenya's Chief's Act (Laws of Kenya, Cap. 128) still reads:

6. It shall be the duty of every chief or assistant chief to maintain order in the area in respect of which he is appointed...

10. Any chief may from time to time issue orders to be obeyed by the persons residing or being within the local limits of his jurisdiction for any of the following purposes... (e) prohibiting any act or conduct which in the opinion of the chief might cause a riot or a disturbance or a breach of the peace.

This gives the chief wide powers over people in his area of jurisdiction. One headwoman (*likuru* in the local Luhya language) I interviewed described working for the local chief in the following way:

We fear to talk about our problems to the chief, because we are not willing to lose our jobs as *likuru*. For instance, during the council, we were told to accompany census takers and we would get paid some pay. We were not paid but those head-men who asked about the pay were discontinued because the administration felt they have shamed them (Author's interview with headwoman, May 1994, translated by Prisca Awori.).

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<sup>65</sup>In order to control the anti-colonial mobilization in urban areas and destroy Mau Mau's important urban linkages, the colonial state extended the chief system with its tribal police into the African areas of Nairobi, a system still in place today. See *Kenya Today* 2 (2) September 1955: 23-24.

While clearly fearing the chief, the *likuru* also resisted his control. For example, brewing alcoholic drinks is prohibited and monitored by the chief, but the *likuru* explained that “a wise *likuru* denies finding it in his area,” When asked why, she explained:

If I would report such cases to the chief, the policeman is sent to the area to arrest the brewers and so end up creating a lot of instability, for they interfere with the prevailing peace in the area. So I usually feel that it is good to advise brewers to start another means of generating income and wisely warn them to stop.

Here we see the continuation of despotic power of the state acting through the chief, but also its “weakness” or lack of infrastructural power, stemming from its unaccountable and, therefore, unpopular authority that provokes everyday strategies of resistance. The only check on the powers of the chief comes from the administration which backs up the authority of the chief with naked coercion when necessary. For this purpose there is a special form of police called the Administrative Police, which consists of “such number of officers as may from time to time be authorized by the President” (Administration Police Act). These police officers are appointed by the district commissioner and ensure that local administration has recourse to force. Given the power of the chiefs, many poorer rural Kenyans are more concerned with who is appointed their chief than with who is elected their MP. In one case it was explained to me that the area was voting for the local KANU MP, because they had an extremely popular chief. They felt that if they elected an opposition MP this could create problems with a KANU-biased administration, and they did not want their chief, who they dealt with on a day to day basis, to be replaced (Author’s interview with constituent, July 1997).

Local level administrators, such as chiefs and sub-chiefs, until recently, collected KANU membership dues and saw it as their duty to promote KANU in their area of jurisdiction. While some administrators attempt to carry out their duties relatively

impartially, a great many continue to operate on behalf of the office that appoints them, the Office of the President, and there are incentives to act in this way. This means also that while these administrators provide assistance to KANU MPs, they also serve as a means to keep them in line. Former KANU MP and Minister in Moi's government Peter Okondo (1995: 130-131) notes from his experience:

Ask any member of Parliament, he will have no faith in either the marauding "police" in his constituency or in the chiefs. He might pretend if he is a KANU member, but deep down in him, the state of relationship between the M.P. and the Provincial Administration is, one of at arms length. If the M.P. is a member of the opposition, then certainly these officials will be looking for excuses to harass and arrest him to attract the President's attention for favours, such as promotion or commendation in public for a job well done. On the other hand they will go out of their way to please a KANU M.P. and avail him service, advice and guidance. As for a "Minister", that is an opportunity for the D.O. to try and get in an additional word, to the President .

The Provincial Administration is very skilled at finding ways to listen to their "master's voice" and to manage politics in favour of the President and his party. It is the President's political arm throughout the country and it starkly discriminates between the President's men and the President's enemies.

A recent event, in March 2000, underscored the importance of this administrative hierarchy to the workings of patrimonial domination in Kenya. When reformers in the Office of the President released a statement that the position of assistant chief would be abolished, the position of chief reviewed, and district commissioners retrained, it took President Moi one day to halt this move (*Daily Nation* 14 March 2000).

In direct continuity with colonial practice, one important function of the provincial administration is the control of political space. In 1994, the legal underpinning of this control, the Public Order Act (Cap 56), was deemed unconstitutional by the Supreme

Court of Kenya.<sup>66</sup> With reforms just prior to the 1997 December election, the Public Order Act was amended. Meet-the-people tours and internal party meetings were now excluded from obtaining a licence, but meeting organizers were still required to notify the police. When given instructions “from above”, the police continue to find many excuses to prevent meetings. Regardless of the legalities, the system of policing public meetings persists in the multi-party era. Meetings continue to be liable to attack because of a “lack of a licence” or “security reasons.”

### **The Historical Legacy and the Politics of Liberalization**

In sum, the legacy of Kenya’s colonial state formation is alive and well. An institutional configuration, fashioned within the complex politics of the colonial rule, continues to create a “field of power” with lines of force strongly emanating from the center. Locally, this central power is exercised through the institutions of “decentralized despotism”, particularly the provincial administration, but also through dependent councils. Local client-administrators continue to work as an instrument of surveillance and control for those at the apex of power: the president and his coterie of patronage bosses. In continuity with colonial times, this bureaucratic arrangement persists as a substitute for government in local communities. Most critically, highly inequitable and centralized mechanisms for distributing land remain, and this creates a situation where control of land is at the same time “control of the nerve centre of political power” (ole Kantai 1992: 6). In a multi-party context, despite nominal attempts to disentangle KANU from the administration, this entire institutional nexus facilitates maintenance of an unlevel playing field and facilitates the deepening of electoral despotism through direct coercion and selective withdrawal of security, including land rights of “subversive” communities and individuals.

In the colonial period, the government, through the governor, gave preferential access to what became known as “public” land to the settler community, generating

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<sup>66</sup>*Imanyara vs. Attorney General* High Court of Kenya 1994. This kind of legislation is not unique to Kenya, but is found all over the African continent (Stevens 1997).

the inequities that ultimately led to the rise of a large number of squatters and landless poor in “informal” settlements. In the post-colonial period the president continues to have access to the institutional nexus that facilitated alienation of African land in the colonial period. In the current context, as we shall see in more detail, these powers are used to give preferential access to clients. These clients in turn give support to the regime in the form of financial assistance, loyalty and, in the cases of the most powerful, violent intervention in the struggle to win newly competitive elections. Indeed, there are strong incentives as well as available mechanisms for the president and his clique to allocate public land to reward clients and bolster their own wealth. However, much literature on patrimonialism tends to suggest that “politics of the belly” is accepted practice, without considering the highly contentious struggles around the material basis of power in Africa’s agrarian societies: land. As a result, the changes in struggles around land in Kenya’s move to a multi-party context, particularly the struggles of those who have historically lost out and continue to lose out in the patrimonial process, are missing in our theories of transitions. However, as we shall see in Chapter V, these struggles over land suggest ways in which patrimonialism itself is potentially being challenged “from below”.

The historical production of the landless, and the entwined legacy of migrant labour and settlement schemes, created challenges to the neat ethnic administrative boundaries of colonial rule. Today this legacy creates the grounds for a contemporary politics of “insider” and “outsider”, “political tribalism” (Lonsdale 1994), “illiberal civic republicanism” (Ndegwa 1997) or “uncivil nationalisms” (Berman 1998). Such a politics links ethnicity to local citizenship rights, including property rights to land. This provides fertile ground for “divide and rule” politics as a counter to the electoral challenges posed by the introduction of multi-party politics.

Still, this insider/outsider politics poses a problem to indigenous moralities to which these “nationalisms” appeal. As Lonsdale (2000a) eloquently asks:

is it possible to account oneself a free, upright, Luo (or self-respecting member of any other group) while at the same time being beholden to a state in the



hock to the Devil of monetary greed? ...In a land now overflowing with the landless poor will the anger in Nairobi, as it did fifty years ago, but with a new urban cosmopolitanism rather than the moral ethnicity of Mau Mau, force an answer to that question? Or does the dividing power of political tribalism still hold the trumps?

I will argue that the shared context of labour, land alienation, and colonial-like repression provide the potential basis for a more cosmopolitan vision of politics. This politics involves redefining the categories of “insider” and “outsider” along the lines of the exploited and exploiter, drawing on indigenous morality in a way that challenges the very rules of the patrimonial game. Whether such a politics will succeed is another question. However, the next few chapters will grapple with the struggle for and against an electoral despotism, a struggle in which the provincial administration and centralized powers over land allocation play a central role.



## Chapter III

# Post Cold War Challenges: Patronage Inflation and the Politics of Dependency

*In the struggle for nation building, we have enemies, internally and externally.*

*President Moi Kenyatta Day 1992<sup>1</sup>*

Africa's highest level patronage bosses engage in complex clientelistic relationships with foreign donors, NGOs, and corporations. These ties often involve substantial opportunities to obtain patronage resources critical to maintaining patrimonial control. The end of the Cold War precipitated a change in external patron-client relations, leading, in many cases, to aid reductions and the rise of "good governance" conditionalities. The former willingness of donors to turn a blind eye to the overt corruption and despotic politics of their African allies declined, and multi-party elections became the new norm for obtaining international legitimacy. Locally, this new context was exploited both by ambitious politicians and by those who historically have lost out in the spoils system, particularly the urban and rural landless poor. Greater public

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<sup>1</sup>The full text of this speech from which this quotation was taken is reproduced in *Weekly Review* 23 October 1992: 9-10.

resistance and protest from “below” intensified. This transformed “field of power” presented real challenges to patrimonial regimes and their beneficiaries.

This chapter applies the theory of “patronage inflation” developed in chapter I to the Kenyan case. The first section examines the material difficulties encountered by the Moi regime. I argue these difficulties are rooted in deepening structural problems with Kenya’s economy, along with post-Cold War political conditionalities on aid. For the Moi regime, this has translated into a decline in easily accessible patronage supplies. The next section briefly examines the rise of internal resistance and challenges to the Moi regime which, coupled with donor pressure, precipitated the shift to a multi-party system. The following section illustrates why this formal institutional change presented a serious challenge to patrimonial control and was, in fact, perceived as a challenge by Moi and his patronage bosses. Indeed, I show how the impact of greater political competition on the dynamics of patronage politics created heightened demand for patronage. This heightened demand emerged just as traditional supplies became more constrained. The result was a proliferation of corruption which drew increasing donor criticism. By the early 1990s, corruption had become a central donor concern. However, demands around “good governance” were selectively applied to forms of corruption that impacted short term macro-economic stability and foreign investment. In this context, I argue that land, less scrutinized and fettered by conditionalities, became an increasingly attractive patronage resource and political tool for the incumbent regime to use to prevent an electoral turnover in power.

## **The Kenyan Economy and Moi’s “Reproduction Squeeze”**

Kenya’s economy has shown some remarkable continuities across the colonial and post-colonial periods. In particular, while manufacturing and service sectors, particularly tourism, have grown, agriculture continues to be central to the economy. Currently, it constitutes twenty-nine per cent of GDP and employs about seventy

per cent of the labour force (World Bank 1995: 268). Beginning in the 1950s with the removal of colonial restrictions on growing cash crops and the transfer of high potential agricultural land to small-holders, growth in production of crops such as coffee, tea, and maize from this sector increased dramatically. Indeed, the expanding opportunities for small-holders buoyed by the post war world economic boom and generally good export prices, helped the Kenyan economy to become what was considered one of the more dynamic economies on the continent, if not the model for Africa. Over the first decade of independence, real GDP growth averaged more than nine per cent per year (World Bank 1995: 268) and a prosperous middle peasantry grew, particularly in Central Province, the first area where the Swynnerton plan was intensively applied (Castro 1995b).

Replacing the white settlers as the "progressive farmers", Kenya's small political class bought large-scale farms and became a landed class with disproportionate political influence.<sup>2</sup> Ownership of these large-scale farms created incentives to leave intact the marketing boards, credit facilities, and policies that tended to favour the big farmers (Bradshaw 1990, Deininger and Binswanger 1995). Indeed, right after independence, a number of MPs became marketing board members and managers of public corporations in the agricultural sector (Hunt 1984: 282-283, Leys 1975: 96-98, 104, Leonard 1991: 248-274). This, no doubt, explains the large flow of fiscal development expenditures into parastatals as opposed to infrastructural development, which former "African" areas desperately required.<sup>3</sup>

Land accumulation became a critical aspiration for the political class for a number of reasons. First, as we noted in Chapter II, the institutional rules for access were loaded against the poor and illiterate and in favour of access for the educated, wealthy

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<sup>2</sup>Indeed, 954,000 acres (41 per cent of the total) of white farm land had been transferred as large farms and even among these large farms there was substantial inequality with some 7.4 percent of the large farms accounting for 59.2 per cent of the land of all large farms (International Labour Office 1972: 56).

<sup>3</sup>Financial transfers to parastatals as a percentage of total fiscal transfers for development expenditures were 70.1 % in 1976, 51.8% in 1979 and 42.0% in 1982 (Vaitsos 1991: 18).

and well-connected. Secondly, land was important for status in the settler world, to which many wealthy Kenyans aspired, and in indigenous non-pastoralist African societies, of which they were still part. The continuing and increasing high demand for land also made it especially useful as a patronage resource to sell or rent to followers. Thirdly, the manufacturing sector, which grew slowly, was heavily foreign or Asian owned, making it difficult to compete in this sector. Instead, Africanization of management of foreign firms, including multi-national corporations, many of which owned large plantations, provided rent-seeking and employment opportunities to the African political class. In exchange for high salaries, they lobbied for provision of favourable tariff and tax rules for these corporations (Langdon 1981).

In the 1960s, when foreign investment poured into Kenya to take advantage of the growing domestic market, members of the highest levels of the patronage hierarchy were appointed to many of the management boards of these corporations (Leys 1975: 133, Langdon 1981: 40). Further, to exploit Nairobi's position as a regional center for NGOs and multi-national corporations, the politically connected exploited their privileged access urban land. This fueled speculation and investment in high income real estate geared at foreigners. As Leys (1975: 194) noted:

From 1964 onwards there was an intense demand for real estate of all kinds in Nairobi, mainly as a result of the foreign investment boom. Property was reckoned at this time to yield 18 per cent per annum after tax, so that the capital outlay could be recovered in just over five years. Foreign missions and companies preferred not to own property, partly for political reasons, and were willing to pay extremely high rents, sometimes in the form of several years' advance payment on a lease

Here, then, was an extremely profitable niche for well-connected Kenyans at the higher reaches of the state. At the same time, the burgeoning poor in urban centers were in desperate need for housing, and this provided opportunities for lower rung clients of the regime to build, often illegal, low quality rental houses and, hence, to become slum landlords (Chege 1981, Amis 1984).

In rural areas, land accumulation among the political class proceeded apace. For example, in the late 1970s in Nakuru District, there were 40 individual farms of over 500 acres of mixed farm land which were owned by the following thirty-eight people (Hunt 1984: 287): 6 MPs, 5 Senior Government Administrators, 5 Senior Police Chiefs, 2 Land Board Members, 2 County Council Officials, 1 Ambassador, 2 Former Chiefs, 1 Company Executive, 14 Farmers and Traders. Eight of these people also owned land in Kiambu District, while three owned additional land in Nakuru District through companies (Hunt 1984: 287-288). At the same time, in Kiambu, one of the most densely populated districts, fifty per cent of the land was owned by 183 individuals, with the leading 44 owning two-thirds of this. These 44 individuals comprised (Hunt 1984: 288): 5 MPs, 3 Ambassadors, 4 Senior Civil Servants, 4 Other Government Officials, 7 Executives of Parastatals, 2 Church Officials, 19 Farmers, Traders and Professionals.

As land grew less available and prices increased, land accumulation continued by moving into the more arid Maasai land in the Rift Valley. Clients of the regime used their political connections to obtain pastoralist land cheaply (Galaty and ole Munei 1999). They then sold it off at high prices to peasant farmers, many of whom were Kikuyu and unable to afford to buy land in their home districts. Many of these peasant farmers used small parcels of land in Maasai areas as part of a survival strategy, ecological diversification helping to minimize risk of famine (Droz and Sottas 1997). In this way, the former Maasai reserve, Kajiado district, and to a much lesser extent Narok district, came to have large, predominantly Kikuyu peasant farmer populations.

The landless poor, including a disproportionate number of Kikuyu, increased throughout the post-colonial period, and the "formal wage sector" did not grow and absorb them as envisaged by the Swynnerton plan. There are a number of interacting reasons why this is the case. First, the small pool of educated Africans were quickly absorbed by the state or multi-nationals or both. As they could exploit the opportunities provided in the bureaucracy to gain wealth, there was little incentive

to run competitive autonomous businesses, especially as competitors with access to state power had unfair advantage. Second, autonomous wealth generation posed a potential political problem as a challenge to patrimonial power. Therefore, existing local businesses faced many controls. The requirement to buy political protection made them less profitable unless they were incorporated into the patronage system. Third, despite the post-colonial boom and population growth, consumer demand was eventually hampered by persisting marginalization of a large fraction of the population, and this was related to the lack of adequate land reform. Fourth, many of the small autonomous businesses with backward linkages to the economy were run by potentially subversive “informal sector”<sup>4</sup> workers, many of whom identified with the poorer segments of the population. They tended to face harassment and highly unfavourable conditions, such as lack of credit and access to technology. The large numbers of unemployed and the lack of independent labour organizations helped keep “formal wages” depressed. The “informal sector”, which provided cheap necessities in urban areas, helped subsidize these low formal wages (Leys 1975: 267).

The growing rural poor consisted of pastoralists, squatters and low income small-holders, many living in the Rift Valley (Alila, Kinyanjui and Wanjohi 1993: 61). Many became lowly paid labourers on plantations. Others migrated to urban centers in search of subsistence. With agricultural wages very low, population rates high, and land availability declining, migration to urban centers accelerated over time, a trend that has continued up to the present (Republic of Kenya 1992a: 66-67). In 1980, sixteen per cent of the population was in urban centers. By 1995, this figure was

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<sup>4</sup>First coined in the 1972 International Labour Office study on Kenya, the “informal sector” was said to be characterized by “ease of entry, small scale, and labour-intensive operations, where technology is adapted and skills are developed from outside the formal school system and operate in highly competitive labour and product markets” (House 1984: 279). The term used in Kenya is *jua kali* artisan, where *jua kali* means hot sun, reflecting the fact that many of these small businesses work in the open air, without protection from the sun. By 1998, the government estimated that 3.4 million Kenyans worked in this sector, compared to 1.7 million in the “formal sector” (Republic of Kenya 1995: 49). These are, of course, not mutually exclusive categories.



twenty-eight per cent, with an average annual growth rate of seven per cent (World Bank 1997: 230).

This migration and lack of high potential land are highly correlated (Rodgers 1991). A 1977 Nairobi survey of “informal sector” workers showed that forty-three per cent of these workers had no land, forty-two per cent had small plots between one and five acres, and the rest had plots ranging from six to thirty-seven acres (House 1984: 285). Similarly, traders, who came into Nairobi from the surrounding areas, had less land than average (Robertson 1997: 160). Once in the large cities, particularly Nairobi, poorer migrants confronted a highly distorted housing market “with executive residences in ample supply” but very few units for lower income earners (*Economic Review* 16-22 February 1998, Lee-Smith and Lamba 2000).<sup>5</sup> Shanty towns on public land around the urban centers expanded.

As early as the 1960s, there was growing discontent among urban residents, particularly in the capital, about politicians using their positions to accumulate wealth (Howard 1975: 80-81). A 1971 survey of Kenyans living in or near Nairobi and Mombasa showed strong public support for legislation designed to enhance equity and put restrictions on the accumulation of wealth from above.<sup>6</sup> However, most interviewees also felt this highly unlikely. As one carpenter explained (Hopkins 1975: 274):

Well, these men who sit in Nairobi, they all own land, they own cars. If they were like people who worked and who had no money, then they would want to do things like that. But the MPs have big farms so there is little land for men like myself.

As landless and land poor migrants filled urban centers, they increasingly fell out of patronage networks. Growing dissent from “below” was kept in line through very

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<sup>5</sup>According to government estimates, urban areas are likely to require 123,200 new units by 2001, while the current rate of production is 20,000 to 30,000 per year, a shortfall of 80,000 houses. Rural areas are expected to require 225,500 new units (*Daily Nation* 27 July 1998).

<sup>6</sup>Interestingly, it also showed support for multiple political parties by 1971, with sixty-seven per cent of those surveyed thinking it was right, but only fifty per cent thinking it likely in the future (Hopkins 1975: 224).

selective promises of patronage, through incorporation of the leadership of labour and *jua kali* organizations into KANU and, increasingly, through repression. This led Furedi to suggest that the potentially riotous urban "crowd", which had played a critical role in the struggle for independence, had disappeared in the post-colonial period (1973).<sup>7</sup>

### Increasing External Dependency

Another symptom of structural problems with Kenya's economy was the growing dependency on foreign grants, loans, and investment to keep the economy afloat. This dependency began in the colonial period and was related to the cost of continuing "pacification" as well as the uneconomic nature of large-scale farming for the colony as a whole. During the transition to independence, debt was deepened through the process of borrowing external capital from Britain, the Commonwealth Development Corporation, and the World Bank to buy back settler land.

Moi came to power in 1978 at the tail end of a fortuitous boom in coffee prices, but, by 1979, his new government was confronted with collapsing revenues caused by the drop of coffee prices and the doubling of the cost of oil.<sup>8</sup> Precisely at a time when resources were needed to consolidate power and, hence, build new patronage networks, the president faced a serious economic downturn. The response was to compensate for lack of resources by increased borrowing. External borrowing quadrupled between 1976 and 1985, the proportion of government expenditure devoted to debt service rose, and for the first time balance of payments deficits became the norm (Hazlewood 1991: 125).

In the wake of the world recession and this worsening local situation, Kenya became one of the first Sub-Saharan countries to negotiate structural adjustment pro-

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<sup>7</sup>Furedi took this notion from Lefebvre (1965). "The crowd", Furedi writes, "has the potential of becoming a 'voluntary assembly' ", and thus capable of undertaking collective action" (1973: 275). Furedi traces the history of the "crowd" until independence. The role of "this crowd" in the last decade is yet to be written and is taken up at points in chapter V.

<sup>8</sup>Oil in Kenya is used both as a fuel and as the basis of a petroleum processing industry.

grams with the World Bank and, in March 1980, received its first Structural Adjustment Loan (SAL) of US\$55 million. Conditions were relatively vague, but the Bank recommended greater openness to overseas trade, stricter budget controls, and selective privatisation. Two years later, the second SAL was negotiated with a larger number of more specific conditions along the same lines. Throughout this period, the government drew loans from the International Monetary Fund (IMF). Between August 1979 and March 1983, Kenya received credits worth US\$700 million of which it actually drew US\$250 million. As the graph below clearly indicates, the trend from 1980 to 1994 was towards growing aid dependency and accumulated debt, which eventually stabilized under the more stringent conditions for macro-economic stability that came into play in the early 1990s.

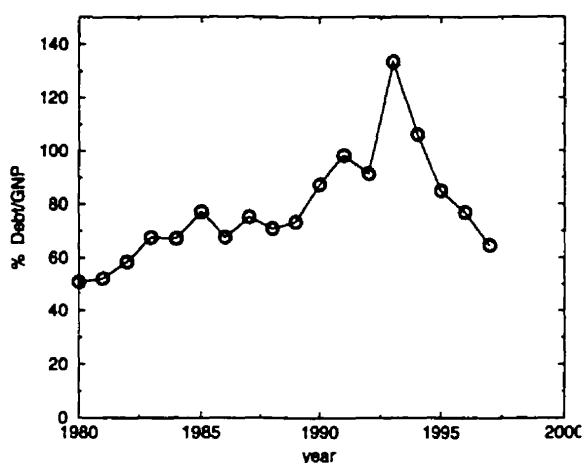


Figure III.1: Aid Dependency Shown by Per cent Total Debt/GNP Calculated from data in World Bank 1996, 1999)

Despite this dependency, the Kenyan government still had substantial bargaining power. Many conditions placed on loans were simply not implemented, particularly if they infringed on presidential patronage or threatened social stability. For example, reduction of public expenditures in light of a rapidly growing population and the high demand for crucial services was extremely unpopular and was likely to cause serious dislocation and suffering. Thus, despite external pressure, the government continued to increase public expenditures in this period (Grindle 1996: 143-144).

Liberalization of the maize market and privatization of parastatals are other examples of the government fending off conditionalities. Land reform, very timidly and vaguely placed on the list of conditionalities in the second SAL negotiations is another critical example. It was squarely taken off the agenda by Moi and his clients, many of whom, as we have noted, are large-scale farmers with immense tracts of land. Similarly, any attempts to restructure the Agricultural Finance Corporation (AFC), which since colonial times used government revenue to provide credit to large scale farmers, was blocked. After a 1986 Agricultural Sector Credit of US\$ 60 million, AFC overdue rates rose to sixty percent with delinquent customers coming from among the large-scale farmers who helped sustain Moi in power (Mosley 1991: 293). The pattern of World Bank/IMF-government interactions around aid is commonly described by Kenyan commentators as a "dance." The government takes a step and makes a show of implementing conditions and, then, once the money is in the bank, turns around and reverses any changes.

One way in which the Kenyan government has, in fact, increased its bargaining power with respect to external patrons has been to diversify sources of aid, drawing from a number of bilateral and multi-lateral sources including the EEC (European Economic Community) and, to a lesser extent, OPEC (Organization of Petroleum Exporting Countries). Indeed, starting with the United Kingdom as its only donor in the early 1960s, by 1992, Kenya had 30 different sources of aid (OECD 1965-1995). The more sources of aid the more likely it is that the Kenyan government can compensate for loss of aid from one source by striking a new deal with another.

Donors rarely act in concert, and this tendency is reinforced by mandates to promote national commercial interests. Donors compete in using their influence to help procure lucrative contracts for home country firms, particularly in the area of infrastructure (Theobald 1990: 96). This gives the recipient government some leverage over donors. Some donors, such as France and Japan, tend to focus on lucrative trade deals tied to aid programmes and place very little political pressure, if any, on the Moi government. For example, in negotiations over the second SAL, the US and UK sus-

pended programme aid to up the ante on the Moi government negotiators to comply with economic conditionalities. Sweden and the Netherlands did not approve of this strategy and reassured the government that their aid would be unaffected by the SAL negotiations. Undercutting the US and World Bank push for maize privatisation, the Japanese then offered to provide aid to build maize storage facilities (Mosley 1986: 113). This lack of coherence provides margins of manoeuvre for the Moi clique in light of growing dependency on aid. Nevertheless, in the 1990s, this margin of manoeuvre would become narrower as major donors attempted to co-ordinate their actions to reinforce conditionalities.

One source of particular concern to the World Bank, IMF, and a group of Western donors was the increasing and increasingly blatant corruption, often involving foreign firms. In Kenya kickbacks for contracts had escalated from about ten per cent during Kenyatta's time to twenty five per cent or more under Moi (Harden 1990: 263, Kibwana, Wanjala and Okech-Owiti 1996: 57-58). In anticipation of these kickbacks, firms inflated project costs, transferring the costs of kickbacks to the Kenyan public. Indeed, one financial consultant explained to me that she advised her clients to double the cost of any project in Kenya.

In the late 1980s, a number of scandalous deals were revealed in the local and international press, which raised questions about "foreign aid". For example, in 1986, in the Turkwell dam scandal, Minister of Energy Nicholas Biwott, a key patronage boss, negotiated a profoundly disadvantageous deal for Kenya with French contractors, Sogreah and Spie Batingnolles. Many of the prices quoted for various pieces of machinery were double the internationally competitive price, and the kickbacks involved were at least US\$27 million (Harden 1990: 209). When an unhappy German EEC official, Achim Kratz, sent a detailed memo to the EEC in Brussels explaining why the deal was corrupt and why it was not in Kenya's interests, the French government used their pressure to have Kratz transferred out of Kenya (Harden 1990: 209). In another deal the government chose to buy two Airbus passenger aircraft instead of Boeing 767s which were at least US\$ 15 million cheaper, largely because the Airbus

contract offered better kickbacks. President Moi was purported to have received a seven figure commission (*New York Times* 21 October 1991). It would become more difficult to justify lending for infrastructure projects when so much of what was being lent was blatantly diverted into private pockets. Further, foreign firms, by competing for lucrative contracts, were pushing up the price of kick-backs and in the process, as scandals hit the press, were delegitimizing this form of foreign lending. This contributed to a growing movement among some donors to selectively withdraw aid as an expression of their disapproval over this corruption (Brown 2000).

## **The Rise of Internal Challenges and New Constraints**

The transformed international context was sensed by Kenyans who had experienced a deepening of despotic rule throughout the 1980s. This reached a culmination in the replacement of the secret ballot by notorious queue voting in the 1988 election. Touted as an “African” practice, voters lined up publicly behind the candidate of their choice. The result was “the most ‘rigged’ election in Kenyan history” (Throup 1993: 385). By 1989, a friendlier international context, growing frustration, and economic distress helped push internal resistance into the public realm. This resistance was originally articulated by church leaders, closer than most of the Kenyan middle classes to the travails of the average, increasingly poorer, Kenyan.<sup>9</sup> A watershed public attack on KANU rule came in the form of a scathing sermon delivered on the eve of the new year 1990 by activist clergyman, Reverend Timothy Njoya. To a packed congregation at the St. Andrews Church in Nairobi, he challenged the ruling party to learn the lessons from Eastern Europe. He emphasized that one party states “have completely failed in East European countries of Romania, Hungary and Poland where they were

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<sup>9</sup>The depth of poverty increased throughout the 1980s and early 1990s, and 45 per cent of the rural population and 35 per cent of the urban population were considered below the poverty line (World Bank 1995: 270).

manufactured and imported by Nkrumah, Nyerere and Keita into Africa” and further that they should be replaced by multi-party systems (*Weekly Review* 12 January 1990).

The sermon rocked the political establishment unused to such direct challenges. Later, in March of 1990, two former government ministers who had fallen out of favor, Charles Rubia and Kenneth Matiba, called a press conference to announce their support for a multi-party system in Kenya. They told the press that they were in the process of applying for a licence to hold a pro-multi-party rally in Nairobi. When they actually applied to the provincial commissioner for a licence, as expected, their application failed. Their attempt to appeal to the Nairobi “crowd”, the heterogenous mass of urban poor, artisans, small business people, and traders, who played a critical role in the anti-colonial struggle (Furedi 1973), was threatening to the regime. The regime responded with some of the worst violence against urban slums in post-colonial history. When traders, artisans and members of Nairobi’s urban slums fought back, low level battles ensued on the streets of Nairobi.

Rather predictably, given the colonial priorities of “law and order”, embedded in Kenya’s legal code, reflected in its administrative structures and reinforced by Cold War demands for “stability”, the president responded by proclaiming a threat to “law and order”. On 11 May 1990, President Moi held a rally in Nairobi where he told of a plot by Rubia and Matiba, in cahoots with the Church of the Province of Kenya (CPK), to assassinate the country’s political leaders. He declared that “his patience was running out and threatened to lock up such people if they continue to sew seeds of discord in the country” (*Weekly Review* 26 July 1991). This was followed on 3 July 1990 by a statement from State House, Nairobi, the official presidential residence, warning that those planning an illegal meeting should realise its implications as the government would deal with any blatant attempt to undermine “law and order” with the utmost severity. Shortly afterwards, a major crack down of multi-party activists ensued and, on 5 July 1990, just two days before a scheduled pro-multi-party rally in Nairobi, Rubia and Matiba, along with other opposition politicians, were put under

arrest.

Still, on 7 July 1990, ignoring the president's intimidating words, people came to the historic Kamukunji grounds where crowds had gathered in the fight for independence. One eye witness described how the crowd formed itself on the empty field:

Surrounding the field, stood people staring at the totally empty grounds. Two white CID [Criminal Investigation Department] cars and one police patrol car were packed along the road...Just across where the police patrol car was packed, a man in a blue jacket, hair slightly greying and aged about forty five stood in a group of young men some wearing home made berets. It was from among this group that one of the most courageous acts by the pro-democracy advocates came. The man in the blue jacket led his group towards the middle of the field clapping their hands. On seeing this, the onlookers clapped and whistled...Now the two finger salute (multi-party salute) was being flashed by everyone who were on the field...(Gathitu 1992: 25)

Eventually, thousands of Kenyans demonstrated in an unprecedented and overt display of their discontent with the status quo. When the police attacked demonstrators, rioting ensued. Shops were looted and transportation paralyzed in what could only be understood as a statement of frustration and anger among the poor.<sup>10</sup> Further, riots spread rapidly into rural areas, particularly the Kikuyu areas around the city-Limuru, Muranga, Nyeri, Kiambu- but also farther inland to Nakuru and Kisumu. In the wake of the demonstrations in Eastern Europe which preceded successful challenges to one-party rule, it seems likely that President Moi and his party stalwarts were worried, as were his external patrons afraid of increasing instability if some change was not forthcoming.

Once again the beginning of the new year, 1991, was ushered in with a new challenge to KANU when veteran politician Oginga Odinga called for multi-partyism. A

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<sup>10</sup>In Kenyan political folklore these riots are called the Saba Saba riots. Saba, saba means seven, seven in Swahili which reflects the date, 7 July, on which they occurred.



week later another venerable old politician, Masinde Muliro, called on the president to repeal section 2(a) in the constitution which banned opposition parties, arguing that "Kenya must stand up to the challenge of the wind of change that is blowing across the world" (*Weekly Review* 11 January 1991). At the same time, prominent human rights lawyer Gitobu Imanyara filed an application in the High Court to have the legislation that made Kenya a de jure one party state struck out as unconstitutional. A month later, Odinga announced the formation of a new party, the National Democratic Party, and on 13 March 1991 presented himself along with other party members at the Registrar General's office for registration, which, unsurprisingly, was refused.

Faced with this remarkable series of challenges to KANU's monopoly of power from both disaffected members of the political class and from "below" and, still haunted by the Saba Saba riots of the previous year, the Moi cabal this time remained low key in its response. However, government representatives reiterated what would become a constant refrain: *that Kenya was not cohesive enough as a nation to have multiple parties*. In such a context, they insisted, advocating for the formation of multiple parties was tantamount to advocating violence. However, they were now confronted with the reality that opposition was not going away. Indeed, in early August, two weeks before the High Court denied Odinga's NDP party registration, the Forum for the Restoration of Democracy (FORD) formed. Comprising veteran politicians from five of Kenya's provinces,<sup>11</sup> FORD demanded a free debate on changing the constitution to entrench fundamental human rights, allow multi-parties, and limit presidential tenure to two terms (Maina and Mburu 1991: 16) In addition to this continuing internal pressure, the donor community, with increasing fears of instability, were watching events closely.

In November 1991, despite numerous warnings, the Moi regime was shocked when

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<sup>11</sup>The leadership consisted of Oginga Odinga, Masinde Muliro, Martin Shikuku, George Nthenge, Ahmed Bamahriz and Philip Gachoka, with a coterie of younger politicians, the "Young Turks", behind them.

the majority of donors took an unprecedented action. They co-ordinated their actions and suspended US\$350 million in non-humanitarian balance of payments support for six months pending progress on economic and political reforms.<sup>12</sup> Donors expressed concern with declining macro-economic stability and misuse of public funds. For the first time they also officially expressed a strong desire to see greater respect for pluralism. This unusual coordination on the part of donors was a threat to the survival of the heavily aid-dependent regime.

Moi acted rapidly. Immediately after the donor announcement on aid, as a stopgap measure, 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 the assistance of its administrative clients, 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. Indeed, it was not the decline of aid per se that created the most distress; it was the influence that the IMF and World Bank had on Kenya's credit rating. This rating determines the cost of accessing global finance for both businesses and the government in its transactions with international partners. This profoundly affects the dealings of Kenya's patronage bosses who, besides benefiting from government contracts, own a dazzling array of businesses, many of which rely heavily on credit.

Ultimately, to restore investor confidence and international credit<sup>13</sup>, the president convened a meeting of the KANU governing council without announcing its agenda.

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<sup>12</sup>The previous year, the EEC announced that Kenya would be eligible to a minimum of K.sh 4.1 billion (US\$ 670 million) worth of programme resources, not including loans for the 1991-1995 period (*Daily Nation* 8 June 1990). The Japanese Government also pledged K.sh 4.3 billion (US\$ 720 million) in loans (*Daily Nation* 2 March 1990). There was, however, creeping disenchantment among a number of donors at this time (Brown 2000).

<sup>13</sup>These IMF/World Bank loans were clearly of great importance to the regime in terms of what Dietz and Houtkamp (1998: 102) have called the "image of acceptability." Indeed, throughout 1991-1995, Kenya continued to receive a great deal of aid, unsurprisingly for projects in which foreign firms had contracts. OECD sources suggest that the amount of multi-lateral and bilateral aid in this period was US\$4 billion (*Financial Times* 18 July 1997).

Debate on the party's future was filled with arguments against multi-partyism. KANU organizing Secretary Musyoka put the standard argument in bold terms: "The choice is between KANU and violence," he told the delegates, "it is for you to decide." After listening to the discussions for over two hours, the president spoke, reminding the delegates of KANU's achievements, but, then, in what no doubt came as a big surprise to many there, he suggested that it was time to allow alternative parties. Such a measure was necessary to screen out disloyal KANU party members or, in Moi's word's, "to choose the good eggs and bad eggs by putting them in water." The delegates voted as usual, according to the presidential wish and, hence, agreed to repeal section 2(a) of the constitution banning opposition parties. Ominously, the final words Moi gave to his party members were: "Protect yourselves, do not expect me to protect you" (*Weekly Review* 6 December 1991).

## The New Patronage Dynamics and Patronage Inflation

What kind of Africans such MPs are who keep jumping from one party to another like ticks?

President Moi<sup>14</sup>.

When given a choice between political liberalization in the form of multi-party politics and an aid cut-off, Moi chose almost immediately to open the political system in return for aid flows. It is likely that, while wary of a united opposition, *Moi calculated that he could still win elections as long as he had adequate resources to maintain key patronage networks and control of state institutions, including its monopoly on the "legitimate" use of violence.* Only section 2(a) of the constitution, which banned alternative parties, was initially repealed. Otherwise, the complex, highly despotic and essentially colonial constitution described in Chapter II remained

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<sup>14</sup>Quoted in the *Daily Nation* 17 January 1999.

untouched. This left intact the bureaucratic apparatus along with its allocative and coercive powers and the highly concentrated powers of the presidency.

This institutional framework perpetuated a situation where the presidential winner would be able to step into enormous legally sanctioned powers. Theobald (1990: 128) has aptly described the consequences of this general institutional configuration:

...the very existence of extensive opportunities for self-enrichment through control of the state apparatus places a fantastic premium on actually being in power. The over-riding goal of politics then becomes to capture and retain the fortress of public power. This situation generates not political parties in the sense of organizations whose basic aim is to promote a programme or ideology, but political machines: loose coalitions of vested interests who join together to get themselves into power.

Initially, with the first-past-the-post parliamentary system grafted on to a presidential system, the ability to govern without a majority of the popular vote meant it became feasible to attempt to gain power with just enough national support to squeak through the electoral process. This institutional configuration further undermined cooperation among the opposition. With stakes immensely high, trust among the political class low, and potential new routes to power open for the ambitious "big men" of patrimonial politics, within a very short time the country witnessed a proliferation of political parties.

Leadership wrangles led to the fragmentation of a once united opposition, Forum for the Restoration of Democracy (FORD) into numerous regionally based parties. FORD quickly fell apart into FORD-Asili, led by Kenneth Matiba, and FORD-Kenya, led by Oginga Odinga. Shortly after, former Finance Minister Mwai Kibaki formed the Democratic Party. Each presidential candidate largely fell back to voicing a nationalist script, while appealing to an imagined ethnic community expected to benefit from control of the state.<sup>15</sup> This decline of the initial multi-ethnic coalition

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<sup>15</sup>However, parties did not map one for one onto imagined ethnic community. For example,

and the proliferation of new parties certainly helped KANU's chances of winning the multi-party elections scheduled for 29 December 1992.

President Moi benefitted from this fragmentation by making national representation a prerequisite for gaining access to power and, in continuity with colonial politics, by actively preventing nationally based parties. The Constitution of Kenya Amendment Bill (No.7), accepted with little debate in the KANU parliament in August of 1992, prohibited coalition governments and stipulated that the winning presidential candidate must have at least twenty-five per cent of the vote in at least five of Kenya's eight provinces. This created a real barrier to opposition access to power through elections. When new parties attempted to campaign nationally, they faced serious obstacles. With few sources of material support, besides the personal wealth of the candidates and their supporters, the new opposition leaders lacked resources to travel extensively. When they were able to campaign, they still faced the techniques of intimidation used by the provincial administration since the colonial period. Further, as we shall see in the next chapter, President Moi deliberately created barriers to trans-ethnic cooperation within the opposition, particularly cooperation that would extend into what the patronage hierarchy considered "KANU zones" -its pastoralist and coast constituencies.

Still, Moi faced new pressures within KANU. Former disciplinary procedures within the party no longer had force and were dropped. The presence of alternative parties gave lower level clients new bargaining power relative to the higher echelons of the patronage hierarchy. Potentially popular candidates within the dominant party could now threaten to defect to the opposition. "If they didn't like the 'deal' they got from KANU, they could now look elsewhere" as one prominent KANU official put it (cited in Holmquist and Ford 1994: 20). Substantial discontent within KANU ranks Matiba (FORD-A) and Kibaki (Democratic Party) appealed to the same imagined community and reflected the class politics within it. Matiba appealed to the "ordinary man" which drew support among the urban poor. Kibaki represented much more the landed classes, and he included many former Kenyatta clients in his party. Most parties also made attempts to look national in outlook by recruiting supporters from different regions of the country.

already existed over unpopular patronage bosses who brought little actual popular support to the party but, nevertheless, had access to substantial resources and the president's backing. Many prominent KANU personalities did, in fact, cross over to the opposition. This made Moi and his patronage bosses acutely aware of the need to buy the loyalty of disgruntled KANU members and clients. In the aftermath of the manipulated KANU nomination process, prior to the 1992 election, Moi made efforts to secure loyalty of losers by offering them parastatal appointments (Throup and Hornsby 1998: 331).

Cementing party loyalty was not always successful, and multi-partyism saw a merry-go-round of defections, with many lower level KANU MPs threatening to defect or, in fact, defecting and then being "bought" back. In the run up to the December 1992, election attempts to buy opposition politicians escalated, making "the role of money and favours stronger than ever before" (Throup and Hornsby 1998: 407). Nominated opposition candidates were preferred. This is because once nominated, a candidate's name stayed on the election ballot, blocking a replacement candidate from running. In this way, KANU bought back 50 parliamentary defectors just before the 1992 election (Throup and Hornsby 1998: 409). In the aftermath of the election, defections were also encouraged to whittle away opposition strength in parliament.

Coupled with the need for resources to campaign, bribe voters, and pay-off those involved in pro-KANU violence, the costs of maintaining dominance in a multi-party context had escalated. It is hardly surprising that the money supply in 1992 increased by about 35 per cent, much of this in the form of Central Bank Loans to various commercial banks associated with the president (Grosh and Orvis 1996/7: 56). The Kenyan Bureau of Statistics noted that "much of the increase in money supply occurred during the second half of the calendar year, when increases of 15 per cent and 10 per cent [in the third and fourth financial quarters] were recorded respectively". In other words, this large increase in money supply occurred before the December 1992 election (Republic of Kenya 1993a: 70).

Even when KANU won the 1992 election in a profoundly unfree and unfair process

which gave the president thirty-six per cent of the popular vote,<sup>16</sup> the party still faced a new challenge in parliament. With one hundred seats as opposed to eighty-eight seats for the opposition, and with maverick MPs within its own rank, the KANU hierarchy now needed patronage resources to keep a parliamentary majority on various critical votes. By mid-1995, nine defections were “bought” by the president and his clique. As each defector was required by law to re-run in his/her constituency in a by-election, the president allegedly promised a guarantee of a five-year MP salary should they lose (Grosh and Orvis 1996/7: 53). In addition, KANU MPs kept up pressure for patronage in the post-election period. For example, one disgruntled Kenyan MP from the dominant party warned in parliament that “in modern competitive politics, there is nothing wrong with his sharing political platforms with opposition politicians in his (Kamba) community.” In addition, he reminded the president “of failed promises that he made before the last general election which included K. sh 70 million [US\$ 1.2 million] for power and water supplies” and complained bitterly that “we do not have a permanent secretary or an assistant minister after we supported the party (KANU) in the last general election” (*The People* 1 December 1999).

Opposition politicians, especially those without independent bases of wealth and those who were locked out of access to state resources, often found it hard to function, particularly as constituents demanded services and development projects, and KANU made it clear that opposition areas would be deprived of state funds.<sup>17</sup> Very early on, then, some opposition politicians, such as Oginga Odinga and, later, his son Raila Odinga (National Development Party) entered into “cooperation” with KANU, exchanging patronage resources for political support in parliament, possibly on an issue by issue basis. The net result of these dynamics was an escalating demand for patronage resources.

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<sup>16</sup>This has been aptly documented in Throup and Hornsby's (1998) monumental book on the 1992 election and National Elections Monitoring Unit (1993).

<sup>17</sup>The independent basis of wealth of the Kikuyu leaders of FORD-A and DP, no doubt made them the most feared and distrusted opposition opponents. They were, along with their constituents extremely difficult to “buy” (Kanyinga 1994).

Another more complex threat to ruling clique domination was the new possibility that politicians would circumvent the patronage hierarchy altogether by appealing to constituents. This meant that the terms of the national debate were no longer determined from above. As we shall see in Chapter V, land allocations in particular became an area of increasing scrutiny, discontent, and spirited criticism. This more populist politics was not entirely new in Kenya. Even under the one-party system, popular backbenchers, many of whom took public stances that rubbed against the grain of the party line, were consistently re-elected, often to the annoyance of the higher echelons of the patronage hierarchy. However, there were clear limits to how far these backbenchers could go before they were disciplined, mostly by expulsion from the party. In extreme cases, like J.M. Kariuki, Tom Mboya, and Robert Ouko,<sup>18</sup> they were assassinated. More often, they were jailed and tortured in the basement of the government Nyayo house in Nairobi. This perpetuated a climate of fear that kept less courageous MPs in line. This ability to discipline from within seriously diminished in the multi-party system, and the culture of fear was, to some extent, broken. One result was that constituents gained more voice. This opened the terrain of debate at both local and national levels in a way that was threatening to the secretive rules of the patrimonial game. One response of the ruling KANU clique to patronage inflation was to use escalating violence against constituencies that could not be "bought" with promises of patronage. Another response was to search for new resources to solidify existing support, leading to what appeared like an alarming escalation of corruption.

### **The Proliferation of Corruption**

These dynamics of patronage inflation led to escalating corruption in Kenya. Corruption appeared to reach new heights in the multi-party era. In part this reflects a freer press and the presence of an opposition, as well as cooperating individuals in the

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<sup>18</sup>The Scotland Yard detectives who investigated the murder of the Foreign Minister Ouko concluded that Biwott killed him, because he threatened to expose Biwott's involvement in contracts around the Kisumu Molasses plant in Ouko's constituency.



bureaucracy, particularly the Auditor General. Nevertheless, even by the Auditor-General reports which span the one party and multi-party era and have been written by the same highly respected Controller and Auditor General, David Njoroge, misappropriation appears to have increased and a large number of corruption scandals followed one another (Center for Governance and Democracy 1998).

It became clear that pushing the “good governance” agenda by tinkering with minimal political reforms and, at the same time, introducing economic reforms through market liberalization would not very easily translate into less corruption. In fact, this could perversely engender its proliferation. As long as the most powerful patronage bosses were involved in implementing these reforms, they could use their tremendous powers and political creativity to not only subvert them, but benefit from them as well. This was profoundly true in Kenya where, as the *Weekly Review* commented on 20 February 1998, a scrutiny of grand corruption “would provide an illuminating study of how its perpetrators have been able to keep ahead of the government” or how perpetrators within the government have kept ahead of donor recommendations to reduce corruption.

In many cases, higher level patronage bosses have, in fact, utilized reforms to their benefit. For example, on the advice of the donor community the government introduced foreign exchange bearer certificates as part of currency reform. The result:

The country made many multi-millionaires between 1990 and 1993, when people became rich out of manipulating the market for foreign exchange bearer certificates that had been introduced by the government.... Speculators used the facility to expatriate billions of shillings out of the country (*Weekly Review* 20 February 1998).

When, on donor advice, the government liberalized imports, a large number of scandals emerged where well-connected people circumvented the rules by fraudulently claiming their goods were in “transit”. Indeed, nominated MP and patron boss Rashid Sajjad was involved in importing sugar duty free, which then was sold on

the local market at a high profit, seriously undermining the local industry. In between 1991 and 1993, an estimated US\$430 million were "lost" to financial fraud involving the falsification of export and import invoices in connection with structural adjustment loans. This loss was more than the Kenyan health and education budgets combined (Watkins 1995: 40). In another case, donors advised the government to sell off assets of the Kenya Railway Corporation, including land and houses, to improve the cash flow of the parastatal. Employees were brutally evicted from the houses and influential individuals quickly bought up the plots with houses, which they then sold at inflated prices to another parastatal, the National Social Security Fund (*Weekly Review* 20 February 1998).<sup>19</sup> Thus, Kenya's patronage bosses used their control over the state apparatus to create new resources out of "market liberalization", which was, in part, intended to increase government efficiency and transparency.

Most upsetting to donors was the Goldenberg International scandal. The scandal began when it came to light that a Moi associate, Kamlesh Pattni, through his company, Goldenberg International, was awarded an exclusive export licence for gold and diamond jewelry. Pattni was further allowed export compensation at fifteen per cent the normal rate. This deal was approved by the Minister for Finance, George Saitoti in November 1990 and eventually led to a transfer of K.sh 240 million [US\$40 million] from the Central Bank of Kenya to Goldenberg for fictitious gold and diamonds exports until payments stopped in 1992. Then, a number of mysterious payments were made to the Commercial Bank of Kenya from the Central Bank of Kenya, K.sh 5.7 billion [ US\$100 million ] in April 1993, and, a few months later, payments of K.sh 13.5 billion [US\$225 million] and K.sh 16.5 billion [US\$275 million] (*Economic Review* 23-29 March 1998, Kibwana, Wanjala and Okech-Owiti 1996: 89-90, *Daily Nation* 11 June 2000). This led to a great deal of bad international press, a public outcry in Kenya and a souring of relations with donors. While the Attorney-General claimed

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<sup>19</sup>As we shall see in Chapter V, this strategy of buying public land at reduced prices and then selling it back to the public at inflated prices via parastatals became a thriving way to make money. See also *Economic Review* 24-30 March 1997.

that he would prosecute the culprits, little action was taken, which further worsened relations between the Kenyan government and donors. The Danish government cited the scandal and government inaction in prosecuting those involved as the reason for a reduction of aid by thirty per cent (*The People* 5 September 1993).

By mid-1990, despite reforms, proliferating corruption in Kenya and elsewhere provoked a global movement towards more overt condemnation of specific forms of corruption. This movement was led by the World Bank and IMF, as well as by the newly formed NGO Transparency International.<sup>20</sup> The Kenyan clique experienced the new anti-corruption push through the suspension of both an IMF enhanced structural adjustment facility loan of US\$175 million on 31 July 1997 and of the second tranche of the Structural Adjustment credit from the World Bank and the African Development Bank of US\$100 million, which was to be used as budget support. Frustration with corruption in the energy sector, which involved Minister Nicholas Biwott, and lack of progress on the Goldenberg Scandal, which implicated Vice-President George Saitoti, pushed the IMF to suspend the loans again. The deputy director of the Africa Department of the IMF, Goodal Gondwe, spelled out the conditions for reinstating the loans: stronger management of the energy sector, independence of the Kenya Revenue Authority, prosecution of the prime suspects implicated in past financial irregularities including the Goldenberg fraud, and establishment of an independent anti-corruption authority (*Economic Review* 1-7 September 1997).

These conditions angered Moi who saw them as “more political than economic” (*Economic Review* 4-10 August 1997). Indeed, they would have forced him to act against his key patronage bosses, Biwott, Saitoti, and Sajjad, who, as we shall see in more detail in the next chapter were playing an integral role in Moi’s strategies for winning the next multi-party election on 29 December 1997. Instead, Moi rebuffed the pressure. As a result, the shilling depreciated, and foreign investors liquidated

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<sup>20</sup>There was also more attention to the “supply side” of some forms of corruption, with the December 1997 OECD resolution to criminalize bribery abroad and eliminate the tax deductions for them which existed in a number of OECD countries (Vogl 1998).

their treasury bonds.<sup>21</sup> Throughout this period, intense negotiations between the Moi government and the IMF continued. This time, while waiting until after a number expensive by-elections in 1994, the government was careful to present an image of macro-economic stability. Hence, it did not print money to finance its 1997 electoral campaign and made a show of keeping inflation down. This is reflected in the figure below, which shows the change in annual money supply over this period.

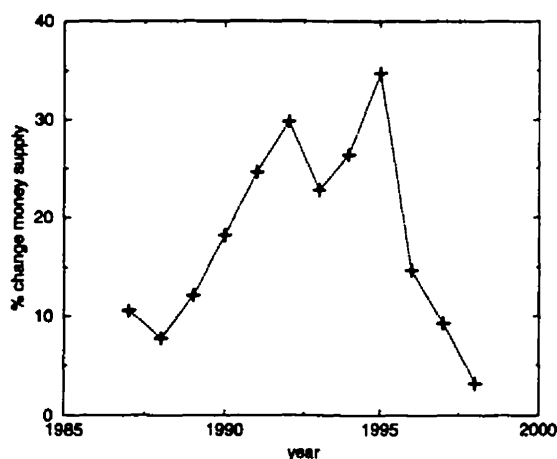


Figure III.2: Annual Percent Change in Money supply Calculated from data from Republic of Kenya 1993a, 1995, 1999c.

The figure clearly shows the acceleration in money supply increase beginning around 1989, with a peak during the first multi-party election in 1992 and, then, a decline after the 1994 by-elections. It also clearly shows another increase leading up to the 1997 election and then a steep decline when donors were carefully watching the Central Bank of Kenya. These measures to control the money supply and the appointment of a group of technocrats in the civil service, headed by former political opponent Richard Leakey, helped Moi to convince the IMF and World Bank to reinstate aid, which they agreed to do in July 2000.

<sup>21</sup>In order to raise money to reduce its budget deficit and to absorb the vast amounts of money floating around after the 1992 elections, the Kenyan government issued treasury bonds at very high interest rates, which led to windfall gains for speculators, while artificially bolstering the shilling, much to the displeasure of exporters (Watkins 1995: 95).

## The Turn to Land as Patronage

By mid-1990, corruption scandals around public land became remarkably frequent. However, these scandals received much less attention from the international media and donors. For example, when a large swathe of Karura National Forest was sold to "private developers" in 1996, provoking riots in the capital, most donors and foreign journalists seemed relatively unconcerned about this irregular privatization of public land *as corruption*. This was the case even though the sums involved were comparable to other corruption scandals. For example, in the case of Karura forest, if we ignore the environmental benefits of the forest and calculate the value of the irregularly allocated land as real estate only, half of the forest would be worth at least K.sh 3.5 billion [US\$56 million].<sup>22</sup> Shortly after the riots, and in the midst of ongoing violent struggles around the forest in the capital, IMF representative Festus Osundsade argued that he was happy with Kenya's performance and that the only issue pending was who was to be appointed to the anti-corruption authority (*Daily Nation* 10 March 1999). The United Nations Environmental Program, situated in front of the scene of struggle, invited President Moi to speak on the importance of conservation.

While the Karura Forest struggle hit the national and international news in February 1999, throughout the decade, Kenyans had experienced the increasingly violent manipulation of land rights as a political weapon against reform and political opponents. Much of this violent and highly despotic politics around land, with the exception of some periodic concern with "ethnic clashes" and the refugees it generated, gained much less attention and criticism from donors than financial sector scandals. These manipulations of land rights were *never subject to any suspension of aid*. Always an attractive patronage resource as well as a means to punish opponents, land as a local and less scrutinized resource, became increasingly useful in

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<sup>22</sup>This estimate is my own. Half of the forest is 1,290 acres, and a "private developer" revealed that he paid K.sh 13.5 million for five acres, which was a good price. Thus, 1,290 acres of the forest was worth at least K.sh 3.5 billion (US\$56 million).

the context of "patronage inflation" and in a situation where most donors were selectively concerned with forms of corruption that most affected foreign investors and macro-economic stability.

This selective donor concern about corruption is linked to a number of factors. In Kenya, it is understood that land is very politically sensitive. As we have seen, even after a number of studies continued to show the necessity of land reform (for example, Livingstone 1981, 1986, Mwangi 1981, World Bank 1983, Hunt 1984, Deininger and Binswanger 1995), after 1983, the World Bank dropped the issue of land reform altogether. As one economic analysis summed it up, "the political problems raised by this issue are enormous" (Economic Intelligence Unit 1987/88: 18). Much of the sensitivity is linked to internal factors such as the potential of the land issue to stir up the growing mass of landless poor who, at least in urban areas, are feared by many donors (Brown 2000). Further, the involvement of the president and his clique in illegal land accumulation is well known. However, as we have seen, the IMF/World Bank and a collection of Western donors were willing to broach the highly sensitive issues of the Goldenberg scandal and export/import fraud. Part of the sensitivity around land, then, also lies in the fact that foreign investors, particularly in agri-business<sup>23</sup> and tourism, are dependent upon government approval for leasing and owning land. Access to land is a resource for which foreign investors require *presidential* approval. According to the Land Control Act (Cap 302), in cases where land transactions involve non-citizens, it is the president who gives consent to the land boards to approve such transactions.<sup>24</sup> In some cases, transparency in land transactions is not always in the interest of those foreign investors eager to build infrastructure projects, buy contested beach property or lease land from locals for

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<sup>23</sup>This factor is mitigated to some extent by the large out-grower contracting schemes in Kenya. In such schemes, small-scale or medium farmers use their own land to plant cash crops. In this way the actual farming is contracted out. This means that multi-nationals do not have to get as heavily immersed in the politics of buying land for growing crops themselves.

<sup>24</sup>While there are ways to get around this through local alliances, the bottom line is still that the president has ultimate authority.

mining.

Finally, ever since the 1960s the World Bank has pushed and funded a program of land privatization as essential for capitalist development. Indeed, production and protection of *private* property rights in land have been a cornerstone of Western donor policy towards Kenya up to the present and have been considered part of Kenya's "success." Small-holder production resulting from even limited land redistribution did lead to rises in production and an improved quality of life for millions of small-scale farmers and their families. However, serious structural problems exist which lead to irregular privatization. This has meant that the politically well connected have benefited disproportionately to the detriment of both equity and, as the World Bank's own report (1983) suggest, productivity. Western donors largely stayed silent with respect to these irregular privatizations by a political class they relied on as allies in the Cold War.

This emphasis on privatization of land was never balanced with adequate concern of how to protect essential *public* property in land, including how communal lands could be used in efficient and ecologically sound ways for pastoralist production. Thus, donor policy, in continuity with the Swynnerton plan, enabled land accumulation among the well-connected and wealthy political class. The irony, as we shall see, is that private property rights are now threatened not by communism but by the lack of protection of public property. The private rights to land produced through irregular privatization of public lands are increasingly viewed as illegitimate by growing numbers of the Kenyan public, particularly the badly affected poor but also by members of the middle class, and this is destabilizing the property rights regime as a whole. This situation is made worse by the selective withdrawal of private rights to land in "ethnic clashes" and the consequent politicization of land rights as they became increasingly articulated with the electoral process in the multi-party context.

In brief, while the world-wide anti-corruption campaign has impinged on Kenya, this campaign is oriented towards forms of corruption that more directly impact foreign investors such as more competitive bidding processes, foreign exchange and

currency policies, exports and imports, as well as general macro-economic stability. While these concerns are not bad in and of themselves, little attention has been paid to the incentives they create for the regime to cope with "patronage inflation" by turning to the unscrutinized and unfettered local resource, land. In light of the necessity of winning multi-party elections under the conditions of "patronage inflation", land has taken a central role in the creative strategies used by Kenya's patronage bosses to maintain critical flows of patronage resources needed to preserve patrimonial control. This suggests that, in the post Cold war reconfiguration of "the field of power", manipulations of a problematic private-public boundary around land rights are likely to emerge. In the next two chapters I present evidence that this is the case, by examining two forms of manipulation of land rights and their relation to the electoral despotism of the last decade: the "ethnic clashes" and "land-grabbing".



## Chapter IV

### The Rise of “Ethnic Clashes”

*How could I have anything to do with the [ethnic] clashes, when I was seeking votes from you at the same time?*

*President Daniel arap Moi (Daily Nation 6 October 1996).*

*From where can an ordinary Kalenjin get arrows, guns and helicopters to attack fellow Kenyans? Moi!!!*

*Students Demonstrating in Nairobi, February 1992 (Daily Nation 1 May 1992).*

At the end of 1991, Kenya experienced the rise of an unprecedented level of violence in the form of “ethnic clashes”. This violence would leave thousands dead, almost half a million displaced and hundreds of thousands effectively disenfranchised. It also would involve a massive transfer of privately owned land into the hands of KANU clients. To guarantee their private rights to land, these clients, in turn, had a stake in preventing an electoral turnover. This chapter demonstrates that this unprecedented level of violence, and the related withdrawal of state protection for private rights to land, were fundamentally linked to genuine challenges to patrimonial control. Key members of a besieged KANU regime strategized to counter political change by playing on grievances generated by a history of exclusionary and irregular land allocations. Through revival of a *majimbo* or ethno-regional discourse ascribing rights to land based on ethnic identity, which, in turn, was linked to support

for the KANU government, key patronage bosses attempted to divert often profound grievances around land into an electorally beneficial politics.

This strategy of using "ethnic clashes" to counter the threats posed by multi-partyism did not require depleting a declining base of patronage resources. Instead, by promising a return of land, as well as cattle in pastoralist regions, this exclusionary ideology was linked to promises of material gain for local opportunists and more active collaborators. These collaborators included informal youth militias and clients within the provincial administration and local councils who cooperated to selectively withdraw state protection for "outsiders". The resulting ethnicized polarization was not only politically useful for patronage bosses but, over the short term, effective in winning elections and reinforcing local domination.

This chapter traces how key members of Kenya's ruling clique intensified this form of anti-multi-party campaign in key electoral regions. My aim is not give the full history of this violence which hit many parts of the country simultaneously. Instead, I isolate key dynamics of the "clashes". I begin by examining the *majimbo* rallies, which preceded a series of violent local "clashes". Next, I probe the beginning of the first wave of violence prior to and after the 1992 election and examine events in Narok North Constituency in detail. Finally, I look at the violence in Laikipia after the 1997 elections. This case study draws attention to how this violence worked, not only as electoral strategy but as a wider bargaining tool at the national level. This explains why "clashes" persisted past the elections, a point that has led Throup and Hornsby to suggest the "clashes" were not a political weapon relating to elections (1998: 541). As Médard has noted, instigators of the "clashes" were, like most politicians, thinking about future elections (1996: 66).

While affirming the thesis that these "ethnic clashes" served as an electoral strategy (Médard 1996, 1998), I add to contemporary explanations by suggesting that collective punishments also became a means for the highest level patronage bosses to increase bargaining power to stave off challenges to election results, promise "security" in exchange for votes in intransigent constituencies, and prevent constitutional

reforms that would potentially level the playing field. Further, rather than merely activating pre-existing cleavages, I will argue that this violence created fears of collective retribution among the ethnic constituencies “represented” by the regime. This undermined potential trans-ethnic alliances at the local level. Such “divide and rule” tactics facilitated the consolidation of an ethnic basis of support, as well as the creation of “constituencies of conflict” (Menkhaus 1998: 221), those who benefitted from the violence, have no interest in a politics of reconciliation, and serve to police these violently imposed boundaries of fear between Kenya’s peoples.

At critical moments, a coordinated front coalesced among often disputatious patronage bosses. However, I emphasize that there was no Grand Electoral Strategy. Instead, patronage bosses fought to maintain local arenas of domination, and this contributed to often contradictory outcomes, where “clashes” in one region benefitted local KANU warlords, but generated refugees which became a serious problem for other KANU players. This apparent inconsistency and confusion helped obscure the origins of the violence, particularly from an international audience. It also generated dissent against these violent tactics within KANU ranks. Thus, I counter the view that the “ethnic clashes” constituted an organized withdrawal from an “independence bargain” between KANU (now opposition) and KADU (now KANU) factions of the political class.

Some opposition politicians were involved in escalating violence, mostly through exhorting their vulnerable constituents to fight back. In some cases, those targeted took up arms and killed in revenge, making the violence more genuinely like “clashes.” In other cases, neighbours protected each other across ethnic lines. There were also acts of opportunism, as some people used the disorder to punish personal enemies or grab land. However, this chapter demonstrates that the primary logics behind these “ethnic clashes” stem from the political objectives of a set of powerful actors within the highest level of the patronage system. Facing new challenges to their patrimonial domination, described in the previous chapter, these patronage bosses initiated “clashes” as a means to maintain their grip on power.

## Majimboism Against Multi-Parties

A constellation of Kalenjin KANU MPs, ministers, and local officials associated with the patronage boss Nicholas Biwott, a close Moi associate, actively began countering multi-party advocates as soon as they emerged into the public realm. Beginning in early 1991, a new counter-offensive was launched by a series of *majimbo* rallies. *Majimbo* means province or region in Swahili, and these rallies drew on the narrative of the pre-independence movement for provincial autonomy.<sup>1</sup> To evoke *majimboism* in the 1990s was to imply that, once again, there was a need to protect “minority groups” and their property and control from a feared Luo-Kikuyu domination. *Majimboism* in this way was used to counter the idea of multi-partyism by painting it as an exclusionary project and, particularly, a strategy of Kikuyu, and to a lesser extent, Luo domination.

Majimboism, as a call to align the boundaries of the provinces with imagined ethnic boundaries and, hence, purify them, played on the colonial construct of Africans as existing peacefully only within segregated, homogeneous tribes. Besides the play on Western images of “tribalism”, the attraction of such a colonial model for Kenya’s patronage bosses was clear. Even if they should lose control of the central government, they could bargain with the new leaders on the basis of their political strength in ethnic enclaves where they had an iron grip on local politics. To legitimize their project, KANU patronage bosses equated the idea of “majimboism” with federalism, which in academic circles was being advocated as a solution to ethnic conflict.<sup>2</sup> How-

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<sup>1</sup>The first mention of the idea of “provincial autonomy” appears to have been in 1954. Afraid of loss of property in the event of a genuine transition to universal franchise, European settlers of the conservative Federal Independence Party devised the notion of provincial autonomy. The Kalenjin, Maasai, and some of the coast political class picked up this notion of autonomy and, in the process, reaffirmed colonially defined boundaries.

<sup>2</sup>In 1994, when the scholar Ali Mazrui proposed a form of *majimboism* which implied autonomy and decentralization, the patronage bosses were quick to cite him as an authority to legitimize their project (*Standard* 13 July 1994). For the debate around *majimboism* see also *Daily Nation* 9 July 1994 and Alamin Mazrui’s response to Ali Mazrui in *Daily Nation* 1 July 1994.

ever, any discussion of resurrecting provincial parliaments, which would dilute central government control was muted. As the *Weekly Review* remarked, *majimboist* MP Dr. Joseph Misoi “did not bother to explain the merits of federalism as a political system” but rather “wielded federalism as some kind of threat against continuing agitation for political pluralism” (*Weekly Review* 2 August 1991). Multi-party advocates, in turn, protested that *majimboism* was eroding national unity.

The pro-multi-party coalition, Forum for the Restoration of Democracy (FORD), propounded a liberal agenda favoured by both donors and middle class Nairobi supporters. It did very little to directly address the real concerns of “minority” pastoralist groups, many of whom had suffered some of the worst marginalization in the country under *both* the Kenyatta and Moi regimes. By not recognizing this historical marginalization, particularly with regards to access to land, and the related fear of domination, particularly by the more numerous and “more developed” Kikuyu, the movement failed to undermine the potential appeal of *majimbo* ideology for Kenya’s largely pastoralist communities, or, in Kenyan lexicon, the KAMATUSA (Kalenjin, Maasai, Turkana and Samburu) communities, along with coastal communities. The involvement of wealthy Kikuyu brokers in privatization and accumulation of pastoralist land, especially fertile Maasai land (Galaty and ole Munei 1999), gave concrete expression to fears of “domination”. KANU *majimboists* directly played on these fears by telling their pastoralist and coast constituents that a victory for FORD would mean loss of their land.

Even though marginalization of pastoralists and coastal peoples has proceeded apace under Moi, the historical basis for the fear of Kikuyu domination lay in the memory of Kenyatta’s rule. Kenyatta’s government, justifiably, was perceived as deepening already existing inequities across regions and communities. Most contemporary Kikuyu politicians, lawyers, and thinkers, with the exception of journalists from *The People*, have done very little to recognize this problem and address the fears it continues to fuel.<sup>3</sup> Instead, they respond with a liberal vision that asserts

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<sup>3</sup>It is interesting that the journalists at *The People*, owned by Kenneth Matiba and coming out of

the constitutional right of any Kenyan to live, own land, and have property rights protected in any part of the country. Without recognizing the fears of communities which absorb migrants and have little authority over land allocations, this liberal vision too easily hides the process of dispossession that is occurring through irregular and erratic privatizations, only some of which involve small-holders, often as second or third buyers of grabbed land.<sup>4</sup> Some members of the Kikuyu political class have fanned the flames by asserting Kikuyu superiority over pastoralist "backwardness".<sup>5</sup> Thus, the *majimboists* played on contentious issues over land distribution and ownership and attempted to deflect responsibility while channeling genuine grievances in politically profitable ways.

President Moi carefully maintained a public appearance of being above the multi-party-*majimbo* "debate". On 19 August 1991, he issued a statement condemning both sides and called proponents of one or the other systems "agents of fragmentation and chaos when the situation called for peace and national unity" (*Weekly Review* 23 August 1991). However, only a month after Moi's supposed silencing of the debate, on 8 September 1991, there was a meeting at Kapsabet town in Nandi District, Rift Valley Province, to relaunch the campaign for *majimboism*. Chaired by Henry Kosgey, KANU Nandi Branch chairman, this meeting involved prominent Kalenjin KANU politicians from the Rift Valley. All were linked to one of the highest rung patronage bosses in the Moi cabal, Eleyo-Marakwet District KANU chairman and Rift Valley Provincial representative to KANU's governing council, Nicholas Biwott. Participants included two cabinet ministers, Timothy Mibei, Minister for Public Works, and John Cheruiyot, Minister for Co-operative Development, three assistant ministers, Kipkalia

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the radicalizing experience of Kikuyu landlessness, are more acutely aware of these same problems in other regions of the country.

<sup>4</sup>This is an important point made by Galaty and ole Munei (1999) and gets to the heart of the conflicts between advocates for pastoralists and most "civil society" organizations promoting this view.

<sup>5</sup>For example, owner and editor of *Finance* MP Gatabaki does a great deal of harm by publicising his chauvinistic attitudes towards other communities.

Kones, Eric Bomet and Willy Kamuren, three other MPS, Paul Chepkok, Benjamin Kositany, and Ezekiel Barng'etuny, as well as 34 councillors from Nandi, Kericho, Bomet, and Nakuru Districts (Government of Kenya 1992b: 9).

These Moi clients and patrons in their local arenas claimed that they had the backing of six out of eight provinces for *majimboism* and that they had already drafted constitutional amendments to be tabled in parliament. Further, they resolved to:

- (a) take action against FORD (Forum for the Restoration of Democracy)
- (b) fight anti-establishment figures using all means at their disposal so as to protect the government and the ruling party KANU;
- (c) to ban Mr. Paul Muite (who was strongly advocating multi-partyism) from setting foot in the Rift Valley (Government of Kenya 1992: 9).

Rally participants made it very clear that as long as the campaign for multi-partyism continued, they would support *majimboism*.

KANU stalwarts and key patronage bosses at these public rallies not only decried multi-partyism, but overtly threatened its proponents with violence. Ethnicizing the opposition as Kikuyu and, hence, playing on fears of Kikuyu domination, the speakers made the implications of *majimboism* clear when they asserted that all those Kikuyu settled in the Rift Valley would have to pack up and re-settle in Central Province. MP Willy Kamuren warned government critics to move out of Kalenjin areas for, "with *majimboism*, they would all be required to go back to their motherland" (*Weekly Review* 13 September 1991). Hinting at the potential redistribution of land to Kalenjin government supporters, MP Kimunai Soi told the audience that "all outsiders who have acquired our land will have to move and leave our land to our children." MP Paul Chepkok directly advocated violence, saying that the residents of the Kalenjin districts were ready to take up arms against the multi-party proponents and were only restrained from doing so by the president. The implication was, of course, that if the president gave the word, they were ready to cleanse Rift Valley of "outsiders", described in *majimbo* rhetoric as *madoadoa* or dark spots.

This was followed by yet another rally on 21 September 1991 at Kapkatet, Kericho District, in Rift Valley province. Nicholas Biwott attended and was feted "as one of the most loyal ministers in the president's cabinet". The theme of this meeting was the willingness to use any means, including violence, to counter anti-government activists in FORD. MP Chepkok grew even more vitriolic in his rhetoric encouraging the audience to "take up arms and destroy dissidents on sight" (*Weekly Review* 27 September 1991). Biwott lent his voice to the cause by making explicit what was at stake. "The Kalenjin are not cowards", he told the crowd, "and are not afraid to fight any attempts to relegate them from leadership", that is, of course, the presidency with its cascading patronage networks from which they themselves were benefitting (*Weekly Review* 27 September 1991, Imanyara and Maina 1991: 20).

The rally ended with an "order" barring FORD leaders and other activists from setting foot in Rift Valley province. The *Weekly Review* appropriately interpreted these meetings at the time as "a new approach in the war against government critics, that of keeping the counter-offensive in top gear as a means of opposing the persistence of critics in attacking the government." Further, the pro-establishment journal remarked that "it would appear as if the leaders of last Saturday's meeting were certain that no action would be taken against them for preaching violence" (*Weekly Review* 27 September 1991). In fact, in what would become a persistent pattern, the president would neither endorse nor speak out against the utterances of his patronage bosses, although he would protect them when they were confronted with public protest. In general, he would maintain the official posture of being above the conflict. This would allow him to use the extremist faction to enhance his power in bargaining and also to set himself up, somewhat paradoxically, in the eyes of both internal and external audiences, as a potential restorer of peace.

In 1991, as the oppositional forces remained relentless, the president and his clique of patronage bosses reacted by developing a new approach to this pressure. They allowed elite dissident activity in Nairobi, although not without serious harassment, and began an effort in rural constituencies to use an unprecedented level of intimidation



against target populations through quite overt threats of violence. While unfolding largely away from donor eyes, this sent strong messages to the opposition about the extent to which key players in Moi's regime were willing to go to hold onto power.

The *majimbo* rallies, as public displays of power, also served to transmit these messages to KANU loyalists. Staged in the KANU monitored and controlled rural areas of the Rift Valley, they conveyed a new message to local provincial administrators and government officials as well as to KANU supporters at large as to what would count as "loyalty to the president." Further, they implied that "loyalty" would be rewarded, particularly with land occupied by "outsiders". In the process, KANU hawks were attempting to solidify support among their own constituency as much as intimidate the opposition. In part they would achieve this by encouraging complicity in the violent attack on private property rights of "outsiders". The multi-ethnic communities of small-hold farmers in settlement schemes and small shopkeepers in market areas, potential supporters of the opposition and conduits of "subversive" ideas, provided convenient targets.

## The First Wave of Violence

Rural violence began in 1991 and continues up to the present. Two peaks in violent activity occurred before and after each election, in December 1992 and 1997. Kenya's first wave of rural violence came very quickly on the heels of the September *majimbo* rallies. About a month after the rallies, conflicts over a number of former settler farms, now multi-ethnic settlement areas, in Nandi District where Kosgey was KANU Chairman, appeared to erupt into violence. After independence these former settler farms were sold off to land buying companies, which, in turn, sold shares to land hungry Kenyans, particularly former labourers, who came from all over the country. At the end of October 1991, violence pitting Kalenjin raiders against these multi-ethnic "outsider" communities began on Meteitei farm in Tinderet Division and appeared to spread across the areas of the Rift Valley bordering Western and Nyanza

Provinces. To carefully examine the origin of this violence, I will go into the Meteitei “clash” in some detail, emphasizing patterns that would reappear in many “clashes” as they spread across the Rift Valley, Western, Nyanza, and Coast provinces.

### **The Beginning: Meteitei Farm**

Meteitei farm is a 2,934 acre farm in Tinderet Division, Nandi District. A former settler farm, in 1977 it was sold off to the Meteitei Land Buying Company, a cooperative of Kisii, Kikuyu, Kamba, Luhya, Luo and Kalenjin who used to live and work on the farm as squatters and labourers. This transaction and the implementation of the settler scheme was monitored and administered by the Settlement Fund Trustees, an “independent” body under the authority of the Minister of Lands and Settlement. The Ministry was to provide land titles. The Meteitei Land Buying Company raised K.sh 967,000 for the land, but as is fairly typical, the government had failed to provide titles.

With the assistance of the local chiefs, in 1983 the farm was invaded by around 310 mostly Nandi farmers.<sup>6</sup> This made the issue of sub-division of the farm according to shares in the land buying company highly contentious for there were more “shareholders” than those actually registered. Numerous meetings aimed at resolving this problem through negotiation were unsuccessful. Libanze, Secretary of the original Meteitei Land Buying Company, was questioned about this situation at the Akiwumi Commission, a public inquiry set up to investigate the clashes:

Judge Oduor: When the Kalenjins invaded the farm in 1983, did you report the matter to the police or the area chief?

Libanze: How could I have done this when some provincial administrators were related to the invaders?

Judge Oduor: So you feared?

Libanze: I did not go to report because of fear.

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<sup>6</sup>There were also some Luhya and Kisii invaders.

Judge Bosire: Did you get your refund?

Libanze: No, they said that the money we had paid should be treated as rent for the use of the land during the period we had occupied it (*Daily Nation* 26 February 1999).

The *majimbo* movement, set in motion by high powered patronage bosses, provided the protection and legitimizing ideology for the violent removal of the original shareholders of Meteitei farm. Kosgey, KANU chairman and then Minister for Tourism and Wildlife, along with Meteitei councillor and Nandi county council chairman Samuel Chelule convened a meeting with the 310 Kalenjin "shareholders" and their leader, Kipyego Korir, KANU chairman for Meteitei location. The "shareholders" were "briefed" on the Kapsabet meeting and told that their "problem would be solved by the government." (*Daily Nation* 25 February 1999, Republic of Kenya 1992b: 44). Later that night, the houses of "outsiders" on Meteitei farm were razed to the ground and their occupants rendered homeless.

The Meteitei farm "clash" escalated when a Kamba woman, Ms Mong'ina, returned to her farm to collect some property and was killed. When two police officers, Lang'at (Kalenjin) and Otieno (Luo) were assigned the duty of guarding her body, they were confronted by a group of hostile Nandi men. When shooting in the air failed to intimidate them, Lang'at shot into the crowd and killed a fellow Kalenjin. The rumour spread that Otieno, the Luo officer, had killed a Nandi man. This rumour provided the pretext for the 1 November 1991 attack on the neighbouring 1,610 acre Owiro farm where many Luo, including Officer Otieno, lived.<sup>7</sup> As at Meteitei farm, armed arsonists burned down the homes and crops of non-Kalenjin residents, rendering around 4,000 people homeless.<sup>8</sup> This was followed by a bolder attack the

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<sup>7</sup>Over and over again people would point to rumours such as these as the reason for the clashes. However, careful scrutiny suggests that they more often provide rationale for better organized raids. These rumours and narratives of outrages committed by the "other" provide the means to legitimize the violence, and also obscure the source of the violence.

<sup>8</sup>By March 1999, only about half of the displaced had returned and tensions continued to run high (*Daily Nation* 5 March 1999).

following day in broad daylight. The armed Kalenjin appeared to be in a uniform of white shorts and green T-shirts.

As soon as the Meteitei farm violence occurred, Nandi Chairman Kosgey, who only two months before was threatening violence against "outsiders", was quick to shield himself against responsibility by decrying the violence. He portrayed the Meteitei "clash" as stemming from a simple land dispute, with no political interference. The Rift Valley PC, Yusuf Haji, reiterated this view, by claiming that the dispute was over shareholding, as *the original number of 310 bona fide owners* had illegally increased to 589 (*Weekly Review* 15 November 1991). However, by portraying the 310 "shareholders" as the original buyers of Meteitei farm, the PC was supporting the invaders' narrative and hence their right to the confiscated property of the refugees. Further, while police and GSU (General Service Unit)<sup>9</sup> were brought in many days later to keep the peace, and 108 "raiders" were caught, temporarily detained and, in most cases, released, the new shareholders' right to the land was made *de facto*. The lack of state protection for the original shareholders prevented them from pursuing institutional channels to contest this situation. As one frustrated victim put it, "most of the police here are Nandis -they watch or collaborate. I went to the sub-chief who tells me to go to the chief, who tells me to go to the DO; I go to the DO and police who tell me to go away" (*Nairobi Law Monthly* No. 38 November 1991). These "clashes", consistently portrayed by the higher level bosses as local "land clashes" unrelated to the *majimboist* project, continued to spread into other settlement areas and trading centers such as Kunyak and Kpere farms, Kotetni and Koru, at the border between Nyanza province and the Rift Valley.

Many KANU MPs, not involved in the violence and faced with refugees coming into their own constituencies with tales of the "clashes", were profoundly angered by the tactics of the primarily Kalenjin constellation of clients around Biwott and used parliament to demand an explanation. The alarming spread of violence prompted the

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<sup>9</sup>The General Service Unit is a paramilitary force of around 5000 well trained men, who are directly accountable to the president.

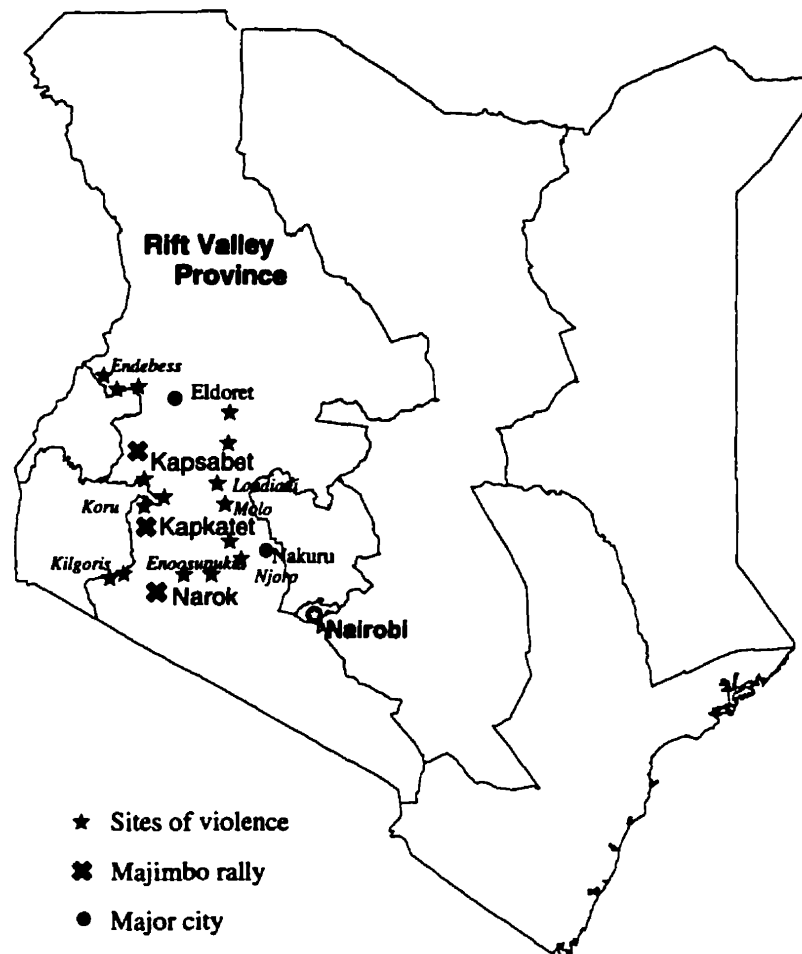


Figure IV.1: Rift Valley Majimbo Rallies and Violence

MP from Nyando Constituency near the Rift Valley/Nyanza border, Miruki Owour, to table a motion in parliament to discuss the conflicts as “an issue of national importance.” However, he later withdrew the motion without explanation and the speaker of the National Assembly, Professor Jonathan Ng’eno,<sup>10</sup> persistently blocked debate, citing certain rules. When MP Kennedy Kiluku demanded an explanation, he was thrown out of the house (*Hansard* 15 November 1991).

By the end of November 1991, as these clashes spread to parts of Nyanza, Western

<sup>10</sup> According to witnesses, his farm in the Mt. Elgon region was used as a sanctuary for “warriors” (Republic of Kenya 1992b: 78). Hence, he may have had a personal reason for wanting to silence debate.

and Rift Valley provinces, the MP for Vihiga, Semo Bahati, initiated a free lance motion asking parliament to set up a probe into the "ethnic clashes". His remarks at the time were cutting:

It is difficult for even a layman to believe that about 100 people from a location or constituency can be armed with arrows to attack their neighbours without assistant chiefs, chiefs, informers and district officers being aware of what is happening. The Kenya government is behind these clashes and I say this because we want this motion to go through so that if the KANU government is not involved in them, it may exonerate itself.

With Ng'eno absent, the motion passed.

Accounts of these "clashes" pointed over and over again to the presence of organized raiders. Local youth were recruited through "secret" meetings, paid, trained and assisted by KANU youthwingers, police officers (sometimes from outside the district) and some provincial administration officials. Since all meetings require licences and, hence, government approval, it is impossible to avoid the conclusion that these meetings were sanctioned, if not coordinated, by local authorities (Author Interviews with victims July 1997, Republic of Kenya 1992b, National Council of Churches of Kenya 1992). Indeed, the extent to which these raids were planned at meetings organized with the help of local authorities is reflected in the many cases where people were warned by neighbours who participated in these meetings.

While these warnings were often in the form of threats, there were many cases of attempts at protection. In one case, a popular Kikuyu family was warned by Nandi neighbours to leave and were reassured that their property would be protected so that they could come back later, which is what happened (Author Interview with Ngugi July 1997). In another case, a Luhya family was similarly warned by their Nandi neighbours, but on a second trip back to collect more property they stumbled upon the raiders who were burning down their home. One raider, a local police officer, shot a young woman from the family dead in full view of the neighbours (Author Interview

with Nandi hills victim in Western Kenya June 1994).<sup>11</sup>

In the Meteitei and Owiro farm cases, witnesses claimed that the raiders received transportation and spotlights to identify whose house to burn from MP Barng'etuny and were, in fact, paid for their activities. This testimony was corroborated from a witness from another "clash" area. Michael Mwangi, commanding officer at Koru police station, told the Akiwumi commission that the Nandi DC, David Mtavo, in the presence of MP Barng'etuny, addressed 600 Kalenjin "warriors", but did not order the police to disarm them. The "warriors" continued to burn houses as they left the meeting (*Daily Nation* 27 March 1999).

In 1992, "clashes" continued along these patterns with new "clashes" in Nakuru District where there were many predominantly Kikuyu settlement areas. This generated protests from students, clergy, politicians, teachers and some ordinary Kalenjin in Nairobi, fearful that this *majimbo* politics would spiral into reprisal attacks. Unable to suppress national debate on this issue any longer, the Moi government reverted back to an old technique to reduce pressure and delay the need for a response: the committee. On 13 May 1992 the National Assembly appointed a Select Committee to "investigate Ethnic clashes in Western Kenya and other parts of Kenya." By appointing as chairman outspoken KANU critic of the "clashes" Kennedy Kiliku, the committee regained some legitimacy. As the committee traveled around the country, Kenyans affected by the violence made use of the opportunity to tell national government representatives of their plight. After deliberating on the evidence, the committee suggested that the "clashes":

- (i) were politically motivated and fuelled by some officers in the Provincial administration; and
- (ii) were instigated in the misconception that some ethnic communities could chase away other ethnic communities in order to acquire their land.

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<sup>11</sup>See also Republic of Kenya (1992b: 70). This advance warning would also allow counter-offensives in some cases, which would give the "clashes" more of an actual dynamic of a "clash" between two parties.

Further, among their recommendations they asked that action be taken against those involved in the violence, that the provincial administration be made more ethnically representative to make it more impartial and that a Special Trust Fund be set up to resettle victims (Republic of Kenya 1992b: 82-83). The report estimated that as of September 1992, 779 people were killed, 654 injured and 54,000 displaced and that approximately K.sh 1 billion [US\$ 17 million] worth of assets in the form of houses, crops, livestock and machines were destroyed (Republic of Kenya 1992b: 85-90).

When Kiliku brought the report up for debate and adoption in the KANU parliament, unsurprisingly those named within it as perpetrators of the "clashes", including Biwott and Barng'entuny, denounced the report as a "total fiasco" and "useless" (*Weekly Review* 23 October 1992). The report's adoption was defeated, with 53 MPs (including all Rift Valley MPs and three of the twelve committee members) voting against and 23 MPs voting for it. While this vote showed the power of the higher level KANU clique to control the party, it also showed there was considerable dissent within KANU about these violent tactics.

The "ethnic clashes" created an atmosphere of profound intimidation for the multi-party elections on 29 December 1992. The Commonwealth observer group monitoring the election suggested that KANU won 16 Rift Valley parliamentary seats unopposed as a result of the violence (Commonwealth Observer Group 1993: 18). The coterie of Kalenjin patronage bosses behind the *majimbo* movement effectively used the violence to buy the support of some, intimidate others, rid their constituencies of "subversive" cosmopolitan communities as potential conduits of oppositional politics and, in the process, disenfranchise voters, *both those who fled and those who remained and faced one candidate running unopposed*.

Nevertheless, while these "clashes" were planned by patronage bosses and their lower level clients, including the youth whose "services" they bought, this does not mean there was a Grand Strategy involving all members of the KANU clique. Instead, the most powerful patronage bosses, who were also set to lose the most in an electoral turnover, developed strategies to secure their electoral seats and ethno-regional basis



of power while attempting to increase their bargaining strength against reformers. This form of “decentralized despotism” led to contradictions. For example, in Londiani, Kipsigis warriors attacked Kikuyu farms and were rewarded with land belonging to the very small “indigenous group (the Okiek). In Kilgoris, Kipsigis farmers were attacked by Maasai warriors and lost their land. This gave the “clashes” the superficial look of “tribal clashes”, but these contradictions reflected the de-centralized strategy of patronage bosses “protecting themselves.”<sup>12</sup>

Much attention has focussed on the refugees as the targets of the violence. However, I argue that *majimbo* politics was equally aimed at creating a firm ethnicized constituency of support by instilling fear of retaliation. In this way they also created “constituencies of conflict”, groups of people who have illegally gained valuable land, and, hence, require the current regime to squash the rights of legitimate holders to keep this land. Such constituencies have no interest in a politics of reconciliation, and the net result is the deepening of despotic politics for those who remained behind in clash zones. In the next section, I illustrate this dynamic through a detailed case study of Narok North Constituency.

## A Look at the Local Level: The Case of Narok North

### The Background

The heart of Narok District lies about 100 km from Nairobi in the Southern part of the Rift Valley. It consists of rolling dry plateaus as well as lush hills with substantial rainfall and rivers.<sup>13</sup> Along with the adjacent district of Kajiado, Narok District is

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<sup>12</sup>This also helps explain why the culmination of such processes, in which patronage bosses turn into warlords, can spin out of control leading to state collapse, as in Somalia.

<sup>13</sup>A much condensed version of this case study will appear in the *Canadian Journal of African Studies*.



Figure IV.2: Location of Narok District Source: Republic of Kenya (1993b)

part of what was once a Maasai reserve under colonial rule.<sup>14</sup> In the first Maasai “agreement” of 1904 approximately 11,200 Maasai and over two million stock lost their land to 48 Europeans by allegedly agreeing to move to Laikipia (Okoth-Ogendo 1991: 30). When the land in Laikipia became attractive to settlers, the Maasai were moved yet again under the 1911 Maasai “agreement” to the more arid terrain of the Southern Rift valley, the current Narok and Kajiado Districts. The land within the reserve was legally defined as Trust land, a status that was maintained in the post-independence period.

Defining the Maasai reserve as a “closed district”, colonial administrators attempted to create an ethnically pure enclave that fit their notions of a tribe. This

<sup>14</sup>The largely pastoralist Maasai once grazed their cattle over a much larger area of Kenya. The reserve gave the Maasai 3.8 million hectares of land compared with the 7.7 million hectares they had access to before the reserve (Bekure and Ole Pasha 1990: 236).

policy intervened in a long pre-colonial history of Maasai interaction with agriculturalists, particularly the Kikuyu. Kituyi describes these pre-colonial relations as follows:

In normal years, Kikuyu cultivators exchanged their cereal produce for Maasai livestock and livestock products. This exchange was based on the fact that the two communities lived in different ecological zones, and each produced goods desirable to the other, but which the other did not produce. In years of catastrophe, the two communities accorded each other refuge and time to recover. Impoverished Maasai could be adopted by Kikuyu families while they tried to survive and look to a return to herding while impoverished Kikuyus could go herding for Maasai families and eventually become adopted by the families (1991).

A history of interactions, including intermarriage that entwined Kikuyu and Maasai kinship networks, challenged notions of a firm ethnic boundary dividing them. This did not imply a dissolution of cultural, particularly linguistic difference that serves as markers of this boundary. Rather, as Galaty suggests, it means that the boundary was and continues to be “negotiable” (1993: 190).<sup>15</sup>

While the movement of the Maasai south into the reserve pulled the Kikuyu and Maasai farther apart, the policy of ethnic segregation was never completely successful. The policy failed to prevent infiltration by many Kikuyu who, also under land pressures by white settlers, looked to their old refuge of Maasailand. They became clients and workers for Maasai homesteads in exchange for access to land. Maasai households benefitted from Kikuyu clients who supplied labour, wives and informal business connections. By enlarging a Maasai elder's household, Kikuyu clients gave him greater weight in the community (Waller 1993).

The colonial administration worked against this Maasai-Kikuyu interaction and actively attempted to keep Maasai and Kikuyu separated. They policed the borders of

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<sup>15</sup>For examples of boundary “crossings” in Kikuyu orature see Cavicchi (1977: 87-88). See also the example described by Galaty (1993).

the Maasai reserves to prevent Kikuyu infiltration and raided homesteads in search of Kikuyu to evict. In some parts of Maasailand there were regular whole-scale evictions and hut burnings. Rather than critically examine a land policy that generally favored white settlers, district commissioners attempted to convince the Maasai that it was the infiltration of Kikuyu "aliens" who were spoiling their land (Waller 1993). Despite these efforts, Kikuyu continued to live among the Maasai, many assimilating and taking up Maasai identities.

Between the World Wars, Kikuyu immigration increased. While assimilation continued, Kikuyu agricultural enclaves emerged, and many settlers held a Lockean belief that those who cleared and laboured on the land should enjoy its use. In contrast, the Maasai viewed land as part of a communal territory owned by no one. Further, the Kikuyu enclaves competed for land with the already land squeezed Maasai. During the Emergency period thousands of Kikuyu were forcibly removed from Narok, reducing this competition. With the onset of independence, however, migrants, including many Kikuyu, began moving in.<sup>16</sup>

In 1954, following the Swynnerton plan, the colonial government began to encourage the adjudication of Maasai Trust lands into individually owned ranches. As Campbell (1993: 263) writes;

The establishment of the individual ranches marked the first time that Maasai began to move away from the traditional values which saw cattle as the basis of production towards a view of land, no longer as Maasai *territory*, but as the basic resource for individual advancement..

However, paralleling the experience in other parts of the country, it was largely the "progressive ranchers" who disproportionately benefitted from marketization of land by being granted large tracts of land for individual use. The flip side of this process was increasing landlessness among the pastoralists (Kituyi 1990: 154-155). Within

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<sup>16</sup>It is interesting to note that there were Maasai who participated in this revolt alongside Kikuyu: Kikuyu Central Association had a branch in Maasailand run by Maasai, see King (1971).

this context, the idea of land as community territory did not disappear altogether, but rather co-existed uneasily with the idea of land as a commodity. Indeed, particularly among the poor, land, as both an essential source of economic security and as a focus of community identity and spirituality, continues to be socially embedded in non-market rules. While these notions would provide a cultural resource for exclusivist ethnic-based political mobilization, it is critical to note that these notions are not intrinsically exclusivist and, in fact, have not been exclusivist in practice. The long history of inter-ethnic negotiation between the Kikuyu and Maasai around access to land refutes any suggestion that this is the case.

The post-independence government continued to push land sub-division and individual and group ownership. Hence, parts of the trust land were adjudicated and title given to individuals and cooperatives. Like most land adjudication exercises supervised by the government administration, there have been widespread irregularities, with land being allocated as patronage rather than to legitimate claimants.<sup>17</sup> Expansive ranches and large-scale wheat and barley farms, owned by the wealthy, blossomed. In search of a small parcel of land to lease or buy, poor Kikuyu and Kalenjin migrants also poured into the district.<sup>18</sup> Migrants were rapidly moving into Narok District. In 1969, there were 83,243 Maasai. By 1979, this number had risen to 118,090 which represented 56 per cent of the total population. The rest of the population included 59,000 Kalenjin, 17,400 Kikuyu, 4,500 Kisii and 1,500 Okiek (Republic of Kenya 1993b: 11). By 1989, the Kenyan population census found 398,272 people living in Narok (Republic of Kenya 1994). The net result of this influx of migrants,

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<sup>17</sup>In the past, these "irregularities" have involved the manipulation of public land buying companies so that a disproportionate number of shares and hence area of land in collectively purchased farms go to senior administration figures. In the process, poorer, and, in some cases, younger members were edged out of their share of land. Many observers argue this has led to the pauperization of the majority of the Maasai (Hillman 1994, Kituyi 1991, and Peron 1995a, 1995b).

<sup>18</sup>To get an idea of the extent of these pressures the example of an "informal sector" worker in Nairobi is illuminating. He bought 2 acres of land in Narok in the 1980s and paid K.sh 20,000. One acre of land in his Gathiga home in Central Province was going for K.sh 200,000 an acre in the same period (King 1996: 62)

along with the alienation of Maasai lands for national parks, was to intensify a sense of land pressure and insecurity on the part of the largely pastoralist Maasai and to further exacerbate environmental degradation.

### **National Politics Articulated Locally in Narok North**

William ole Ntimama is the local MP for Narok North, the KANU Narok District Chairman, government minister and, as these positions indicate, a high powered patronage boss. Beginning in 1990 when the multi-party debate was heating up, he began to vociferously argue that the land adjudication officials in Narok District were Kikuyu and had used their influence to allocate themselves and their families huge tracts of land (*Weekly Review* 24 May 1991). He painted the Kikuyu in Narok as alien despoilers of Maasai land by suggesting that the whole land adjudication process was a Kikuyu conspiracy to dispossess the Maasai. Rather than suggest a careful look at land adjudication procedures from which Ntimama himself had benefitted, the MP resorted to a colonial tactic of diverting attention from government policy by ethnicizing the blame for Maasai land pressures.

This reversion to colonial ideology of the "alien" was not an entirely new tactic. In the 1988 electoral campaign, Ntimama sent out the message that those living among the Maasai must vote with the Maasai. By setting himself up as a tribal leader, Ntimama equated voting "with the Maasai" with voting for himself. His chief rival, Haroun Lempaka, was also a Maasai. Hence, there was not even a question of having a Kikuyu representative. Lempaka's bid to challenge Ntimama in the 1988 elections failed, however, when his documents "went missing" from KANU headquarters.<sup>19</sup>

An even closer look at the local level is revealing. In Enabelili and Enosupukia

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<sup>19</sup>Ntimama was up against another powerful patronage boss, Justus ole Tipis and was attempting to dislodge him and take his place. The race was close: Ntimama received 12,658 (55.3 per cent) of the KANU nomination votes compared to Tipis who received 10,223 (44.7 per cent) of the votes. They then went on to compete in the general elections with Lempaka already cut out of the race at this stage.

locations, as well as in the small but growing Narok town, the Kikuyu were estimated to be a majority. Increasing political clout accompanied their increasing numbers. By 1983 the Kikuyu were a majority on the Narok urban council (*Weekly Review* 1 March 1991). During this time, Ntimama himself was chairman of the Narok County Council and over saw many land sales to Kikuyu. Questioned on this later, Ntimama admitted that he had helped many Kikuyu gain access to land but they had failed to be “grateful” (*Economic Review* 11-17 July 1994). The arrangement, as Ntimama understood it, was most likely that the Kikuyu buying land through the County Council would become his clients. As his clients, come election time, they were expected to reliably vote for him. The Kikuyu buyers had a very different interpretation of these transactions. The first to have their land alienated and treated as a commodity, many Kikuyu, no doubt, conceived of these transactions as occurring on a “willing seller, willing buyer” basis. In short, the land was a commodity that they purchased and their right to hold onto that property was guaranteed in the constitution and by the state. Once they had the land, they saw no compelling reason to be Ntimama’s clients.

In the 1988 elections, this became a major issue, with Ntimama campaigning largely on the settler issue, arguing that the settlers needed to be “put in their place”. His opponent, Justus Ole Tipis, in contrast, actively courted the settler vote. Hence, many in the Kikuyu community felt no obligation to vote for Ntimama, and it is hardly surprising many failed to vote for him in the 1988 elections.<sup>20</sup> In fact, the election results were quite close with Ntimama winning 14,240 votes to Tipis’s 12,369 votes.

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<sup>20</sup>There was, at that time, the infamous queue voting system during the KANU nominations in which voters lined up behind their chosen KANU representative. Hence, it was clear who voted for whom.

## Ntimama's Response to the Threat of Multi-Partyism

The rise of alternative parties in Kenya created a new set of challenges for patronage bosses like Ntimama. First, being high up in the KANU hierarchy with chances to intervene in the KANU nominations and, in this way, ward off unwelcome challengers, was ineffective against challengers from altogether different parties. Second, opposition politicians, outside of the party-state locus of power, were more willing to criticize KANU policy and break official silences. Third, with the real possibility of a change in power, Moi's patronage bosses faced an exposé of their dealings as well as retribution. It is not surprising that the potential threat of multi-partyism provoked not only resistance but an active anti-democratization effort on the part of prominent power-brokers in Moi's clique, such as Ntimama.

The first sign of Ntimama's agitation began on March 1991 at a *majimbo* rally held in his Narok North constituency. Attended by a number of prominent KANU ministers and MPs including the key figures in the president's inner circle such as Nicholas Biwott and George Saitoti, the current vice-president, it was an impressive show of power. Once again, Ntimama targeted the Kikuyu settlers calling them inciters and agitators and accusing them of acquiring Maasai land by dubious means. It was at this rally that the KANU parliamentarian issued his infamous statement for Kikuyus to "lie low like envelopes or face the consequences" (*Weekly Review* 1 March 1991, Author interviews with people in Sekutiek who attended the rally, October 2000).<sup>21</sup>

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<sup>21</sup>When called before the Akiwumi Commission on the Ethnic Clashes, Ntimama refused to acknowledge that he, in fact, made these comments and claimed that he was misquoted by the *Daily Nation*. See (*Daily Nation* 16 April 1999). Here is some of the relevant testimony:

Justice Bosire: What was the misquotation? The use of envelopes and not antelopes?

Ntimama: Yes, the antelopes lie low to avoid being preyed on by the leopard.

Kagucia (Cross-examiner): Meaning what?

Ntimama: An antelope lies low to avoid being preyed on by the leopard.

Kagucia: Were you saying that in the context of foreigners living in Narok?

Ntimama: That was the *Nation's* idea not mine.



Confronted with outrage by opposition activists, the president stood by his client. Speaking at the Agriculture Society of Kenya show taking place in Eldoret, he remarked that those criticizing Ntimama had misunderstood him. The minister had not singled out any particular group for criticism. Rather, Ntimama had only spoke out in general terms of immigrants pushing around the indigenous Maasai in Narok. Then he turned the tables by referring to an article in the magazine *Finance*, owned by Kikuyu chauvinist Gatabaki. This article also retrieved a colonial discourse by characterizing the Maasai "like the 'Red Indians' of North America-doomed to extinction." Ntimama, in an interview with the *Weekly Review* at the time, acknowledged the obvious; he was, indeed, referring to the Kikuyu in Narok in his speeches.

The following year, with the ban on multi-partyism repealed, Ntimama was facing two parliamentary contestants from other parties that were heavily Kikuyu-based: his old rival, Lempaka (FORD-Asili) and Tiampati (Democratic Party).<sup>22</sup> Lempaka, FORD-Asili's National Treasurer, was from the minority Ildamat clan, while Ntimama was from the majority Purko clan which comprise about 60 per cent of the Maasai population in his constituency. Thus, the 15,000 Kikuyu became a crucial swing vote, and it was clear that they would "vote for anyone except Ntimama" (Throup and Hornsby 1998: 499). Ntimama's strategy for "protecting himself" from these competitors was to persistently treat the Kikuyu community in Narok as alien troublemakers responsible for the deprivation of Maasai rights, particularly around land. Indeed, he told Maasai voters that "all that the opposition leaders want is to grab your fertile land" (*Daily Nation* 24 February 1992). The sense of insecurity around land many Maasai felt resonated with Ntimama's claims that if the Kikuyu

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Kagucia: I speculate that the leopard means the indigenous Narok people while the antelope refers to foreigners.

Ntimama: That is the misinterpretation.

Bosire: What were you referring to?

Ntimama: I really cannot recall it must have been a small story I was telling.

<sup>22</sup>FORD-Asili at the time was led by Kenneth Matiba, a Kikuyu. The Democratic Party was and is still led by Mwai Kibaki, also a Kikuyu.

led opposition were to come to power, Maasai land would be grabbed. This worked as an electoral strategy that aimed at gathering Maasai votes against the Kikuyu. However, uncertain of a Maasai majority vote across clan, Ntimama also set out to intimidate the Kikuyu community into not voting and forming an alliance with Maasai opposition to Ntimama. In this way, an attack on the Kikuyu was also a way to undermine the bargaining power of local Maasai opposition.

Ntimama's rhetoric reflected the power he wielded by virtue of being close to President Moi and by virtue of being appointed the Minister of Local Government. This power, in turn meant that he had privileged access to the Narok County Council and the provincial administration. This allowed him to mobilize supporters and have meetings, as well as organize the subversion of his opponents' campaigns. It is hardly surprising, then, that in the build-up to the December 1992 election, Narok North constituency was marred with pre-election irregularities and violence, particularly at Enosupukia, Kwaahoo, Laiser and Sekutiek. At the end of May 1992, Narok church leader, Reverend Julius Kamwaro, complained that Kikuyu residents were not being allowed to register (*Daily Nation* 1 July 1992). This concern was echoed by one of Ntimama's Maasai opponents, Mr. Tiampati who was running on a DP ticket and who was relying on the Kikuyu vote in his struggle for the seat (*Daily Nation* 13 July 1992). At Enosupukia registration center, located in a heavily Kikuyu area, local chiefs and KANU youthwingers were interfering with voter registration, and at least one voter claimed that officers were referring them to Kiambu in Central Province (*Daily Nation* 12 June 1992). While Ntimama continued to vehemently deny that Kikuyu voters were being intimidated, leaflets from "Young Maasai Warriors" began to circulate, warning Kikuyu not to register or face death. In July 1992, a reporter on the scene observed that "most Kikuyus had resolved to stop registering for the safety of their lives" (*Daily Nation* 15 July 1992).

The first incident to reach national attention was the death of three men on 10 June 1992 by people said to be Maasai warriors or *moran*. The victims were returning from registering as voters at the Enosupukia registration center. The National Elections

Monitoring Unit (1993: 128), a domestic elections watchdog organization, described the situation as follows:

Three people were killed by people said to be warriors at the Enosupukia registration centres. Ten buildings are razed to the ground. Trouble started after alleged warriors ganged up and vowed not to let any Kikuyu to register as voters .

Shortly afterwards, the Attorney General stated that his office would investigate the Narok killings, and new registration centers were opened. Registration was highly irregular, however, and Narok North was one of the constituencies where there were "falls in registration by more than 800 voters, which should have been impossible" (Throup and Hornsby 1998: 263). It is highly likely that the previous violence acted as a deterrent to many potential Kikuyu voters. Indeed, despite public outcry, anti-Kikuyu rhetoric continued. On the eve of the election, on 28 December 1992, vehicles with loudspeakers toured the Kikuyu areas of Narok, threatening those who did not vote for KANU with eviction (Throup and Hornsby 1998: 381). According to former police Superintendent for Narok Joseph Kimaru Chumo, the next day three Kikuyu were killed by a group of Maasai as they were going to vote (*Daily Nation* 23 March 1999). In the end, Ntimama won the Narok North seat in the 1992 election. The results (below) gave him a substantial lead.<sup>23</sup>

**Narok North 1992 Parliamentary Results**

Candidate	Party	Votes
William ole Ntimama	KANU	24 523 (64 per cent)
Haroun Lempaka	FORD-A	9 489 (24.76 per cent)
John Tiampati	DP	4 305 (11.24 percent)

<sup>23</sup>These election results were taken from Institute for Education in Democracy (1998).

### **“Clashes” at Enoosupukia**

Ntimama's rhetoric began to transform into large-scale action after the 1992 general election. The trouble started in Enoosupukia, a thriving community of pastoralists, farmers, and traders. In 1977, Enoosupukia Trust land, controlled by the Narok County Council, was sub-divided and sold to private owners, although some of this land had already changed hands as far back as 1960. Some of the buyers were Kikuyu. Others were Maasai, who, in turn, sold portions of their large tracts of land to Kikuyu small-scale farmers. Many of these small farmers were unable to buy land in Central Province because of the high prices.<sup>24</sup> This was encouraged at the time by Ntimama as Narok County Council Chairman.

In June 1993, Ntimama attended the Vienna World Conference on Human Rights as an official government delegate. Along with a group of “traditional Maasai”, he presented himself as a staunch supporter of the “indigenous rights” of the Maasai. The rotund Minister greatly amused the Kenyan press by shedding his business suit to don a traditional Maasai *shuka* (cloth) for the occasion.<sup>25</sup> On returning to Kenya in July 1993, Ntimama proclaimed the Maasai and Kalenjin in the Rift Valley “indigenous Kenyans”, because they had not been adequately compensated for land lost during colonial times. In particular, he singled out the Kikuyu as non-indigenous since they had lost only “a small piece of land” (*Weekly Review* 9 July 1993).

In August 1993, Ntimama simply declared the area around Enoosupukia trust land under the control of the Narok County Council. On 28 September 1993, the Narok district commissioner, Calestous Akello, called a meeting and ordered an estimated 30,000 people to leave the Enoosupukia hills (*Daily Nation* 29 September 1993). The residents largely resisted. They refused to go or, if they were to leave, demanded

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<sup>24</sup>For example, one “informal sector” worker in Nairobi who bought 2 acres of land in Narok in the mid 1980s, paid K.sh 20,000. One acre of land in his Gathiga home area was going for K.sh 200,000 an acre (King 1996: 62).

<sup>25</sup>At the same conference a group of “traditional Maasai” destroyed a photo exhibit on the “ethnic clashes” set up by activist Dr. Maathai. They also stole copies of the Kiluku report (Nowrojee 1993, *Weekly Review* 9 July 1993).

compensation for land that was bought. They clearly saw their eviction as punishment for voting for the opposition in 1992 and believed that the land would revert back to those from whom they had bought it (*Weekly Review* 8 October 1993).

Ntimama justified his actions on environmental grounds. He argued that the people living in the Enoosupukia hills were cutting down trees, creating environmental damage and ruining the source of water essential for the Keekonyokie clan of the Maasai living downstream from them. To emphasize his point, at the end of September he took Minister of the Environment and Natural Resources John Sambu, local leaders, and journalists to tour the Enoosupukia water catchment area. Conspicuously absent from the group were environmental experts who might have made assessments of the damage done and offered potential remedies. When questioned on this, the Narok County Council insisted that this was a "special case" (*Weekly Review* 8 October 1993).

As we have seen, Ntimama's appeal to local pastoralists, many of whom saw him as a champion of their rights against "foreigners", was that he provided an easy "solution" to very real problems of insecurity of pastoralist land rights and environmental degradation. However, while migrants certainly contribute to these grievances, the roots of these problems are far deeper, have a longer genealogy, and involve national park land, group ranches and large-scale farmers such as Ntimama himself <sup>26</sup> (Peron 1995a, 1995b, Sindaga 1984). Hence, these problems will hardly be solved through the expulsion of these migrants who are a reflection of "population

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<sup>26</sup>Like many Maasai belonging to the political class, Ntimama has a Kikuyu wife, is engaged in large-scale wheat farming and, as mentioned before, brokered deals to sell Maasailand to the migrants he was now attacking. Father Kaiser of the Catholic church pointed to these duplicities when he noted in his testimony to the Akiwumi Commission, "There is a lot of environmental degradation taking place in Mr. Ntimama's area, and he does not speak about it. Bulldozers are destroying the place and he has been keeping quiet, yet he has been shouting about Enoosupukia water catchment area" (*Daily Nation* 3 February 1999). Both Biwott and Ntimama were furious with Fr. Kaiser's testimony before the commission. On 23 August 2000 Fr. Kaiser was murdered by unknown assassins (*Daily Nation* 25 August 2000).

growth, overcrowding, and land availability elsewhere", implying "a regional problem requiring a regional solution" (Bernard and Anzagi 1979: 97-98 Cited in Sindaga 1984: 34) and cooperation, rather than conflict. However, Maasai grievances provided a powerful basis for Ntimama's political strategizing.

On 13 October 1993, days before a court ruling on the "eviction" notice, the "clashes" broke out in Enoosupukia. Here is one witness account (National Council of Churches of Kenya 1995: 7):

On October 13th, Maasai morans, crept silently to a home in Kipuput village and slashed every family member. People had gone to help them but they were fought by the morans fearlessly. They were carrying bow and arrows, spears and rungus which showed marks of being recently made... The Kikuyus who were poorly armed carrie[d] pangas and were repulsed quickly. The Maasai wore red shukas although some of them were neighbours to us and ran to people slashing them mercilessly. People, mostly Kikuyus, cried to them calling their names but they only worked on them hopelessly.

The askaris (watchmen) who had been brought by the D.O. [district officer] helped the Maasai morans when they were attacked by the Kikuyus. The Maasai warriors claimed that they wanted their men who were killed by the Kikuyus when they were stealing livestock. In the Kimondi area, a group of Maasai warriors led by the local game ranger [name withheld] had a gun and shot dead three Kikuyus after seeing that the Maasai would be defeated. The total number of those killed came to five after two people were slashed in the garden that day. At around noon the whole of Enoosupukia had got hold of the news and the people were stricken by grief. People felt frightened. The Kipuput villagers started to migrate with the little they could carry to the churches especially to the Catholic Mission.

On October 14th, 1993, Thursday, people kept taking their livestock to the Church for safety. They thought the Maasai could not attack them in Church as in places like Molo, Longuruoni and Burnt Forest but this turned out later to be futile.

On October 15th, 1993, Friday... a group of morans ran into the Catholic Mission around 8 a.m. where women and children were. They smashed the windows mercilessly, women screaming loudly and children crying in a high pitch. They injured two men. They took with them livestock around the Church compound but before they reached the gate, the parish priest in charge came with three soldiers from Kongoni police station in Nakuru district and chased away the Morans. Father Noel looked at the destroyed Church. He told the women to take to their heels to Maela for refuge and the big exodus started...

About 2 o'clock the real fight started. The Maasai Morans spirited like arrows. They ran after the Kikuyus with rungas, bows and arrows. They slashed people like a caught antelope..In that day eight men were killed, some being shot dead and then slashed not to show bullet marks. The "Maasai" carried silencers. It was later reported that they were GSU (General Service Unit-a special government para-military organization) from Narok. People seeing that things had turned upside down, took to their heels to Maela...

After reaching Maela, accommodation was insufficient. People slept on verandas. Children cried of hunger. Hotels were filled to the brim. People know that eviction was a success for the local Maasai who had said that every Kikuyu will return back [to] Kiambu (Central Province) because they never voted for KANU-Ntimama.

Women and children, both Maasai and Kikuyu, unaware of what was happening, fled together, and a number of Kikuyu took refuge in the homes of their Maasai relatives. This led to the burning of an number of Kikuyu friendly Maasai homes (Interviews with Maasai residents of Enoosupukia, October 2000). At least 35 people were killed in such "clashes" in Narok North as a whole.<sup>27</sup>

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<sup>27</sup>Through press reports and church documents, I have compiled an incomplete list of the known dead in Narok District. They are Githua Magwathi, Kahama Mathara, Ngugi Chege, Stephen Wango, Gathuru, Joseph Kihui, Mburu "original", Rasta Mugo, Ndun'gu (Baba Kamau), Mundia, Wachiuri, Macharia Ihiga, Samuel Njuguna, Mugo Gachau, Mburu Kinyanjui, Peter Ngugi, Luka

One striking feature of this "clash", largely characteristic of "clashes" country-wide, was the lack of immediate government intervention. Witness accounts reveal that the violence continued for days without any firm action on the part of a usually highly interventionist government. Further, witnesses cite a clear complicity on the part of a number of local government actors such as the District Officer, the Forest Ranger, and the GSU officers sent for "security" in the account above.

More detailed investigations by the Nakuru Catholic Diocese later revealed that many of the Maasai "warriors" were, in fact, game rangers, police and army personnel.<sup>28</sup> These outsiders were assisted by a small core of local government officials and residents, most of whom were eager to take back small parcels of land they had sold to Kikuyu farmers. Many of these locals who killed their neighbours are well known. For example, residents told me that ex-GSU and Narok County Council Wildlife Ranger, Johnson ole Punywa, had shot dead three Kikuyu during the "clashes". Testimony before the government inquiry by District Officer Akello corroborated this (*Daily Nation* 30 January 1999). Ole Punywa was never punished and, in fact, received a promotion. Involvement of game rangers paid by the Narok County Council was further confirmed by the account of victim, Peter Kinuthia, who witnessed three game rangers shoot dead two people and fatally wound another (*Daily Nation* 23 October 1993).<sup>29</sup>

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Njenga, Githui Gichange, Kimani Murira, Joseph Gatheru Njoroge, Paul Gatheru Macharia, Samuel Matu Kamau, John Kariuki, Paul Mungai Kinyanjui, John Kariuki Kamau, Njenga Karomo, Moses Njoroge, Gichia Kamau, Moses Tamoo, Githua Maguathi, Muiruri Mbugua, Ismael Mudachi, James Kamau Waithima, David Kamau Komba, Samuel Kihara Nganga.

<sup>28</sup>In fact, the names of those involved were contained in evidence prepared by the Nakuru Catholic Diocese for presentation to the government (Akiwumi) Commission of Inquiry into the Ethnic Clashes (Affidavit of Francis Gitaari presented to the Akiwumi Commission sworn on 17 February 1999). Francis Gitaari is now in exile.

<sup>29</sup>The use of game rangers in Ntimama's personal militia seemed to be further supported by government actions in 1997. When Ntimama temporarily fell out with the dominant faction in KANU led by Nicholas Biwott and threatened to form his own party, the government withdrew all firearms held by approximately 300 Maasai Mara game rangers and brought in regular police and



On 19 October 1993, the opposition moved to adjourn other parliamentary matters in order to discuss the Enoosupukia "clashes". In the opposition ranks there was very little doubt about who was responsible. Veteran politician, Oginga Odinga, put it most bluntly when he said "the president of this country should stop his ministers from playing about with violence" (*Hansard* 19 October 1993). Ntimama, then Minister for Local Government, defended himself by arguing:

Sir, I want to say that it is the Kikuyu who started the war. I want the honourable men over there to wait and hear what I am about to say. Who started the war? A Maasai was beheaded and his head was taken away as the principle paraphernalia for oath-taking. Our cattle were mutilated by the Kikuyu. Our homes were surrounded and they tried to burn them and we had to have the normal right of defending ourselves.

Sir, I want to say that during colonial times the Maasai were suppressed and isolated. Some people took the same advantage to suppress us and invade our land. They took our schools and everything. Enough is enough.

Ntimama revived colonial imagery of Kikuyu atavistic behaviour- oath-taking and cow mutilation- to paint Kikuyu farmers in Narok as brutal primitive colonizers.<sup>30</sup> These Kikuyu colonialists were driving the Maasai into primitivity by taking away their schools. MP J.N. Mungai responded with a query:

GSU units. (*Economic Review* 19-16 February 1997).

<sup>30</sup>As Rosberg and Nottingham note in their classic work on Mau Mau "the oath by Kikuyu nationalists was used by Europeans as the most important element in the thesis that Kikuyu politics at this time had reverted to primitive atavism" (1966: 261). Cattle maiming took place during the Mau Mau revolt in part as protest against forced destocking of squatter herds. Ntimama was reviving colonial imagery of Kikuyu savagery in his rhetoric, and, hence, was following a practice, noted in Rwanda, of retrieving colonial narratives as a substrate for ethnic ideology (Taylor 1999: 104). My investigations revealed that in Enoosupukia, a cow had wandered into a farm, and was, in fact, slashed by a particularly unpopular Kikuyu farmer. However, this unpleasant incident was not the cause of a spontaneous clash, but was used after the fact as an explanation for the clashes by the organizers of the violence.

My big question to the minister of state and to the government is: why have we turned to "jungle law" against one another? Be it a member of the opposition attacking KANU or a member of KANU attacking the opposition, we have a procedure that should be used. We know that these people were given notice to leave Enosupukia, the so-called "water-catchment area", and before the notice matured, these people were attacked by raiders...Why were those morans allowed by our big security forces to "take the law into their own hands"? (*Hansard* 19 October 1993)

Ntimama never addressed this question. The Kikuyu MPs walked out of parliament en masse. On 21 October 1993, forty-one opposition MPs from all different parties and ethnicities threatened to paralyze parliament if President Moi did not dismiss Ntimama from government. Luhya MP Mukhisa Kituyi, also a sympathetic scholar on the Maasai, issued the following statement:

We are demanding the unconditional dismissal of Mr. Ntimama from cabinet in the wake of his speech purporting to justify genocide as an act of Maasai self-defence.

When parliament met on 26 October 1993, sixty-six MPs disrupted the proceedings by refusing to sit. One MP, Agnes Ndeti, said she would not sit as "we are mourning our dead in Narok." Chanting "murder, murder, murder" they were all thrown out of parliament for "gross misconduct."

These moves in parliament were supported by street protests, particularly in Nakuru, the largest city in the Rift Valley. The mostly Kikuyu *matatu* [small vehicle] owners, who provide most transportation in the area, stopped service around Nakuru. Traders and shop owners supported the strike, and for days Nakuru shut down in protest (*Daily Nation* 30 October 1993). Around the same time a multi-ethnic group of university students in Nairobi and Nakuru confronted riot police to demonstrate against the "clashes" (*Daily Nation* 30 October 1993, *Standard* 24 October 1993), and the Catholic Church wrote an open letter to the president decrying

the “sporadic” violence around the country that nevertheless was “systematic” as “if by design” (*Daily Nation* 29 October 29 1993).

Ultimately, the opposition only succeeded in effectively demonstrating the impotence of parliament in light of sources of power that lie outside of it. Ntimama flaunted his impunity as a member of Moi’s inner circle by saying that “it was only President Moi who could determine his fate since he was the one who appointed him to the cabinet” (*Weekly Review* 29 October 1993). Forgetting their factional fights, powerful patronage bosses lined up behind him. At a rally a few days later on 30 October 1993 in West Pokot, Rift Valley, where more violence was in the works, a group of KANU MPs led by Moi’s right-hand man, Nicholas Biwott, voiced overt support for Ntimama saying he had a right to defend the Maasai “who have been oppressed for too long by the Kikuyus in Enosupukia” (*Weekly Review* 29 October 1993). For his part, President Moi ignored the parliamentary demonstration and kept Ntimama as a minister.

Throup and Hornsby (1998: 564, 580 fn 94) suggest that the Narok clashes were part of a “deliberate internal attempt to sabotage efforts of the reformists” in KANU who were negotiating the new terms for an IMF loan at the time. However, this seems highly unlikely. Aid has never been suspended for human rights reasons alone, and it would be surprising if KANU’s bosses thought there was going to be a change in this regard. In fact, as the National Council of Churches of Kenya wryly noted, as the clashes were raging and the rhetoric of the Moi’s ministers such as Ntimama continued quite openly, “the World Bank and IMF reevaluated their 1991 suspension of aid to Kenya, pledging 850 million US dollars in new aid for 1994, 170 million of that directly going into the Kenyan treasury for balance of payments assistance” (National Council of Churches of Kenya 1995: 11). Donors mentioned their concern about the clashes, but, as previously, the money was disbursed anyway. With the exception of a loss of tourism revenue, the regime paid very little international cost for the “clashes.” This played into the calculations of the *majimboists*, who, very much like the perpetrators of genocide in Rwanda, grew ever bolder with the realization of their impunity.

In the 1997 General Election Ntimama ran again in Narok North, this time unopposed. There were struggles within the establishment for the KANU nomination, but no opposition candidate dared to face Ntimama in a constituency where he clearly had an "iron grip" made possible by presidential support. Even Ntimama's old rival, Lempaka, used a new tactic in 1997. He defected from the opposition to join KANU and struggle from within through the KANU nomination process, a battle he nevertheless lost.

Moi continued to lead the presidential vote in this constituency. However, fewer constituents cast their vote for president, and fewer voted for Moi. Nevertheless, his share of the votes cast was what mattered. Kikuyu constituents, some of whom refused to be intimidated, most likely switched their allegiance from the Kikuyu populist, Matiba, who was out of the race, to the more conservative Kikuyu, Kibaki. It is interesting to compare the number of votes "lost" in between the two elections with the number of displaced people from the Enosupukia clashes. The government claimed at first that only 900 people were displaced<sup>31</sup> and then changed this number to 1,250.<sup>32</sup> The National Council of Churches of Kenya, which was keeping a register at a refugee camp, estimated that there were 10,000 displaced in the camp and as many as 30,000 refugees altogether. This included an estimated 7,090 adults (Human Rights Watch 1997: 97). As we can see below, this is roughly equal to the decline in voters in the 1997 election.

#### **Narok North Presidential Election Results 1992 and 1997**

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<sup>31</sup>Government of Kenya/UNDP, *Programme Document: Programme for Displaced Persons, Inter-Agency Joint Programming* 26 October 1993: 8 cited in Kenya Human Rights Commission 1998a: 20.

<sup>32</sup>In radio broadcasts, in December 1994 the government claimed that there were 1250 "genuine refugees" (National Council of Churches of Kenya 1995: 20).

Candidate	Votes (1992)	Votes (1997)	Difference
Moi (KANU)	22 675	20 775	-1900
Matiba (FORD-A)	10014	–	–
Kibaki (DP)	3138	5095	+1957
Odinga (Ford-K/NDP)	497	450	-47
Total Votes Cast	36 331	26 907	-9424
Total Voters Registered	49 692	46 476	-3216

Unsurprisingly, the land cleared by the eviction of Kikuyu, was not re-forested and “protected” as a water catchment area. Rather, Ntimama’s supporters, fellow Purko clan members from Mosiro in the lowlands, merely grazed their large cattle herds on the vacated land. This generated a new set of inter-Maasai conflicts around the cleared land. The rhetoric of the local government officials of Narok County Council, who supported Ntimama’s eviction scheme, was that there was the need to protect the area as a water catchment area for the Keekonyokie clan living downstream from Enoosupukia. However, members of the Keekonyokie clan are now struggling against Ntimama’s clients over part of the area where they claim historical rights. Ntimama’s Purko clients persist in claiming part of Keekonyokie land on the basis that “they fought for it and so they own it” (Interviews with Enoosupukia Maasai residents, October 2000). In 1998, this simmering dispute led to the deaths of three Keekonyokie clan members (Interview with Keekonyokie clan elder, Enoosupukia October 2000). Conflict has also emerged within the Purko Maasai between more traditional herders and agriculturalists. Although the original Maasai living in Enoosupukia have cattle herds, they are largely farmers. Ntimama’s lowland Maasai clients, who replaced the Kikuyu farmers and traders, are gradually destroying food crops and silting up the wells, the only form of water supply for the Maasai farmers of Enoosupukia.

Inter-Maasai conflict has superseded any original bitterness against the Kikuyu which had existed only as an ember, which Ntimama fed and fanned. The highlands Maasai had extensively inter-married with Kikuyu<sup>33</sup> and relied heavily on their trad-

<sup>33</sup>The Kenya Human Rights Commission has published a partial list of those evicted from the area

ing networks and transportation to sell food crops in the cash economy. The schools in the area were also strongly supported and staffed by Kikuyu and were open to Maasai children.<sup>34</sup> Many Maasai residents expressed dismay that the GSU had dismantled the schools in the area and sold off the building materials for profit. Only in 1998, was one new school built which has the first two primary levels. Since 1993, many Maasai school children have merely stayed at home. By destroying "Kikuyu schools" Ntimama also destroyed educational opportunities for Maasai children as well. In the wake of these adverse effects of the "clashes", anger has been directed at as well as their title deed numbers (1996, 79-82). Many of the claimants have names that reflect, in fact, mixed Kikuyu and Maasai heritage. As Galaty shows those Maasai who leave pastoralism to farm are often perceived as "outsiders". The identity marker of the Maasai is always shifting (1980, fn 5). Hence some of the "Kikuyu" evicted may at one time have been "Maasai"! Indeed, one evicted family I interviewed insisted on its Maasai identity, although the father was a Kikuyu and therefore, according to the "marker" selected by the invaders, the whole family was Kikuyu. Maasai men with Kikuyu wives were generally not affected. Finally, one former refugee leader insisted that they were what they considered "Maasai" families among them and who they felt deserved proper resettlement along with the Kikuyu victims (Interview with former Maela Local Community Committee member, Maela October 2000).

<sup>34</sup>There are very real inequities in educational facilities in Maasailand compared to the rest of the country. This needs to be addressed, particularly as it feeds into the land problem, because illiterate Maasai are more vulnerable to manipulation both by "outsiders" and by the wealthy "insiders". However, Maasai parents tend not to send their children to school, while Kikuyu parents, forced into the cash economy early on in the colonial experience, see school as a critical path of advancement and try all means to get their children through school. As a result in Narok District, there were many Kikuyu children in schools, some who were not even from the district, who fill vacant positions. However, as a recent study noted, "it is not just that students from other ethnic groups take the available places but there does not appear to be any demand for those places on the part of Maasai parents" (Holland 1996, 43). This is particularly true for Maasai girls. Ironically, given Ntimama's attempt to blame this situation on Kikuyu "infiltration" Holland found that "the presence of mothers from certain ethnic groups... has produced positive changes in the areas of diet and rates of educational participation" (1996, 45). Of course, there are profound tensions between these changes and Maasai culture, that require creative rethinking of curricula and school regimen. This will not be solved, however, by blaming Kikuyu children for these deeper problems.

the lowland Maasai interlopers.

With the Kikuyu gone and with emergence of new, potentially violent rifts between the Maasai, Ntimama has avoided going to Enoosupukia. His clients, benefitting from the “clashes”, continue to dominate local councils and control Enoosupukia land. Unlike in the past, there is no one to mediate festering disputes, and the anger among the highlands Maasai is palpable. The consensus among those interviewed was that “the next war” will be among the Maasai in Narok.

One of the striking aspects of the Narok case of “ethnic clashes” is the extent to which it succeeded in keeping a key patronage boss in power without any major costs to the Moi regime. At the local level, Ntimama retained the seat for KANU in two general elections, and, in fact, in the context of massive land alienations, his actions in “sticking up for Maasai rights” were initially popular. Narok North became, as the “*majimbo*” rhetoric prophesied, a “KANU zone.” In addition, the cleared land opened up new resources to buy support through patronage and raise the stakes in the fight for change. By effectively taking land claimed by others, Ntimama’s supporters now had a stronger stake in maintaining KANU and Ntimama in power.

### **Refugees: Unwanted International Attention**

As events in Narok North were unfolding, similar patterns of violence were experienced in Western Kenya, the Coast and other parts of the Rift Valley, mostly around the various epicenters of the *majimbo rallies* and adjacent to the home turf of a small number of powerful patronage bosses similar to Ntimama. By November of 1993, Human Rights Watch estimated that at least 1,500 people had been killed and 300,000 displaced (1993: 1). This growing humanitarian crisis was of concern to local communities and churches, as well as donors and human rights activists.

Unlike in Rwanda where the church became complicit in the killings, in Kenya church groups played a critical role in protecting clash victims and speaking out on their behalf. The Catholic church and the National Council of Churches of Kenya, an umbrella group of Protestant denominations, publicly condemned the violence and

the government involvement in it. As the number of refugees accumulated, the Kenya National Council of NGOs set up an Ethnic Clashes Network (ECN) to coordinate church and NGO relief and advocacy work. Under these internal and external pressures, the government agreed to cooperate with the United Nations Development Program (UNDP) in assisting the refugees. However, the call by the ECN to set up a trilateral commission including the government, UNDP, and NGOs went unheeded.

Throughout, in face of strong internal and international criticism, the regime maintained that the opposition was supporting "a culture of violence" and fomenting the "ethnic clashes". In August 1993, Kerry Kennedy of the Kennedy Human Rights Center, made an unofficial tour of one of the Rift valley "clash" sites in Molo. Later, she issued a stinging statement promising to alert the US government to the deteriorating human rights situation and to recommend that future aid be tied to the country's human rights situation. A few days later, Lord David Ennals of the British House of Lords, a long time friend of opposition politician Kenneth Matiba, also took an unofficial tour of the badly hit areas of Nakuru and Molo. He too made a strong statement condemning government involvement in the violence. Clearly concerned, the very same day the government issued a statement calling it "all lies" (*Weekly Review* 15 October 1993), and on 1 September 1993 the government issued a statement reiterating its position that opposition parties were to blame.<sup>35</sup> The following day the government declared the Rift Valley "clash" areas, Londiani, Molo and Burnt Forest "security zones", effectively sealing them off from the press, international observers and opposition politicians.

By October 1993, the violence had diminished, although the security zones remained in place. The government claimed that "it has now been firmly established that members of the opposition caused the clashes because, when the government

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<sup>35</sup>The statement was signed by the head of the public service and secretary to the cabinet, Professor Phillip Mbithi. In 1996, Mbithi was demoted and resigned from government. In an interview with the *Daily Nation*, he renounced his 1993 position claiming he "was not fed proper information". Instead, he told the reporter, "I believe that a clique of power barons in the government were responsible" (*Daily Nation* 11 June 2000).



moved in and sealed off the areas and the matter was left in the hands of the government and the local communities the violence stopped" (*Weekly Review* 15 October 1993). Of course this does not explain why the government let the "clashes" go on for so long in the first place if it really had the capacity to stop them, nor does it explain why members of the opposition have not been tried for "clashes" if they were, indeed, guilty. Nevertheless, UNDP Representative to Kenya David Whaley held a press conference approvingly noting that the government had managed to get the violence under control so quickly. As journalist Bill Berkeley noted, the "surprise was that the violence ever happened in a security zone" (Human Rights Watch 1997: 55).

President Moi continued a dual strategy of courting donors and professing innocence, while issuing orders to clear away refugees. On 12 November 1993 President Moi addressed a rally in Nakuru where he ordered the provincial administration to settle clash victims, including the Enoosupukia victims, who, he claimed, affirming Ntimama's version of events, had mutilated Maasai cattle and therefore were attacked in retaliation. As the *Weekly Review* noted, this announcement came just as the Kenyan government was working out the details of the K.sh 1.4 billion resettlement programme with UNDP. In case this was misinterpreted by the opposition to mean that the government was backing down on its tactics, the *majimboist* rhetoric continued in full swing. At the end of November 1993, around the same time as Biwott promoted the *majimbo* agenda at a rally in Kericho, Home Affairs Minister Francis Lotodo publicly announced that the Kikuyu had forty-eight hours to leave West Pokot or the Kalenjin community would take the laws into its own hands (*Daily Nation* 29 November 1993, 30 November 1993).

Mushrooming refugee camps drew unwanted international attention. Maela, 50 km east of Naivasha in Nakuru District was one such camp. A look at the fate of approximately 10,000 Enoosupukia refugees at Maela, 50 km east of Naivasha in Nakuru District, further underscores government complicity in the "clashes" and highlights the experience of victims after the violence.

Despite the efforts of local Kikuyu families and church groups, the conditions at

the makeshift camp at Maela were squalid. On 9 November 1993, after representatives of the US Embassy visited the area, US ambassador Brazeal was moved to declare the camp a disaster area and promised US\$25,000 towards shelter and water. The United Nations Development Program (UNDP) had also stepped in to provide humanitarian assistance. Despite these interventions, by the end of the year, twenty-two people had died of disease related to these conditions, including eleven children (Kenya National Council of NGOs 1995: 12).

The government dealt with this unwanted international attention by declaring Maela a restricted area and, in this manner, prevented NGOs, churches, UNDP officials, the press, in short, any outside observers from visiting the area. On 5 January 1994, DO Mohammed Hassan, along with twenty police officers destroyed the camp, justifying the action by suggesting that the refugees were a security threat. When pressed, he admitted to acting on "orders from above" (Kenya National Council of NGOs 1995: 12, Interview with refugees, Maela October 2000). After unprecedented outcry, the government backed down and allowed the camp rebuilt.

Approximately a month after a November 1994 London Investors conference, in which the government's "improvement" in dealing with the ethnic violence was approvingly noted, and less than two weeks after the Consultative Group meeting of donors in which the chair similarly noted that "there had been positive developments" (Human Rights Watch 1997, 86), the government acted on Maela again. On 24 December 1994, DO Hassan entered the camp with police, GSU soldiers, and trucks and announced that residents would be getting *shambas*, small plots of land and "would be celebrating Christmas on their new farms" (Interview with former refugee from Maela camp, October 2000). he called out names and herded people, without most of their remaining possessions, into over twenty government trucks from various Rift Valley district headquarters. To the consternation of UNDP, it would later be revealed that the fuel used to transport these refugees away from their homes was put on the UNDP account (Akiwumi Commission evidence prepared by F. Gitari, Nakuru Catholic Diocese).

In line with the *majimbo* vision, under the cover of night, the refugees were dumped at various places in Central Province. In many cases families were separated, and all the refugees were once again stranded. In response, relief efforts regrouped at the three different sites, Kirigiti, Ol Kalou, and Ndaragwa. On 1 January 1995, a day after Moi criticized UNDP for not providing the government with K.sh 1.4 billion [US\$ 23 million] for resettling clash victims, these sites, in turn, were attacked on orders from "above". The *majimboists* aimed to push these refugees, like so many others, into the anonymity of the growing Kenyan underclass. Many ended up in the Nairobi slums, fueling the already simmering discontent of Kenya's landless, urban poor.

Hundreds remained behind at Maela. When the last truck left, DO Hassan supervised the destruction of their camp by police and youthwingers. In order to appear like the government was settling the "true" victims, the DO selected 200 families, 1,250 people, as "genuine" refugees. These "genuine" refugees were given small pieces of poor quality arid land. This land was at Moi Ndabi, a former government farm. UNDP had originally bought this 3,000 acre farm from the government to re-settle the victims of the clashes. However, the settlement process was turned over to the local provincial administration, which gave each of the 200 refugee families 2.5 acres of the worst land. The remaining land was doled out to Maasai and Kalenjin KANU supporters. Indeed, one Maasai resident of the area, who owns a farm of at least 50 acres, showed me the allotment letter he had received from the government for land at Moi Ndabi.

While the Kikuyu of Moi Ndabi continue to live in fear and poverty, those 300 refugee families who remained in Maela barely survive by working as casual labourers, some traveling long distances to work on the farms of their former Maasai neighbours. One Maela refugee is the former Headmaster of the dismantled Enosupukia primary school. A teacher at Enosupukia for fifteen years, he has been refused a government transfer and hence a salary since 1993 (Interview with refugees, Maela October 2000). Fifty fortunate families from Enosupukia were given free land and assistance by the

Catholic Diocese of Nakuru (*Daily Nation* 19 March 1997). However, I met at least one refugee who had returned from this settlement to Maela, claiming the land the church allotted him was so arid, it was impossible to survive.

After the Maela debacle, UNDP efforts were officially halted. While refugees continue to express appreciation for UNDP attempts to intervene, the UNDP has been severely criticized for its uncritical collaboration with the Kenyan government (Human Rights Watch 1997). The Maela episode could leave no doubt that the president, through his arm in the countryside- the provincial administration, fully supported the violent eviction of Kikuyu residents and voters from Narok.

## Laikipia and the Continuing Violence

It is hardly surprising that prior to the 1997 elections, as a movement for constitutional reforms was gaining momentum, "ethnic clashes" occurred yet again. This time, they appeared in Mombasa, where an anti-KANU movement of Muslim youth was making linkages, via the banned Islamic Party of Kenya, with migrant constituencies from Western and Nyanza Provinces (Kenya Human Rights Commission 1997, 1998b). Violence also re-emerged in the Rift Valley. While the elections were marred by serious violence and rigging, to avoid instability donors legitimized the election.<sup>36</sup>

In the aftermath of the 1997 elections in Kenya, while other presidential candidates acceded defeat, presidential runner-up Mwai Kibaki announced that he would contest the results shown below. Kibaki was alone in his efforts to demand a recount and, through a High Court petition against the president and the Electoral Commission, to challenge the election results on 75 different grounds.<sup>37</sup> One of the complaints was

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<sup>36</sup>The Donors' Democratic Development Group, through urging by the British High Commission, publicly issued a watered down report on the election. One key phrase that was excised was "in five per cent of the parliamentary contests, the irregularities in the poll were so great as to invalidate the elections in these particular constituencies and, consequently the legitimacy of the overall KANU majority in the national assembly" (Cited in *The Economic Review* 23 February-2 March 1998).

<sup>37</sup>Kibaki and his lawyer received anonymous death threats, although the well-connected and highly

that the president had unlawfully declared parts of the republic security zones and in this way prevented Kibaki from campaigning (*Daily Nation* 23 January 1998).

#### **Presidential Election Results 1997**

Candidate	Party	Votes	Percent
Moi	KANU	2,500,865	40.40%
Kibaki	Democratic Party	1,911,742	30.89%
Odinga	National Development Party	667,886	10.79%
Wamalwa	Ford-Kenya	505,704	8.17%
Ngilu	Social Democratic Party	488, 600	7.89%

On 17 January 1998, Cabinet Minister ole Ntimama, his ally Kipkalya Kones, and a number of other Rift Valley MPs held a “post-election victory rally” in Narok. Kibaki’s challenge and what was seen as Kikuyu intransigence, demonstrated by the fact that not one KANU MP won a seat in predominantly Kikuyu areas, became the rally theme. Kibaki’s refusal to accept the Moi victory became the reason for a new round of threats of collective punishment against the Kikuyu, taken en masse to have voted for Kibaki. Another meeting in Nandi Hills attended by MPs Choge, Leting, and Mark Arap Too, also threatened tribal warfare if Kibaki proceeded with the petition. Addressing a meeting in his Keiyo District the same day, Biwott, Minister for East African and Regional Affairs, warned that “Kibaki’s petition was being viewed as an affront not just to Moi, but to the entire Kalenjin community” and warned it would directly affect relations with the Kikuyu (*Economic Review* 2-8 February 1998).

A few days later, well armed Samburu and Pokot raiders, “cattle rustlers”, attacked Ol-Moran village in Laikipia District in the Rift Valley, killing seven people, raping women and burning twenty houses. In another attack at the same time, forty Kikuyu men looking for stolen cattle were rounded up and mowed down (*Daily Nation* 6 May 1998). New fears of “ethnic clashes” immediately led to thousands of visible Kibaki was better protected than his rural supporters.



Figure IV.3: Location of Laikipia District Source: Republic of Kenya 1993b

residents fleeing to the Ol-Moran Catholic Church compound (*Economic Review* 26 January- 1 February 1998) where they stayed, too afraid to return home. “Clashes” then moved into Njoro. This violence followed the same pattern as the 1992 violence: rally, threats, and, then, shortly after, organized raiders. However, these raiders were better armed Pokots and this time the collective punishment meted out to the Kikuyu of Laikipia was used as a pressure tactic to get Kibaki to drop his petition in the courts.<sup>38</sup>

Both Laikipia West and Molo constituencies have large numbers of communities originally from neighbouring Nyeri, Kibaki’s home District. These communities voted

<sup>38</sup>Well armed Pokot raiders were at the same time terrorizing the Marakwet (a “Kalenjin” subgroup). In June 1998, for example, Lotodo “okayed his Pokot tribesmen to punish Marakwet for, among other reasons, voting for the Democratic Party” (*The Star* 26 June-29 June 1998). All fingers pointed to Cabinet Minister Francis Lotodo (Katumba 1998).

heavily for DP in the 1997 elections. They were also the focal point of “ethnic clashes” both prior to the December 1992 and December 1997 elections.

**Laikipia West Presidential Election Results 1992 and 1997<sup>39</sup>**

Candidate	Votes (1992)	Votes (1997)
Moi (KANU)	7562	19 662
Matiba (FORD-A)	5578	–
Kibaki (DP)	31178	39 419
Odinga (Ford-K/NDP)	253	234
Total Votes Cast	45008	50 811
Total Voters Registered	60418	66 393

**Molo Presidential Election Results 1992 and 1997**

Candidate	Votes (1992)	Votes (1997)
Moi (KANU)	35113	11658
Matiba (FORD-A)	55279	–
Kibaki (DP)	5236	43 550
Odinga (Ford-K/NDP)	2177	961
Total Votes Cast	98858	57422
Total Voters Registered	120705	75942

The DP vote no doubt was a great disappointment for KANU. The former DP legislator Njenga Mungai, who had dominated the politics of Molo constituency since 1979, entered into “peace negotiations” with KANU and ultimately defected in order to buy security for his constituents. Indeed, the president himself at a rally at El-burgon in Molo Constituency made a show of presenting 585 displaced people from Olenguruone with title deeds to land in the area (*Economic Review* 1-7 December 1997). However, this “cooperation” cost Mungai his seat. Kikuyu voters failed to be intimidated, switched their allegiance from Mungai and voted overwhelmingly for

<sup>39</sup>Only major candidates are shown. Thus there is a discrepancy between the presidential votes shown and the total votes.

Kihika Kimani of DP as their MP. The Molo case shows very clearly how the use of selective violence through "ethnic clashes" is wielded as a bargaining tool by the regime at both local and national levels. It also shows how the transformative experience of violence under some circumstances can create resistance to overtures of patronage and even "peace".

Moi initially remained silent over the violence. However, when the Donor's Democratic Development Group issued a statement expressing concern over "ethnic" violence and "the slow and ineffective response by security forces", the president charged that inflammatory statements by DP leaders had fuelled hostilities, noting that the only KANU constituencies in Nakuru District, Kuresoi and Rongai, were peaceful (*Economic Review* 2-8 February 1998). This clearly sent the message that supporting KANU was what led to "peace". By this time at least eighty people had been killed and thousands displaced, adding to the already large number of internally displaced people in Kenya. When a furious Kibaki and DP MP Kimani urged Kikuyu to arm themselves and fight back if attacked, they were immediately assailed by KANU hawks for inciting violence.

This continuing post-election violence provoked raucous protest on the opening of parliament, 3 February 1998. The scene is described by the *Economic Review*:

As soon as they were seated, opposition legislators who had met and vowed to disrupt parliament started affixing white arm-bands to mark their mourning for the clash victims. When Moi strode into the chamber shortly after 2.30 pm, they refused to stand in acknowledgement, but rose for the prayers. As soon as prayers ended, Kibaki took the microphone to protest that the House could not proceed with normal business when "genocide is taking place in the whole country". Bedlam broke out as the Kanu benches shouted Kibaki down....

Then from the opposition side...members suddenly whipped out placards that had been folded and concealed under jackets. The placards, huge pink, yellow or white manila sheets, condemning Moi and Kanu as killers responsible for ethnic cleansing and genocide in the Rift Valley, were brandished amidst loud



heckling...

After the swearing in of the speaker, Orengo (Ford-K) stood on a point of order.... Angrily banging the table and gesturing towards Moi, Orengo shouted above the din that the oath all members were about to take required affirmed loyalty to the constitution and the president, who in turn would also swear to uphold the constitution. "I will swear this oath," he shouted, "but the president must also take the oath to uphold the constitution. So that when an assistant minister stands up and says that there will be war if Kibaki's petition against Moi's election goes through, he is subverting the constitution..."

MP Orengo was followed by MP Kituyi (both non-Kikuyu), who made the point that "what was going on in the Rift Valley threatened the very existence of Kenya as a country".

The *Daily Nation* editorialist Gitau Warigi, who observed parliament that day remarked (*Daily Nation* 4 February 1998):

If Kanu had any morally or ethically coherent response to the two MPs, and indeed, to the din the section of the Opposition created, it never came. Other than staring malevolently as Mr. Orengo and Dr. Kituyi spoke, nothing by the way of response that could stand out came from the Kanu side to vindicate their claims that they were innocent of the slaughter....

Indeed, it was clear that the KANU clique had issued orders that no one was to respond to the anticipated demonstration. When Orengo moved a motion of adjournment in order to have a matter of "urgent national importance" discussed, the Speaker responded by citing rules that required parliament to be adjourned until 9:00 the next morning. However, that evening the president signed the proclamation proroguing the House until further notice. Outside parliament that day, brandishing placards which read "No more blood", "Kenya is bleeding", "Down with Power Politics up with sanctity of human life", "Impeach Moi", one hundred activists led a

demonstration march to parliament to protest killings in all areas of the Rift Valley. Seven of the organizers were arrested.

As no security was forthcoming, local Kikuyu communities in Laikipia district took up crude weapons such as sharpened sticks and agricultural tools and formed vigilante groups to protect themselves. On one occasion in Naishe (Lare), fifteen Kalenjin were massacred in revenge. This uncontrolled violence provoked a trip by Moi to the area and unleashed a war of words between politicians at the two separate mass funerals for the Kikuyu and Kalenjin victims. Church leaders, however, turned the mass for 56 Kikuyu victims into a peace rally, with visitors from all over the country expressing their solidarity with the besieged people. A Kalenjin opposition politician from the Rift Valley, Tabitha Seii, came to apologize on behalf of her people. When she told the Kikuyu audience that the killers were paid "little money" to kill by the government and should be forgiven for "they are being used", she received a spontaneous round of applause (*Ethnic Clashes In Kenya* 1998).<sup>40</sup>

A month later, as attacks against the Kikuyu continued, in a statement at state house, Moi claimed that the violence in the Rift Valley was part of a larger scheme "to attain political objectives in favour of certain quarters" (*Weekly Review* 20 March 1998), implying once again that Kibaki was behind the "clashes". By the end of 1998, Molo MP Kimani (DP), still facing the problem of "insecurity", eventually caved in to the pressure and started "peace talks." He was soundly criticized by other opposition colleagues who emphasized the futility of such negotiations. They remarked that "it was regrettable that scores of people are still camped in church compounds more than six years since the tribal clashes rocked the country despite government assurance that peace had been restored" (*Daily Nation* 17 November 1998). Still, this electoral despotism presented difficult choices for MPs unable to assure constituents of a basic level of security.

To ease public pressure, at the end of June 1998, Moi announced a full judicial

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<sup>40</sup>Footage of this funeral, as well as of Laikipia during this violence, was taken by Koigi wa Wamwere (*Ethnic Clashes In Kenya* 1998).

commission of inquiry into the causes of the “ethnic clashes”. By July 1998, chairman Justice Akiwumi and Justices Bosire and Ondeyo were sworn in by the Chief Justice. According to the rules, the Commission could:

- a) refuse to hear any evidence deemed prejudicial to the state security
- b) keep out anyone from the proceedings
- c) keep the public out of any particular session “for the protection of persons, property or reputation of any witness or person being investigated.

Regardless of these limitations, Kenyans came to testify and the accused sent lawyers to take their place and argue for their innocence. Beginning on 20 July 1998, testimony unfolded for over a year and was transmitted to the wider public through the press. Despite the obstruction of evidence by the Commission, the public inquiry was clearly leading to the conclusion that the government was culpable. In turn, the government withheld the inquiry report, which prompted the Law Society of Kenya to sue for its release. By 15 February 2000, lawyer Haroun Ndubi, who was handling the case for the Law Society of Kenya, was receiving death threats (*Daily Nation* 23 March 2000). By January 2001, the report was still being withheld by the government.

## The Aftermath

At the local level, the “ethnic clashes” succeeded in widening the spatial separation of ethnic communities, a goal of the *majimboist* project. It generated profound fear of insecurity, which, in turn, was a political resource for KANU patronage bosses. Lelo (1996) describes Olengurone four years after the “clashes”:

Since 1992, the situation has remained tense. Some of the displaced persons who had hopes of ever returning to their farms have given up. Instead, a number has resorted to selling their land at throw away prices. This has left a lot of

bitterness among the victims. Those who have been stubborn and refused to sell their land are frustrated until eventually they give in.

There is a lot of suspicion among the new arrivals. They fear any stranger who comes around. They are supposed to report immediately to the authorities any new faces they see in villages. It is like people fear foreigners will harm them or, worse still, expose their anti-social deeds to the world.

This fear was a resource which patronage bosses used to win votes. Indeed, the whole Olengurone Division was made part of the new Kuresoi constituency, which was hived off the primarily Kikuyu Molo constituency in 1996, and is now represented by KANU MP arap Koske.<sup>41</sup> While Molo was a particularly large constituency and division was justified, the new boundaries chosen by the KANU regime created a primarily Kalenjin constituency in the heart of this "clash" area. Kalenjin complicity in these "clashes" and the violation of norms of legitimate behaviour created fear of retribution and suspicion of all "outsiders." The pro-KANU provincial administration has become a source of precarious protection. In this way, the votes in Kuresoi are captured for KANU, canceling the opposition vote in neighbouring Molo.

A buffer of fear prevents cross-ethnic coalitions. Hence, these "clashes" allow patronage bosses to police boundaries of their own bases of support, narrowly defined as the dominant ethnic community within their constituencies. Ethnic clashes, then, were not only a strategy to expel unfriendly voters but also a strategy against potential oppositional alliances between those "within" their ethnic base and multi-ethnic communities which had national linkages, and hence, "subversive" politics. Rather than create a united political block with trust based on shared ethnicity, this strategy, following a classic pattern of despotism, atomized people, even those sharing ethnic affiliation. Lelo (1996) continues:

Local people do not fully trust one another. The "tribal monster" is beginning to turn brother against brother. It is, therefore, futile an effort to regard

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<sup>41</sup>After consultations in Nakuru, residents expected the creation of a new Njoro constituency. Instead, the Commission created Kuresoi constituency.

Olenguorone Parish as one homogeneous community. Indeed, there is no such term as “community.” Individuals see themselves as struggling for their own survival, and everybody should fend for himself.

Indeed, while land has changed hands, the aftermath of the “clashes” often means increased hardship for those who remain behind, including those who, according to the *majimbo* rhetoric, were supposed to be the beneficiaries.

There were also adverse economic effects. In Londiani roughly eighty percent of the town’s businesses were run by Kikuyu who used their extensive networks to bring goods and services to this region of Kipkelion Constituency. After 1992, the Kikuyu were gone, many having sold their generally modest pieces of land at highly deflated prices. In Londiani, Molo, and other former “clash” areas, commerce declined and, as old trading networks ruptured, many basic commodities, once readily available, were no where to be found. One poor Nandi, who experienced the clashes in Uasin Gishu District, told me, “if people who were chased away were businessmen who were cultivating, now the people who remained are poor and can’t get anything because the people who were chased away were providing the goods and necessities. Now they see it is wrong to chase people” (Author’s Interview with witness of Uasin Gishu clashes 30 June 1998).

The general productivity in many areas has declined, because land lays idle. Some of the displaced stubbornly refuse to sell but are unable to plant. Indeed, after the first wave of violence, the government itself recognized that “production in the Rift Valley and certain parts of Western province was hampered by tribal clashes leading to abandonment of farm activities at critical periods of land preparation, weeding and harvesting” (Republic of Kenya 1993b: 114). During the “clashes” school children of all ethnic communities suffered as teachers were killed or fled and schools shut down. In the aftermath, formerly cosmopolitan schools, that once fostered language skills as students interacted in the national languages were emptied of teachers and students. In many areas the best teachers have not returned. Finally, many of those who were promised land for participating in the raids were left out in the cold as wealthier

people, including the well-connected, bought land at depressed prices.<sup>42</sup>

### The “Clashes” and Property Rights in Land

While the state, through “clashes”, withdrew the private rights to land of small holders in settlement schemes, many people continued to attempt to recover their property, risking a return to their land, or staying in town centers or church compounds and venturing out to their farms to plant during the day. In light of government complicity in the “clashes”, few used the courts to try to get their land back (African Rights 1996: 82) and, in fact, the ruling clique was able to control the courts through the famous *nolle prosequi*, an order from the Attorney-General to take over a case, effectively killing it.

This was illustrated in May 1995 when two victims from Narok, Kairu Mbugua and Kahindi Gitari, attempted a private criminal prosecution against Ntimama.<sup>43</sup> Thousands of armed Maasai in traditional garb, trucked in from Narok as well as other districts, packed a surprised Nairobi High Court. The intimidation was a public display of power rather than an attempt to influence the case which was already on its way to being thrown out of court. Deputy public prosecutor Bernard Chunga was ordered by the Attorney-General, and therefore the president, to “take over the case” and discontinue it (*Economic Review* 22-28 May 1995). A higher level Maasai politician, John Keen, justified the actions by saying, “this court case was intended to embarrass the Maasai community and we shall not allow it.” (*Economic Review* 22-28 May 1995). While the Maasai later gathered for a rally in Nairobi without interference from the police, the police stopped a workshop on land rights, utilisation and equity by the Citizens’ Coalition for Constitutional Change. On 18 October 1995, Nairobi lawyer for the victims, Mbuthi Gathenji, was arrested by the Criminal

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<sup>42</sup>For example, clash victims in Western Province were selling their plots at K.sh 30,000/acre when the market rate was K.sh 50,000-K.sh 65,000/acre (Human Rights Watch 1997: 74-75).

<sup>43</sup>The charges were “incitement to violence” for his threats during the *majimbo* rallies, under the Penal Code Cap 63, which is often used against opposition politicians.

Investigation Department and charged with “publishing an alarming publication” for his court statement in the prosecution.<sup>44</sup>

With legal avenues clearly blocked, some refugees attempted to use bureaucratic avenues to get their land back. This proved an equally difficult path:

Those displaced who attempt to report the illegal occupation or transfer of their land to the government are sent futilely from one office to the next until they finally are forced to give up.... The government has taken no steps to address the irregularities in land ownership and sales resulting from the violence, portraying the problems as mere contract disputes that need to be dealt with by the affected individuals (Human Rights Watch 1997: 72).

The displaced often have few options except to live in rental shacks in small towns. Others returned to a badly crowded rural “home area.” Many, including a large number of children, swelled the shantytowns around Nairobi, Nakuru and Mombasa. Not even there were they safe from violence as slum demolitions and attacks on hawkers made life precarious.

With the Kikuyu and other “outsiders” gone, class awareness among those who remained in ethnically “purified” communities often increased. This experience has deepened with the dynamics of “land grabbing”- the illegal and illegitimate transfer of land ownership in which vacated land is rarely redistributed to local landless. Unsurprisingly, the “clashes” did not address the problem of landlessness among the Kalenjin, Maasai or coastal peoples. The appeal of *majimboism* to “minority” Coast and pastoralist peoples was, in part, the notion that local control of land would be returned and the process of marginalization halted. The reality behind the process of *majimbo* politics was quite different. In Olenguruone, for example, Lelo (1996) observed:

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<sup>44</sup>This part of the Penal Code is frequently used to arrest political opponents. See Appendix A for an example of this formal charge against a grassroots (ie poor) activist in Nairobi engaged in a campaign against the illegal privatization of the local playground. Note the high level of bail which is nearly impossible for an average Kenyan to afford.

The influx of “rich and influential people” to grab land, which has been vacated by retreating tribal clash victims, is marginalising more and more people. Some people, who have lived in the area for many years and assumed they owned the land, merely by birth, are suddenly finding they are squatters. Unscrupulous people are organising and acquiring title deeds in Nairobi and forcefully evicting occupants. The people, who were displaced by tribal clashes, are being joined by a new crop of landless people. Thus, groups of former bitter enemies are being brought together by the discovery of common enemies, the land grabbers.

In the aftermath of the “clashes”, with deep scars of violence separating Kenya’s peoples, a growing critique of the “clashes” emerged from below. As public land, including prominent public sites, were irregularly privatized by “private developers” well-connected businessmen, and politicians in a frenzy Kenyans called the “land grabbing mania”, this critique grew.



## Chapter V

# Kenya's "Tragedy of the Commons": The Land Grabbing Mania 1990-2000

*While the whole Power of the State is confided to Man of Landed Property, it may be truly said, they have the means of LIFE and DEATH in their hands.*

*J. Baxter 1795*<sup>1</sup>

Independent Kenya has created a political class akin to the aristocracy in feudal Britain, a class that does not work with its hands but lives off the sweat of the nation...

Nation Editorial 1998<sup>2</sup>

At the same time as Kenyans experienced the "ethnic clashes", instances of bold and irregular privatization of public lands were escalating. "Private developers" were taking over prominent public sites from playgrounds to settlement schemes meant for the poor. As we have seen in chapter II, irregular privatization of public lands was not new, and in fact was an integral aspect of the Kenyan patrimonial system. However,

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<sup>1</sup>From E.P. Thompson (1966: 138).

<sup>2</sup>The full editorial is found in the *Daily Nation* 14 March 1998.

in the 1990s this irregular privatization appeared to accelerate and involve a reckless disregard for community norms. This chapter examines in detail the politics of this “land grabbing mania”, as this process is often called in Kenya. It presents evidence that irregular allocation of land is part of the complex process through which key patrons in the Moi regime attempt to reinforce their control over lower level clients in the provincial administration and the party and raise the stakes for change in the multi-party context. It argues that by accumulating funds through the irregular sale of public lands to “private developers” who, in turn, contribute to election campaign funds, higher level members of Kenya’s ruling clique help finance their hold on power. By scrutinizing the intense contestation around “land grabbing”, this chapter also demonstrates how Kenyan “popular sectors”, rural communities, and some middle class activists are forming local and national publics to challenge both the principles and material foundations of patrimonial rule. In sum, this chapter investigates the ways in which Kenya’s “land grabbing mania” reflects a strategic response on the part of the ruling clique and their clients to a reconfiguration of the field of power described in Chapter III. It also shows how this has triggered trans-ethnic, nationalist mobilizations, a potential counter-politics to the divisive politics described in the last chapter.

## Measuring the Land Grabbing Mania

Within Kenya, “land grabbing” broadly connotes irregular appropriation of land regardless of its precise legal status as “private” or “public”. In the 1990s, with the dramatic appropriations of Government and Trust land, the term primarily came to refer to the attack on public land. Editorials in the press throughout the 1990s argued that this land grabbing situation seemed to “be getting uglier by the day” (*Daily Nation* 1 March 1999). In a 1996 case brought against “private developers”, a High Court of Kenya judge observed that “over the last few years, and in the recent past,

dealings in land have become more and more precarious".<sup>3</sup> MPs regularly rose in parliament to decry cases of "land grabbing" in their constituencies.

The grabbing was so bold and frequent that even government officials could not deny that "the mania" was a problem. For example, Cabinet Minister Maalim Mohammed admitted in parliament that "land grabbing is on the increase" (*Daily Nation* 25 April 1997). More surprisingly, on 26 October 1999, the Minister for Lands and Settlement Joseph Nyagah suggested that his ministry had adjudicated and allocated over half of the entire country (*The People* 27 October 1999). This clashed with official statistics which showed the vast majority of the Kenyan land remained unalienated Trust or Government land (Republic of Kenya 1991, 1998).

However, a glance at government statistics on the amount of land under the various forms of tenure reveals that the 1998 statistics are identical to 1990 statistics. Over the decade, the government gave no indication of how much public land, in the form of Trust and Government land, had been privatized. In the case of forests, a comparison of the official statistics from the table below with other sources, including the government's own Kenya Indigenous Forest Conservation Programme figures, suggest that the rate of forest loss was at least 5,000 ha annually (KIFCON 1994: 5, Greenbelt Movement 1999). Between 1990 and 1998, then, at least 400km<sup>2</sup> of forest have disappeared, and this did not show up in the official statistics.<sup>4</sup>

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<sup>3</sup>The text of Judge Mbogholi's ruling in Civil Case No. 3063 of 1996 is reproduced in *The Economic Review* 5-11 May 1997: 6.

<sup>4</sup>Not all of this devastation was caused by land grabbing. The "ethnic clashes" involved a number of cases of farmers burning down forests where they believed informal militias to be hiding. For example, in the first week of March 1992, the Rift Valley Provincial Officer revealed that 1,700 ha [1.7km<sup>2</sup>] of forest was burnt down (*Daily Nation* 12 July 1992). This thesis provides evidence for the contention that environmental degradation tends to accelerate with civil strife (Deacon 1996), opposed to the notion that environmental degradation along with population growth are "root causes" of Kenya's "ethnic clashes" (Kahl 1998).

**Land Tenure in Kenya 1980, 1990, 1998: Official Statistics (km<sup>2</sup>)<sup>5</sup>**

TYPE OF TENURE	1980	1990	1998	% (1990)
<b>GOVERNMENT LAND</b>	117, 878	116,068	116, 088	19.9
Forest Reserves	9,125	9,116	9,116	1.6
Other Govt. Reserves	1,245	1,970	1970	0.3
Townships	1,911	2,811	2,831	0.5
Alienated Land	37,013	38,546	38,546	6.6
Unalienated Land	34,858	28,598	28,598	4.9
National Parks	22,653	24,067	24,067	4.1
Open Water	11.073	10,960	10,960	1.9
<b>FREEHOLD LAND</b>	7, 135	8, 731	8,731	1.5
Smallholder Schemes	5, 016	6, 615	6,615	1.1
Other	2, 119	2,116	2,116	0.4
<b>TRUST LAND (not for registration)</b>	34,965	59,625	59, 625	10.2
Forest	7,092	7084	7084	1.2
Government Reserves	443	492	492	0.1
Townships	1, 398	1, 812	1, 812	0.3
Alienated Land	13,915	33,397	33,397	5.7
Game Reserves	9,285	13,691	13,691	2.4
National Parks	2,832	3,149	3,149	0.5
<b>TRUST LAND (For Registration)</b>	425, 341	397,366	397,366	68.2
Already Registered	27,217	27,279	27, 279	4.7
Not Yet Registered	398,124	370,087	370,087	63.5
Total Water	11,320	11,230	11, 230	1.9
<b>TOTAL AREA</b>	582, 646	582,646	582,646	100

The minister's claim that half the country had been adjudicated, if true, would suggest that large swathes of Kenyan land were allocated in the last decade. This

<sup>5</sup>Source: Republic of Kenya, *Statistical Abstracts*, 1983, 1991 and 1998.

would constitute a remarkable acceleration in land privatization and a massive unofficial transfer of land, worth billions of dollars. While some privatizations may have followed legal procedures and in fact, from this point of view, be legitimate, a great deal of evidence is accumulating that many privatizations were irregular and involved the transfer of public assets to clients of the Moi regime. One indication that these irregular land transfers were rapidly occurring was the increase in reports of such transactions in the Auditor-General's reports.

By the latest 1995/96 Report, these transfers included the Kenya Agricultural Research Institute land with buildings and equipment worth K.sh 2,360,825 [US\$39,000]. The Report suggested the land was allocated to prominent personalities based on circulars issued by the Head of the Public Service/Secretary to the Cabinet and then Rift Valley Provincial Commissioner (Republic of Kenya 1999b). In another case, 210.284 ha of Kabete Veterinary Laboratory Land was allocated. The report also noted that "the scanty records made available for audit review" from the Ministry of Livestock suggested that at least 12,370.43 acres had been encroached upon, in part, for "settlements." In yet another case, land bought for the Eldoret airport, land which was irregularly allocated in the first place, was bought back by the government at enormously inflated prices. A private valuer for the vendor put the value at K.sh 316,508,000 [US\$ 5 million]. However, the estimate by the Department of Lands was K.sh 17,184,234 [US\$ 280,000]. The government accepted the private valuation and included a payment of K.sh 10,650,000 [US\$ 180,000] as "unsupportable charges". Another concern was 576 government plots (with houses) in Nairobi and other urban centers (Republic of Kenya 1999a, Republic of Kenya 2000, 377-398).<sup>6</sup>

Yet another sign that irregular land allocations were on the increase was the trend, beginning at the end of 1989 and intensifying throughout the 1990s, towards official authorization of "the worst types of slum clearances" in Nairobi, "all too reminiscent of the colonial period" (Macharia 1992: 230) in which land was reallocated from under the feet of the poor. This trend was noted by numerous Kenyan commenta-

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<sup>6</sup>The Auditor-General urged that all para-statals be issued title deeds to avoid irregular allocation.

tors, human rights organizations (Human Rights Watch 1991, Kenya Human Rights Commission 1996b), church organizations (National Council of Churches of Kenya 1991) and scholars of the “informal sector” (Ikaria 1991, King 1996, and Macharia 1992). Kituo Cha Sheria, a legal aid organization, which has been working with the urban poor in Nairobi since the 1970s, circulated a memo expressing concern for the “increase in the number of the urban poor targeted for eviction in the 1990s” (*Daily Nation* 26 April 1997). This pattern was largely ignored by political analysts of Kenya’s transition process who focussed on political party formation and the politics among the political class in general. However, this disturbing trend clearly coincided with emerging pressures for change and suggested a potentially important relationship between them. As we shall see, although the attacks on slumdweller took more overtly class overtones than the “ethnic clashes,” a careful look at the attack on Nairobi’s urban poor gives the first indication of the wider pattern of the deepening of local despotism with multi-party politics.

Like canaries in a mine-shaft, Nairobi’s “popular sectors” were some of the first to be affected by “the land grabbing mania” in early 1990. However, no area of the country remained untouched by the “mania”. Land used by the poor in other urban centers for informal housing and marketplaces was increasingly targeted by “private developers”. With a new boldness, these “developers” proceeded to take over other prominent public sites, many affecting middle class Kenyans as well. Such sites included playgrounds, schools, public toilets, road reserves, court grounds, mortuaries, cemeteries and bus stations. Rural areas, too, experienced this intensification of the land grabbing phenomenon, including pastoralists areas and settlement schemes, particularly on the Coast and Rift Valley, with the fertile and scarce public land of Central Province also badly affected. The map below shows the rough geographic distribution of land grabbing cases reported in various local press sources from January 1990 to June 2000. It indicates that every region of the country experienced land grabbing, albeit to lesser or greater degrees.<sup>7</sup> Events in the capital were mag-

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<sup>7</sup>For a full list, by region, of the stories about land grabbing that hit the press since 1990 see

nifications of thousands of local struggles around grabbed public land occurring in smaller towns, rural, pastoral and forest areas across Kenya.

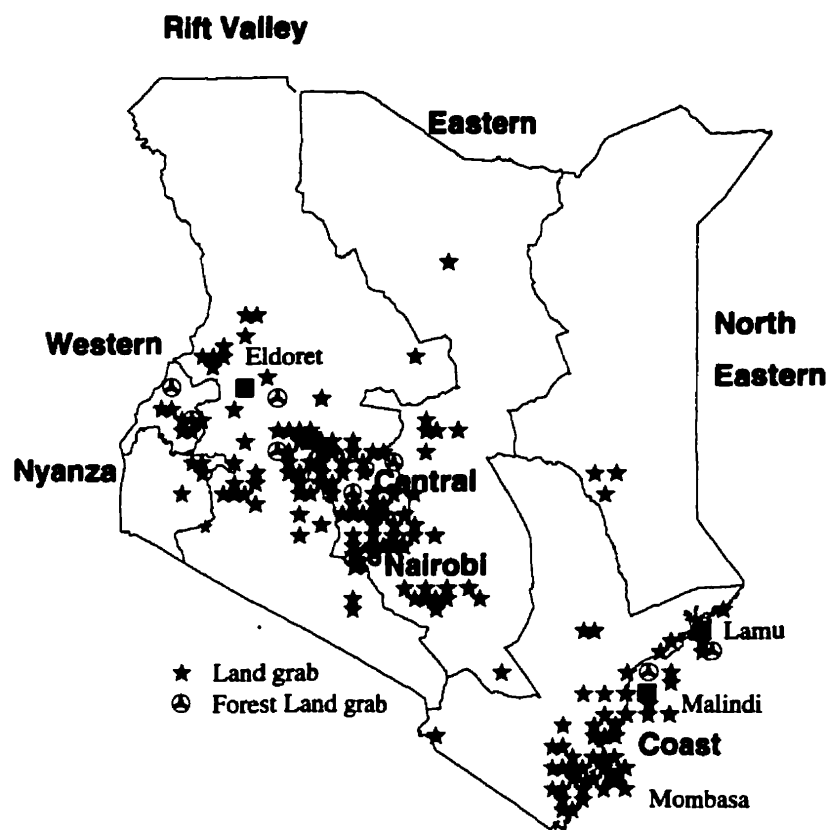


Figure V.1: Regional Distribution of Land Grabbing

While these reports on land-grabbing partially reflect greater press freedom, it is unlikely that this effect alone explains the explosion of land grabbing cases. Evidence suggests an increase in manipulation of access to and ownership of land as the regime faced emerging oppositional forces, and, by 1992, competition from alternative parties. In the next sections, beginning with the early attacks on the urban “popular sectors”, I present the dynamics of the irregular privatizations of land, their linkage to transition dynamics, and the often spirited contestation and mobilization that emerged against this highly visible form of corruption.

Appendix B. The intense land grabbing in Narok and Kajiado Districts involving Group Ranches were no doubt under-reported.

## Muoroto and the Beginning of the Attacks on Urban Villages

When, in March 1990, Rubia and Matiba, two disaffected Kikuyu cabinet ministers, both from Murang'a, called a press conference to announce their support for a multi-party system, they were clearly soliciting the support of what Furedi (1973) has called the "crowd": the unemployed youth, small-scale traders, artisans, taxi drivers, the heterogenous urban poor or "popular sectors".<sup>8</sup> Around the same time, on 26 March 1990, part of the "urban crowd" at the bus station, popularly known as "Machakos Airport", engaged in one of the first major street battles in the capital. Matatu touts<sup>9</sup> defied the bullying groups of KANU youthwingers<sup>10</sup> at the station. It is likely that the youthwingers intensified their attacks on the touts as part of the onslaught against dissent. For their part, the touts reached an unbearable level of frustration and resisted the harassment. The youthwingers retreated but returned with administration police with the aim of punishing the unruly touts. These combined forces still encountered fierce resistance. A reporter on the scene heard many touts complaining "We have no one to speak for us. Touts are human beings. We have no freedom" (*Daily Nation* 27 March 1990). Two days later, City Commissioner and KANU client, Fred Gumo announced a plan to demolish about 7,000 "undesirable" kiosks.

Two months later, on 25 May 1990, shortly after the president held a rally in Nairobi to counter Rubia and Matiba's moves, there was a brutal attack on the

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<sup>8</sup>The "popular sectors" are defined as the disadvantaged in highly unequal societies characterized by limited life chances and consumption possibilities (Oxhorn 1998: 231).

<sup>9</sup>Matatus are local privately owned vehicles which provide a great deal of the transportation for most Kenyans. Touts are poor young men who make a meager wage by funneling passengers to these vehicles.

<sup>10</sup>Youth for KANU was formed in the 1980s and ended up being a means to intimidate anti-party elements. Their indiscriminate use of force made them very unpopular and the focus of complaints to the provincial administration. In the multi-party era, youthwingers are used as "an extra-legal instrument of intimidating and repressing pro-opposition sectors of society" (Kenya Human Rights Commission 1998a: 12).



urban poor. Hundreds of Nairobi City Commission *askaris* [administrative police], riot police, KANU youthwingers and bulldozers violently demolished Muoroto, a densely populated shantytown about three miles from the city center. While slum demolitions have been a regular feature of Nairobi politics since the colonial period<sup>11</sup>, the attack on Muoroto was widely perceived as “the most violent eviction ever witnessed in Nairobi” in the post-colonial period (*Standard* 29 May 1990). Significantly, for the first time, nearly a year before the 1991 *majimbo* rallies, in the struggle over the land on which Muoroto village lay, land grabbing, violence and ethnicized anti-multi-party rhetoric emerge as interconnected political themes.

The actual target of the eviction was, ostensibly, the hundreds of owners of kiosks or open air garages along Landhies road, next to the city bus station, “Machakos airport”. This informal settlement area originated in 1984 when the city commission allocated some space to hawkers to put up stalls. A village grew up around the economic opportunities the space provided as rural migrants saw it as a good location for business. This urban village of approximately 3,000 small scale traders, artisans and their families was recognized by the City Commission through the licenses that were awarded to the residents to ply their trade. However, in 1987, a half acre of space on Landhies road was allocated by the City Commission to its own Cooperative society, NACICO, which wanted to build offices there (*Weekly Review* June 8 1990). While this allocation most likely followed the legal procedure of the unaccountable Nairobi City Commission appointed by the Minister of Local Government, there was no locally elected civic leader to represent the interests of Muoroto residents.<sup>12</sup>

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<sup>11</sup>During the colonial period, Nairobi was essentially viewed as a white area, because Africans were deemed “tribal” and, thus, rural. As landlessness and desire for consumer commodities grew, Africans came to the city in search of wages, but they were living there “informally” and, hence, their housing situation was generally abysmal. See Hake (1977) and Kobiah (1978) for more details on the colonial origins of informal urban settlements.

<sup>12</sup>The Nairobi City Council was dissolved in 1983 and replaced by a centrally appointed commission in order to “clean up” corruption and nepotism. This was to be a temporary two year measure. However, it was only in 1992, with multi-party politics, that civic authorities were reinstated. Thus, at the time, there were no elected civic officials to represent the interests of the Muoroto residents

Nevertheless, not only was the half acre actually targeted, but the entire village area around the half acre. Further, in contradiction to the NACICO claims, the Assistant Director of the City Inspectorate, Johnson Wahome, told the press that “the place being demolished was going to be used for the expansion of the bus stage and added that the commission was going to put up a shopping centre complex” (*Standard* 26 May 1990). Indeed, the *Weekly Review* noted that both Wahome and his boss, Hassan Kaittany, the Director of the City Inspectorate,

watched as the bulldozers razed the village, knowing full well that it was not the target of the demolition. If anything, Wahome featured prominently on KTN (Kenya Television Network) seemingly playing to the cameras as he directed a bulldozer into the Muoroto shanties (*Weekly Review* 8 June 1990).

To show his support for the allocation of the land in question, the Minister for Local Government, William Ole Ntimama, suggested that the property in question was not city land but was, in fact, *private* land. Justifying the actions against Muoroto, he said, “we can not allow people to trespass on other people’s property on the pretext that it was their land” (*Standard* 28 May 1990). These contradictory claims seemed to provoke the view of many of the squatters, as well as their church leaders, that land grabbing was implicated in how their village became a target for “clearance”.<sup>13</sup>

The vigor and brutality of the attacks, along with the way in which the Inspectorate officials seemed to play to the television cameras, suggests that this was not only a calculated eviction but a public display of power. This display of violence against Muoroto village, however, appeared to violate a certain moral consensus within parts at the commission.

<sup>13</sup>This suspicion would later turn out to be well-founded. In 1994, it was revealed that the land around and on the bus stand was in fact allocated to well-connected figures, including Machakos KANU branch chairman, Mulu Mutisya. This secret allocation was contested through a court struggle initiated by the Machakos Public Transporters Self-Help Group. This group insisted that the land was still public and, hence, that revenues collected should go to the City Council rather than Park Towers Ltd, which claimed to have leased the land from Mutisya and associates (*Weekly Review* 2 December 1994, *Economic Review* 28 April- 4 May 1997, *Business Africa* 3 July 1998).

of Kenyan society about the limits of state repression; it provoked an unusual degree of public condemnation among church figures, journalists, and even dissenting KANU politicians. It was one of the first major cracks in the repressive silence imposed by the KANU regime, with the press daring for the first time to openly criticize the government.<sup>14</sup> Indeed, the Muoroto residents themselves would be the first to openly challenge the presidential position over this affair. They were, in fact, some of the first Kenyans to openly and directly challenge any presidential position at this time.

Middle class critics of the Muoroto violence drew on the notion of an inclusive national community of which the poor were an essential part as members of the same churches and providers of essential and cheap services in a harsh economic context.<sup>15</sup> Outrage was, perhaps, more vocal because the government, supported by many donors including the World Bank, officially supported alternative income generation among Kenya's large and growing number of unemployed poor. Countering the rhetoric of Gumo and Ntimama that the victims were "unsanitary" carriers of pollution and "thieves", these critics reiterated their identification with these "ordinary Kenyans." Maverick politician George Anyonya, wrote to the *Daily Nation* calling the Muoroto affair "a serious slur on the moral and political conscience of the nation" and a "national scandal" (*Daily Nation* 31 May 1990). A clearly enraged columnist, Wahome Mutahi, expressed the sense of moral violation evoked by the event:

I feel angry and any right thinking Kenyan does at the site of a well-fed city *askari* confronting a frail grandmother whose only crime is hawking vegetables from house to house. That *askari* young enough to be a grandson of the *mama*, grabs the woman and her luggage and tosses them both into a City Commission vehicle as if they were refuse (*Daily Nation* 28 May 1990).

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<sup>14</sup>The significance of Muoroto as the first event to evoke criticism from the press in this sensitive period has also been noted by Grignon (1994: 7).

<sup>15</sup>As we noted in Chapter III, many middle class Nairobi residents use the services and buy the products of these members of the "informal" sector. Indeed, one MP was caught in the melee as he dropped his car off for repair at an open air garage.

When pushed to justify their actions by this unprecedented outcry, City Commission officials, clients of the Minister of Local Government who appointed them, shirked responsibility. Indeed, the Minister for Local Government defended the City Inspectorate saying, "Mr. Keittany should not be singled out for blame because he had taken orders from his superiors" (*Standard* 2 June 1990). Mr. Keittany's superiors were not revealed. Fred Gumo, the Nairobi City Commission Chairman, denied knowledge of the attack.

The Muoroto eviction occurred within the context of a fledgling debate on multi-partyism. Moi and his client ministers were attempting to pre-empt a debate on the issue in Kenya. To this end they articulated an anti-multi-party rhetoric that emphasized the ethnically divisive effects and potential violence of allowing alternative parties. Indeed, Muoroto coincided with rumors of "seditious" materials circulating, particularly in Murang'a, a Kikuyu area. In a context of emerging dissent, emphasis in the party was on loyalty, precipitating a crack down on potentially "disloyal" or "unpatriotic" elements both inside and outside of the party. This closing of political space, in fact, served to create greater disaffection.

While much focus on Kenya's internal pressures for change focussed on church leaders (Sabar-Friedman 1995, 1997, Throup 1995), and then, later, disaffected politicians who spearheaded change in Kenya, key state actors, such as the centrally appointed Nairobi City Commissioner, Fred Gumo, were highly sensitive to the disaffection among the urban poor, many of whom had links to their rural homelands<sup>16</sup> and who historically were the basis for the mass movement against colonial rule (Furedi 1973). Indeed, it is this "crowd" that opposition politicians would appeal to for support through mass action. One opposition politician told me, with exaggeration given the rural bias in electoral boundaries<sup>17</sup>, to win over Nairobi was to win over the nation (Author interview with Charity Ngilu, 14 November 1999).

As small-scale traders or hawkers, matatu touts, and artisans, the multi-ethnic

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<sup>16</sup>For a discussion on how these networks get created see Curtis (1995).

<sup>17</sup>Gerrymandering has meant that Kenya's urban populations are under-represented by the current constituency boundaries. See Fox (1996) and Institute for Education in Democracy (1998: 6-9)

urban popular sectors are predisposed to resistance. They face daily harassment and indignities as they attempt to ply their trade and survive under difficult conditions, experiencing state repression more intimately than most sectors of the population. It is, quite simply, part of their everyday life.<sup>18</sup> Hence, as Macharia stresses (1992: 230):

From the point of view of those in power, the slums constituted a political (rather than a public health) "nuisance", mainly because they were thought to be harbouring and/or creating political activists who were supporting the call for the end of the single-party state.

In a context of uncertainty, this political "nuisance" was increasingly dealt with through violence.

This violence was also connected to the aspirations of the head of the Nairobi City Commission, Fred Gumo. With an eye on the Nairobi KANU branch chairmanship, and eventually a parliamentary seat, Gumo was competing to become a higher level client in the Moi regime. By cracking down on the potentially problematic Nairobi "crowd" in this critical period, Gumo expected to demonstrate his loyalty and usefulness to the Moi regime and his patron Ntimama, the Minister for Local Government and Physical Planning. This helps explain the trend towards more violent evictions. Thus, the nationally televised display of brutality against the Muoroto residents served as a powerful reminder of how violence could be wielded against opponents of the establishment.

This message was perceived by some as subtly targeted at Kikuyu, particularly those from Murang'a, the home of the vocal proponents of multi-party politics, Matiba and Rubia. Such a link was possible, because rural migrants tend to use social

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<sup>18</sup>A 1977 survey in Nairobi found that 16 per cent of "informal sector" workers experienced harassment by city council *askaris* and 18 per cent said they gave bribes to inspectors and *askaris* with this number jumping to 29 per cent for those workers involved in trade (House 1984: 283). It is likely that such a survey today would find higher numbers, both because respondents would complain more freely and because incidents of harassment have increased.

networks to find work in urban areas and thus tend to concentrate in certain areas. Hence, "this important urban phenomenon helps to explain why any authorized demolition of homes is almost certain to be interpreted as an 'attack' on an identifiable people, not merely a slum" (Macharia 1992: 223). Muoroto, predominantly Kikuyu, elicited such an interpretation from Assistant Minister for Agriculture, Maina Wanjigi, MP for the area. The MP angrily compared the Muoroto eviction to "Operation Anvil."<sup>19</sup> To understand the implied metaphor it is necessary to underscore that colonial officials singled out the Kikuyu, who tended to spearhead clandestine anti-colonial organizing, as "undesirables" and "criminals" in ways that are echoed in the rhetoric of Minister for Local Government Ntimama, a former official in the colonial regime.

In an attempt to counter official attacks on Kikuyu "subversives" Wanjigi drew on KANU's legitimizing ideology as a party which fought for independence and evoked the Kikuyu contribution to the independence struggle. He drew on the Kikuyu suffering in the struggle for independence as an argument against state harassment of hawkers: "some of those people fought for independence and should be left alone," he told a reporter (*Daily Nation* 31 May 1990). Wanjigi was clearly infuriated by the actions of the Commission which had occurred while he was out of the country and without his being informed. By attacking his constituents, the City Commission had undermined his local support and crossed into his territory. Further, the move on his constituents broke an agreement that supposedly had been reached a few weeks earlier between the city commission, KANU officials and MPs, that the city would not make a move without first informing the MP and provincial administration officials concerned. Wanjigi's anger pushed him to an impolitic attack: he called for the resignation of Gumo. This move by an MP and lower ranked patronage boss against the appointee of the Minister of Local Government, Ntimama, galvanized a

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<sup>19</sup>Recall from chapter II that this was the brutal colonial operation in which 24,000 Kikuyu and members of the related groups of Embu and Meru were rounded up and evicted from the city for sympathizing with Mau Mau subversion of colonial rule.

campaign against Wanjigi. Ntimama, his client, Gumo, and other KANU stalwarts assailed the MP for failing to uphold the principle of “collective responsibility,” being a “tribalist”, and inciting his constituents against the government. In sum, Wanjigi erred in challenging the lines of command in the patrimonial regime.

Wanjigi’s error was also reflected in the president’s response to the Muoroto affair. It is important to examine this presidential response carefully, because it marks the beginning of a pattern that would emerge as the push for multi-party politics gained momentum. First, he condemned the attack as inhuman and denied that the government knew about it in advance, even though the Nairobi provincial commissioner was also on the City Commission. The president also issued a statement that a committee would be formed to investigate responsibility for the eviction and promised that no more evictions would be allowed. Thus, he set himself up as a protector of the weak.<sup>20</sup> Second, Moi criticized two church leaders, Archbishop Kuria and Reverend Njenga, both Kikuyu, for “telling lies” in challenging the official version that no one died in the violence.<sup>21</sup> Third, he attacked dissenters within the party and protected his higher level clients, Ntimama and Ntimama’s client Gumo. By carefully attacking only Kikuyu dissenters and Wahome, who was involved in the demolition, the president purposefully ethnicized the Muoroto affair, diverted attention away from those responsible for the violence, and reinforced the common interpretation behind the event with its barely veiled threat against “subversives.”

In his reaction to the dissent evoked by Muoroto, from both within his party and the wider society, the president was drawing on a rhetoric linking “tribalists” to multi-party advocates. In his speech to the nation he instructed the Nairobi KANU chairman, Mungai, to “deal with tribalists in the city”, a reference to Wanjigi. Further, he accused the Kikuyu Assistant Director of the City Inspectorate, Wahome,

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<sup>20</sup>Moi would periodically resort to commissions as a method to defuse public anger. When the commissions would arrive at unpalatable conclusions, the reports would be buried.

<sup>21</sup>Although the exact number of casualties is unknown, the violence left over 40 people seriously injured and most likely a number killed, including city *askaris*. There was a protracted battle between the president and the clergymen who refused to retract their claims.

who supervised the attack, of inciting the residents.<sup>22</sup> By publicly picking out two Kikuyu as responsible for Muoroto, President Moi clearly ethnicized the issue and, at the same time, appearing to respond to demands for accountability. In addition, by focusing on “inciters”, Moi downplayed the agency of the “crowd”.

In the name of fighting tribalism, Moi was also clearly punishing his client, Wanjigi, for his dissent in the sensitive context of challenges to one-party rule. Moi noted, “If there is tribalism of that kind, imagine what could happen if you have a multi-party system?” Wanjigi was suspended from the party for one year. Moi removed him from the ministry, but he retained his position as MP. This was punishment for his transgression of party hierarchies in his support of the Muoroto villagers and hence, for encouraging, in the words of Minister of Local Government Ntimama, “civil disobedience” (*Standard* 2 June 1990). Gumo, by being put in charge of the committee to look into Muoroto, was protected. Eventually Kaittany was suspended for a time. He was eventually returned. A chastened Wanjigi apologized to the president for any “miscommunication”.

In contrast, after consultations, the Muoroto villagers reasserted their political agency by publicly refuting the president’s ethnicized version of events. While pleased with the reference to the independence struggle, in a bold statement Muoroto representative Elizaphan Njoroge emphasized that the villagers were from different tribes and “if he (Wanjigi) was motivated by tribal interests, he could not have voiced the concern of all the residents.” Njoroge also insisted that Wahome did not incite the people to riot. “Mr. Wahome is the greatest enemy of all hawkers in our area. He could not have incited us to riot since he is a big enemy” (*Daily Nation* 4 June 1990). In a context of repression, the Muoroto villagers had dared to break a central tenet of patrimonial politics: they openly contradicted the president. Unlike their political leaders, they refused to ethnicize the affair.

Muoroto signalled the onset of a new level of state-sanctioned violence against potentially subversive Kenyans on the economic margins. It also illustrated how

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<sup>22</sup>The speech is reproduced in the *Daily Nation* 2 June 1990.



the higher level clients in KANU would attempt, through sanctions, to create a united front against political change and against party members like Wanjigi, who displayed “disloyalty”. It also marked the beginning of a linkage between a rhetoric of “tribalism” connected to multi-party politics as a cause of violence, and ethnicized, state-instigated violence against those perceived as potentially a political “nuisance”. Radicalized by their collective experience of state violence, the response of Muoroto residents, even in the face of increased vulnerability and economic dislocation, was to resist their eviction.

At the heart of the struggle over Muoroto, as we will see repeated in many cases, is a contested piece of land, central to the survival of squatters and allocated behind closed doors by KANU appointees. It is through this experience of how access to rights in land are mediated by the state, that divisions between exploiters and exploited, freedom and repression, are often understood. Through this concrete material struggle, land-grabbing victims resist political subordination, the experience of violence catalyzing moral rebellion. In the case of Muoroto, the dispossessed reclaimed the land soon after the demolition. To the extent that these “squatters” were not claiming private right to the land but, rather, merely use rights, they were “consciously or inadvertently protecting the public interest”<sup>23</sup> against the opaque allocations of this land to those inside the regime’s patronage network.

This struggle over land involved a link between this concrete material issue and political subordination that drew on nationalist themes. This link was expressed through a subversive bricolage of music that was produced and circulated in Nairobi after the Muoroto affair. One cassette, called “Mzee’s Memorium”, included Kenya’s national anthem, Kenyatta addressing a press conference from detention in 1961, his first rally at Kamukunji in 1963, his speech when he launched Sessional Paper No. 10 on Land Policy, and Christian songs. Playing it on the streets of the capital constituted a reappropriation and reinterpretation of its potent nationalist symbolism.

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<sup>23</sup>This was a phrase used by Jane Weru in Republic of Kenya, High Court of Kenya Civil Suit No 228 of 1998 (OS).

Another cassette, called in Kikuyu *Thina wa Muoroto*, songs of Muoroto, was sold out immediately. In one song, lyrics describe how a landlord orders his men to flatten poor peoples' homes on a plot in order to construct a beautiful flower garden. The government rhetoric of beautification and sanitation was exposed as class oppression. Further, the parallels between the KANU regime and colonialism expressed in this music were a powerful attack on one of KANU's claims to legitimacy as the mass party that helped bring independence to Kenya.

This explains the reaction of outrage in the Kenyan parliament where members demanded to know how the Kenyatta cassette, produced by the Kenyan Broadcasting Corporation in 1978, and presented to a select few government dignitaries, was circulating in the streets of Nairobi. The MPs seemed most shocked on hearing the national anthem circulating out of state surveillance among the "crowd." Nairobi MP Chris Kamuyu called "for an immediate investigation because the matter touched on the Security of State" (*Hansard* 14 June 1990). Further, they accused the multi-party advocates, particularly Rubia and Matiba, of being behind the production of the cassettes. When arrested and questioned, Gospel musician "JJ" Wanyeki, producer of the Muoroto tape, denied this accusation. After his release, Wanyeki told the *Nation* that he cooperated with the officials to prove that he did not receive funds from multi-party advocates. Rather, he insisted that he was inspired by an apparition and was given the message by an even higher authority than the president:

I was given a message by God to the people of Kenya, that the poor people are not getting adequate food and have supplicated to God, hence God has sent word that the message be conveyed to me to the authorities. The message I got simply says those poor people are oppressed, they are being harassed and are not given a chance to freely seek their daily bread (*Daily Nation* June 13 1990).

Official attempts at controlling this cultural manifestation of resistance was met by yet another cassette called *Patriotic Contributions*, which focussed on class-based grievances and attacked the lack of freedom of expression. It sold out rapidly.

Despite the fact that President Moi and the City Commission Chairman, Fred Gumo, dissociated themselves from the initial attack on Muoroto village, it soon became clear, as attacks continued in October and November of 1990, that Muoroto was indeed part of a larger trend. While the new justification for the demolitions was about “keeping the city center clean”, these demolitions were part of a systematic campaign against hawkers and artisans in the capital. This attack involved moving them off the small pieces of public land sitting on prime real estate in the Central Business District and beyond.<sup>24</sup> On Moi day, 10 October 1990, Nairobi Provincial Commissioner Fred Wiangano and the City Commission Chairman Fred Gumo announced that all hawkers not yet cleared from the city center were to move to new open-air markets at Eastleigh, Outer Ring Road, Githurai, Kibera, Forest Road, Jogoo Road and Langata. This followed a presidential directive that hawkers must move from the Central Business District.<sup>25</sup> The new sites were far from the central business center and, hence, far from the best economic opportunities. In the words of one hawker activist, these “sites do not favour the nature of businesses they (the hawkers) are undertaking” (Voice of the Disadvantaged 1997). Further, the relocation provided the government with opportunities to reorganize its patronage networks by allocating stalls to supporters and denying them to resisters.

On 12 October 1990, the city commission and provincial administration attacked hawkers again, including the small-scale vendors at Machakos bus stand. Once again skirmishes broke out as the hawkers attempted to fend the attackers off by throwing stones and blocking the street. Four hundred and thirty hawkers were taken to court, charged with breaching the peace and throwing stones at police officers, and sentenced to K.sh 3000-2000 in fines or jail terms. They had no legal representation (*Standard*

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<sup>24</sup>Real estate prices were sky-rocketing. Land prices, as the *Daily Nation* noted in an editorial on 20 March 1990, were “astronomical”. For example, the editorial noted, “the maisonnettes in Nairobi’s South B and South C areas were selling for about K.sh 400,000 [US\$ 6700]. Today, one has to fork out K.Sh. 1 million [US\$ 17,00] to buy the same property.”

<sup>25</sup>This presidential directive was never fully achieved as running battles between hawkers and the City Commission have continued up to the present.

13 October 1990). On 19 October 1990, without notice, Muoroto village, along with many of the slums around the city, were destroyed by bulldozers and police.<sup>26</sup> In case there was any doubt that this was official policy, Minister Ntimama announced that “all illegal structures in Nairobi and municipalities throughout the country would be demolished” (*Standard* 24 October 1990).

While the stated purpose of the evictions was to keep the central business district at the core of the city “clean”, these “cleaning” operations started to encroach on shantytowns far from the city center. On 2 November 1990, Kileleshwa Nyakinyua, a village of 3,300 people, was attacked. On 5 November 1990, Gigiri, a village of over 3,000 people, was attacked. On 8 November 1990, Kwambiu, a village of over 3000 residents, located on Nairobi river, was attacked. On 21 November 1990, a settlement of 1,500 people at Kaptagat road was attacked. Particularly striking was the demolition of Kibagare slum from 20-23 November 1990 which rendered over 30,000 people homeless.<sup>27</sup>

Situated next to the posh Loresho estate, Kibagare was the home of many “squatters” who used to work on the coffee plantations, formerly owned by Lord Delamere. The land was sold in 1968 and the plantation transformed into the high income residential estate. Former workers were given a small piece of land to live on. Aston Okindo, past village committee chairman of the multi-ethnic Kibagare community, told the *Weekly Review* (30 November 1990):

We settled on this of land, which was owned, and I believe is still owned, by the government. This is where we grew up, had children, and some of us even have grandchildren here in Kibagare .

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<sup>26</sup>Muoroto residents were scattered, but 141 of them ended up in Kayole slum. They were sent there by the PC Fred Wiganjo with documents saying they were to be allocated plots. As of May 1992, they were without plots, sheltering in mud and polythene plastic shanties, and living a hand-to-mouth existence. According to residents, the land they were supposed to be allocated was, instead, taken over by “well-connected people” who set up rental houses, which the former Muoroto residents could not afford (*Daily Nation* 4 January 1992, 1 May 1992).

<sup>27</sup>For more details on these demolitions see National Council of Churches of Kenya (1991).

The villagers were given twenty minutes and then faced violent eviction. Homeless and prevented from rebuilding new structures, the residents constructed makeshift tents and waited to learn of their fate. Even when confronted with growing criticism from both the press and church leaders, the government was largely silent. Only Minister Ntimama responded by naming unspecified “security reasons” for the demolition, claiming that only 300 people were evicted not 30,000 (*Weekly Review* 30 November 1990). A National Council of Churches of Kenya study, however, suggested that the combined onslaught on markets and settlements destroyed 1,431 small businesses and rendered 4,293 people without their “informal sector” job for subsistence. A total of 45,000 people had become homeless and, according to their own estimates, they lost K.sh 75 million [US\$ 1.25 million] worth of property (National Council of Churches of Kenya 1991). These attacks on the livelihoods and homes of the popular sectors would continue into the multi-party era and intensify.

Land grabbing coupled to political persecution increasingly appeared linked to the evictions and demolitions. Public land was being reallocated under the feet of the urban poor, many of whom were Luo or Kikuyu migrants and, hence, from “opposition areas”. By 1994, one journalist from the pro-establishment *Weekly Review* conceded that “whatever the urban area, the script is always the same-plots allocated to influential people over the heads of the poor landless” (*Weekly Review* 2 December 1994). Many of these public plots were used to reward supporters, including members of the civil service as well as the provincial administration and influential “private sector” clients and financiers of the Moi regime. In a number of cases, land was allocated prior to the multi-party period, but the mere suggestion that a new government could come to power and challenge the shaky nature of these private claims to public land contributed to a violent rush to make ownership *de facto* if not *de jure*. This rush contributed to the sense within Kenya that the spate of land grabbing was truly a mania.

Many of the poor perceived their plight as punishment for their support for the opposition. Hawker activist Harrison Ndungi directly linked the politics of multi-

partyism to the escalation of evictions and harassment of hawkers across the country:

After December 1992 and the first multi-party general elections, the hawkers were blamed for the opposition victory in most urban centres in the country. The government started mapping out strategies of evicting the hawkers from the city centre and other big urban areas where opposition swept the local authority seat.

And further,

Evidence from very reliable sources has it that the government is grabbing any piece of unutilized land for developer's benefits. Most of the undeveloped sites are being used by hawkers who are eventually being evicted without taking any considerations into account (Voice of the Disadvantaged 1997).

In many cases, when resistance failed, the evicted were left to fend for themselves without compensation for property lost. Starting again, they tried to continue their work on ever diminishing public spaces. In the case of Kisumu where land officials and civic planners had irregularly given out almost all the empty spaces within the municipality, it was "difficult for the council to handle the contentious issue of hawkers and jua kali traders" (*The People* 2 March 1999), and the council faced numerous demonstrations. In Mombasa, hawkers, evicted from their sites in the central business district, took up business on an empty road reserve, which was subsequently grabbed, leaving them once again without a place to ply their trade (*Daily Nation* 16 January 1999). In the rare cases where the hawkers were relocated, this was often far from where there is any clientele.

This concrete experience of physical as well as intertwined political and economic marginalization within the urban "popular sectors" creates a sense of a working class identity, a "consciousness of an identity of interests as between all these working people and as against the interests of other classes" (Thompson 1966: 194), particularly against the politically connected land speculators and accumulators who substantially

overlap with the provincial administration and the KANU patronage hierarchy. This making of a "working class" identity does not necessarily negate the consciousness of ethnic identity, but, rather, creates a kind of cosmopolitanism and shared sense of oppression. One "squatter" woman expressed this consciousness by telling others "*kuna kabila mbili hapa Kenya: watajiri na maskini*" [There are two tribes in Kenya: the rich and the poor].<sup>28</sup>

The current experience of violent land grabbing and forced evictions provokes historical parallels with a common experience of repression under colonial rule. Central to this common experience is the neo-feudal relation between tenant "squatters" and the state, with the president as chief landlord. The implicit service expected to be rendered to the landlord is political: loyalty. For example, in June 1990, at the height of the Muoroto affair, Minister Ntimama offered that *because of the mercy of President Moi*, he would allow Muoroto residents to stay (*Daily Nation* 2 June 1990). This neo-feudal conception clashed with the slum dwellers' and hawkers' notions of moral economy that gave them, the landless and land poor, certain subsistence rights.<sup>29</sup> It also clashed with their notions of themselves as citizens and, therefore, entitled to equal treatment before the law and to the right to be heard in a public debate, particularly about the use of public land.

## Land, Identity, and Resistance

Many in the popular sector link their economic travails to violations of principles of justice. They draw on an indigenous morality that holds the right to subsistence as one of its basic principles and the right to access to land as a necessary part of civic inclusion. Intriguingly, these notions resonate with ideas developed against

<sup>28</sup>The author overheard this at a squatter meeting, September 1997 Nairobi.

<sup>29</sup>Joseph Mukaya, representative of the Catholic priests of Nairobi Diocese, speaking at an anti-ethnic clashes demonstration in Nairobi, also railed against the neo-feudal assumptions behind the land manipulations: "Kenya belongs to us.... we are not tenants. Even if we were, the landlord [the government] is supposed to give us time to vacate (*The People* 13-19 February 1998).

feudalism in Europe, particularly notions that “as natural rather than a man made resource”, land was a “special case” for liberal conceptions of property rights (Vogel 1988: 104). For example, Florence Ruguru, confronting the destruction of her home and business at Muoroto, cried out in response, “*dunia haina mwenyewe*”, the world has no owner (*Daily Nation* 26 May 1990). Similarly, to critics of feudalism such as Adam Smith, land was deemed a common heritage for humankind, and thus “every successive generation of men have....an equal right to the earth and all it possesses” (Smith 1976: 384). Writing against feudal lords who possessed large estates and excluded multitudes from subsistence, he claimed (Smith 1978: 63):

who destroys what might afford subsistence for a vast number of the human species...We look on this man as a pest to society, as a monster, a great fish who devours up all the lesser ones; for it is all one whether one destroys the persons themselves or that which ought to afford them their maintenance.

This is strikingly similar to the imagery used by Nairobi’s popular sectors.

One resident from Kayole slum in Nairobi explained her experience of successive brutal evictions by saying, “It is said that the big fish will eat the small fish. So the rich would take the little that the poor have” (Interview with victim of evictions by author and Grace Gathoni 18 June 1998).<sup>30</sup>

This theme was also taken up in the cassettes circulating on the streets of Nairobi. For example, the lyrics to one song include the lines<sup>31</sup>:

The big fish eat the small fish

And we all know that the small fish are the majority in the ocean

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<sup>30</sup>I do not know the origin of this expression, but it may be indigenous, or it may have come from Adam Smith with the British conquest. Apparently, it was also used to assert the natural basis and, hence, to justify accumulation at the expense of the poor. For example, when a local school committee in Nyanza, set up by the local council, was questioned on the obvious class bias in its allocation of school fees, one of the “outstanding African leaders retorted, ‘the big fish always eat the little fish’ ” (cited in Berman 1990: 226).

<sup>31</sup>I am deeply grateful to John Lonsdale, and, indirectly, to Francis Grignon for sending me translations of a number of the songs on these cassettes.



If the small fish, our people, get together and say they will eat all the big fish  
There is not even one that would be able to resist what is the ocean.

In another song, lamenting the murder of the populist J.M. Kariuki, whose “blood was spilt because he felt sorry for the masses”, the claim is made that “our people has been eaten”. The image of eating here is very different from the Cameroonian proverb, a goat eats where it is tethered” emphasized by Bayart (1993) in his influential tract on patrimonialism. Rather, in this imagery, the poor themselves are being eaten, destroyed by the rapaciousness of the wealthy. Indeed, “big men” are often called “*samaki kubwa*” or “big fish”, in a manner that hints not of the morally accepted aspect of their actions but rather of the destructiveness of their eating habits, particularly their accumulation of life-giving land. Given the direct relationship between land and human survival in agrarian and pastoral societies, to exclude someone from rights of access to land is similar to a death sentence. Again, the “subsistence ethic” that is drawn upon in the struggle for rights to land parallels the anti-feudal dimensions of John Locke’s philosophy. While attempting to justify private rights in property, Locke found land and its link to subsistence problematic. If landlessness meant the loss of the right of property in the form of one’s personhood or life, then revolt was not only understandable but justifiable (Tully 1993: 66).

The popular sectors also appeal to notions of intergenerational justice. The fight is not just for today’s survival but for tomorrow’s children. As members of a Kenyan community, they and their children have a right to subsistence and hence access to what became national or public land under the colonial state. This leads many engaged in these struggles in one location to identify with similar struggles elsewhere in the country. For example, in documents for one court case involving a public market we read:

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 (Kinuthia 1998).

It is this "experience of violence to intuitively presupposed conceptions of justice" (Honneth 1995: xiv), in this case intimately linked to rights to land, that motivates political resistance. This tends to prevent a shift of allegiance to the KANU government, increasingly seen to be behind the land grabbing. This experience of repression in the course of everyday work and the identity it fosters do not allow for easy incorporation of most members of the popular sectors into patron-client networks.

Attempts at patronage negotiations still continue to be part of the politics of the political class, including some opposition leaders. For example, at the end of September 1991, around 20,000 "hawkers" from all over the country held a meeting with the Nairobi branch KANU chairman in the capital. When their "chairman", Wilson Muchiri, started attacking multi-party advocates, a large portion of the crowd started walking out in protest. Only after they agreed to leave politics aside and discuss the hawkers' grievances did the meeting take place. Patronage bosses in Nairobi had a two pronged strategy of attacking the popular sectors' source of economic autonomy—first their livelihood, and, then, once the hawkers were desperate, offering to incorporate them into KANU's patron-client networks. In essence, as patronage sources dwindled, KANU bosses attempted to generate resources through violent recycling of past allocations.

In this regard, KANU has made continuous attempts to organize hawkers, offering to look into their grievances in exchange for political support. When an autonomous hawkers' union was in the works in 1997, KANU made parallel attempts at organizing. By October 1998, a new hawkers' union, the Kenya National Union of Hawkers (KNUH), was formed with KANU prompting. The KNUH claimed that the problem between the hawkers and civic bodies was "a lack of dialogue." Further, the union's Secretary General, Gerald Mutakha, said, "hawkers countrywide would henceforth be required to have identification documents from the union to ease their operations in the towns" (*Daily Nation* 25 November 1998). However, these identification docu-

ments would serve to screen supporters from opponents. In this way KNUH hoped to create selective incentives, offers of access to remaining urban spaces, to supporters.

## **The Continuing Assault on Public Markets: Westlands Market**

Select KANU actors attempted to perpetuate their patrimonial dominance in the changing context. This involved rewarding higher level clients with public land largely at the expense of the rural and urban poor, a process that, over time, leads to greater inequities, larger numbers of people falling out of patronage networks, greater resistance and, hence, more recourse by patronage bosses to state violence. In the following section, I present a detailed view of this process by examining how a prominent public market, Westlands Market, was “grabbed”. I also explore the fierce resistance this grabbing engendered. This microscopic glance conveys how this irregular privatization of public land is experienced and illustrates the embeddedness of this process in higher level patron-client networks of the Moi regime.

Westlands market is located in one of Nairobi’s posher areas.<sup>32</sup> Surrounded by shopping malls frequented by Nairobi’s middle and upper classes, it is prime real estate land. It also is a thriving community of small businesses including an open air auto repair service, a hair salon, a butcher, a number of carpenters, restaurants and food sellers. Many of those running these small businesses used to live in the adjacent slum area of Soweto, but, after a brutal eviction there, now live farther away in Kayole slum. According to Stephen Kinuthia, Chairman of the Westlands Open Air Market committee, a delegation from the area led by the local councillor, went to the late President Jomo Kenyatta and asked for government intervention to create an official marketplace because there was high public demand. The government bought land from an Italian settler and, in 1965, granted the plot (No. 1870/45/IX-R-21782) to the Nairobi city council with the special conditions that it be used as a public

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<sup>32</sup>A condensed version of this case study was published in Klopp (2000).

market. The title deed for the plot specifies that it should be used for the public and also that it should not be subdivided or sold.

Once the council obtained the land in the form of a 99 year lease starting from January 1965, the council began to construct stalls to rent out to the market members. On one portion of the land they built 93 stalls, but then the construction stopped, perhaps a result of lack of money. Still there were more than 93 applicants for stall space and those who did not get a stall were asked to use the undeveloped portion. Once this was developed, they were told that they would be given first priority. In 1974 the city *askaris* descended upon the market without warning, demolishing the structures that had been built there. After an appeal to the president on behalf of the market community, the president issued an order reversing the actions of would-be grabbers working through city council. The market went back to its business. Then, in 1983, a mysterious fire razed the market, but the market community rapidly rebuilt. The attempts to appropriate the land seemed to die off, leaving the business people and traders to make their living and provide services to the wider public, including the much wealthier middle classes living in posh houses near the market.

In 1994, tranquility was shattered with the arrival of a surveying team who claimed that they were going to develop the market. This immediately raised the suspicions of the market community. On following up the matter at the Ministry of Lands, they got a tip that the "undeveloped" portion of the land was being sub-divided in order to give it to somebody else. This was confirmed when a Mr. Francis Karani, a former Nairobi city commissioner, walked up to the market one day and announced that the market community were to move, because he had been given the land. Some representatives of the market went to the Commissioner of Lands with their map of the plot and discovered it was still intact. However, it became increasingly clear that there was a plan afoot to grab the land. The market community turned to their councillor, and then approached the elected mayor, King'ori, who came with a delegation of councillors.<sup>33</sup> This delegation disclosed that the plot had been sub-

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<sup>33</sup>King'ori and some councillors were engaged in a campaign at the time to unveil illegal land

divided and allocated to Francis Karani by the Town Clerk, Wandera. As King'ori attested in a signed affidavit, "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."<sup>34</sup>

The Town Clerk had issued a letter of allotment on 15 April 1994 using Nairobi City Commission stationary even though the Commission no longer existed.<sup>35</sup> This allotment letter gave Karani a 99 term lease under highly favourable conditions. It asked for a one million K.sh payment [approximately US\$ 170,000] and an annual rent of 100,000 K. sh [US\$ 1,700] to be paid to the Nairobi City Commission. 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 at least sixty million K.sh [US\$US 1,000,000] at the going market rate.<sup>36</sup> 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.<sup>37</sup> In the hopes of selling the land quickly Salima Enterprises, through the real estate agency Lloyd Masika Limited<sup>38</sup>, put an advertisement in the *Daily Nation* on 22 July 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.

While clearly relying on outright fraud, this case illustrates one common pattern transactions (*Weekly Review* 2 December 1994).

<sup>34</sup>This affidavit was used as evidence in one of the civil suits filed before the High Court of Kenya in Nairobi (Civil Case No, 3623 of 1995). See Appendix C.

<sup>35</sup>The Nairobi City Council was dissolved in 1983 and replaced by the Commission, ostensibly to prevent corruption and nepotism. It was to be in office for two years but, in fact, only ended in 1992.

<sup>36</sup>This was the assessment in the *Weekly Review* 5 May 1998.

<sup>37</sup>A *Finance* article described Karani as "a land shark, a land broker who loiters around Nairobi looking for empty spaces and grabs them with the help of unscrupulous City Hall staff and then sells them off at exorbitant prices raking in millions of profit" (*Finance* 30 March 1998).

<sup>38</sup>This company was also involved in providing an over-valuation of land in the National Social Security Fund corruption scandal (Republic of Kenya 1999b: 49.)

in many cases of land grabbing: with complicity of a “land broker” and officials within the city council who are appointees of the the KANU government, the set procedure for allocations of public land, outlined in chapter II, were blatantly disregarded. One employee of the Ministry of Lands admitted that she “had never worked with a local administration where the land allocation procedures were exactly followed. The issue of public notice for comment was one of the things that clerks would say they would do but never did (Personal Communication to Author (name withheld on request) 1999). This widespread practice of withholding information on land allocation is a technique of power that works to disadvantage those using public land. There is no chance to debate, bid for the land, or mobilize to keep the land public. This is a very concrete example of “how the control of information... allocates power within the state apparatus” (Berman 1990: 88). It also demonstrates the meaning of the Kenyan play on the Swahili word for government, “*serikali*”, as “*siri kali*” which translates into English as sharp or cutting secret. The people most affected by the grabbing are surprised by the arrival of surveyors, and if they resist eviction, grabbers often resort to extra-legal force. When such force is countered by force, a low level localized battle ensues.

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

We have requested to talk to 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 (Interview by Grace Gathoni 25 May 1999).

In addition, they approached their local councillor and their MP, both KANU. In 1996, when Fred Gumo was running in a by-election in Westlands on a KANU ticket, Vice-President Saitoti visited the market and vowed to prevent the grabbing. This, however, was no more than election rhetoric which obscured government complicity.

Later, after being elected MP Fred Gumo (KANU), also an Assistant Minister in the Office of the President and a patronage boss working his way up in the Moi regime, rebuffed the attempts of his constituents to meet with him, even when members of the market camped at his home. Further, the local councillor representing the area, Joshua Makeen, never brought the issue of the fake allocation onto the table at City Council where it could have been annulled. On the councillor's inactivity in the struggle, Westlands Open Air Market Secretary Evans Musonye remarked:

He knows it is a very sensitive matter. We had a lot of demonstrations. We fought with 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 ourselves (Author's Interview 25 June 1998).

In fact, after trying all legitimate means at their disposal and understanding that ultimate authority and power lay with the president, the Westlands market activists demonstrated at the president's office in March 1998- unsuccessfully. They were waylaid by the police, and many of their members were arrested.

The issue at stake for the market community was their very means to exist: their livelihoods and their livelihoods are inextricably linked to the use of public land. However, the activists and their supporters perceive this concrete material issue as a national issue involving basic principles of inclusion and fairness. They see themselves acting in an inclusive public interest. As Musonye explained;

We are asking them (the council), if they do sell this plot, we are near 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



Figure V.2: Westlands Demonstration 27 October 1998

council. Then we develop it and have a wide range of public *wananchi* (citizens) benefiting...(Author's Interview July 1998).

This statement must be understood within the context of Westlands market's location as an island among malls frequented by the wealthier classes and which poorer Kenyans find prohibitive and, in many ways, unfriendly. Musonye's "wide range of citizens" refers not only to the market community but to those to whom they provide affordable services and a friendly public space relative to the neighbouring posh, exclusive surroundings. Further, not only do poorer Kenyans use the market, but also middle class Kenyans trying to make ends meet. For example, on one occasion, I witnessed the open air mechanics at Westlands busily repairing a BMW.

The Westlands case is only one of many attempts at irregular privatization of public markets throughout Kenya. Reflecting a collaboration of local administration officials and "private developers", a combination of *askaris*, regular police and private security men carry out violent evictions. For example, in the Westlands case, Karani hired police to attack the market. In response, the community organized themselves and met 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,





Figure V.3: Open Air Garage Westlands Market 1998

we used all those fighting devices apart from bows and arrows. Seven people were injured, three of them died, and this was never reported (Interview with market member by Grace Gathoni 25 May 1999).

As this case also illustrates, 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<sup>39</sup> 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 in favour of Jamai Mosque (developers) (Voice of the Disadvantaged 1997).

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<sup>39</sup>The allocation of Kigali market led to a battle between the Mosque and the traders who had lived together peacefully up to that point, a conflict that superficially took on religious overtones. Indeed, in their anger, the traders burned pigs in front of the mosque. In actuality, the conflict was caused by an opaque transfer of public land into the hands of the neighbouring mosque through Nairobi city commission brokers. The traders' bid to buy the plot was ignored. When a judge ordered a restraining order on any activity until the case had been looked into, city bulldozers destroyed the market and the curio traders lost millions of shillings worth of property. This was despite a presidential directive that the market be kept in the hands of the traders. The president remained silent in the face of this violation of his "directive".



Figure V.4: The Destruction of Kigali Market 28 July 1998

This is a very important point to emphasize. Government officials benefiting from these transactions could, potentially, as these cases suggest, sell the plots to those already using them. This would prevent social strife and the cost of paying for violent evictions. Still, local officials choose not to take this route. This suggests that while there are strong economic motives at work in the form of rents for the Town Clerk, other administrators and councillors, these allocations are not always caused by lower level rent seeking divorced from a wider political context. Rather, they are embedded in patronage networks linked to KANU political imperatives. While this does not mean that *all* irregular privatizations are part of patron-client politics, the general state of confusion, with some generally less well-connected land grabbers losing court cases, provides a convenient cover for the higher level machinations that are occurring.

In the Westlands case, KANU MP and Assistant Minister Gumo suspected the predominantly Kikuyu and clearly class conscious market community to be his opponents. While party affiliations among the market members varied, the majority supported the opposition in one way or another (Interview with market members

by Grace Gathoni 25 May 1999). By clearing them from Westlands, the MP would physically remove his opponents, much as in the “ethnic clashes.” This practice is consistent with Gumo’s involvement in the trend towards ever more brutal evictions in Nairobi in the early 1990s when he was the City Commission Chairman. With protection from Gumo, his former colleague from the Nairobi City Commission, Karani, could make a commission from the Sadrudin family. The Sadrudin family, in turn could make a handsome profit on their investment, and the lower level officials could receive rents for their role in drawing up the fraudulent documents and blocking the proper functioning of city council procedures. This whole process, in turn, creates loyalty to KANU, for the actors involved depend on the persistence of the current regime to protect them from future prosecution.<sup>40</sup>

## Rural Struggles over Land Grabbing

Land grabbing in rural areas followed similar patterns to the grabbing in urban areas. Trends towards increased evictions and demolition in urban informal settlements were paralleled in rural areas by irregular privatizations and evictions on rural settlement schemes (Kanyinga 1998b) and group ranches (Peron 1995b), particularly in the Coast and Rift Valley respectively. These evictions deeply and adversely impacted the many rural squatters. Many squatters were, in fact, promised land by Kenyatta and later Moi only to find that title deeds never materialized. Indeed, promises of land to squatters were part of the Moi election campaigns in the multi-party context. However, many squatters who were pledged land would find out that they were part of a patronage recycling game. This game relied on promises of land that either did not exist or was allocated to higher level clients. In addition, as we have seen in the case of Meteitei farm in Chapter V, typically, many small-scale farmers who legitimately

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<sup>40</sup>By November 2000, when the author revisited Nairobi, the resistance against land-grabbing had, in fact, succeeded in wearing down the grabbers, and the plot is still public land.

bought land have waited for over a decade for land titles to no avail.<sup>41</sup> As one squatter observed, “politicians have a tendency these days of telling people to stay here while you wait and they don’t give you any document to prove your right” (Interview by Author 25 June 1998), a tendency noted on the Coast by Kanyinga (1998a). In the 1990s, conflicts over land intensified on formal settlement schemes and, as we shall see in the case study in the final section of this chapter, informal settlements as well. Finally, like in the major urban areas, small towns, market centers and rural communities experienced the “land grabbing mania”. The next two examples, based on the author’s own fieldwork, illustrate these struggles and their similarities to the struggles in the capital.<sup>42</sup>

In Githiga, Kiambu district, is about 40 km North of Nairobi. Shortly after the first multi-party election in 1992, opposition councillor Njoroge wa Wanguthia discovered that the Gathiga market, a cemetery, and a school compound had been grabbed by “local tycoons” and made it one of his first battles in office. The Town Clerk claimed that the plot allocations had been passed in a previous council meeting. Unconvinced, the councillor first put a caution on the transactions at the Land Registry. Second, he called a council meeting to nullify the allocations. In between, 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 councillor told the emissary, “Okay, they use money power, and I will use people power and we’ll see.” He organized for a meeting in the market and the entire village attended. After relating the details of what he was doing to fight the allocation, 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

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<sup>41</sup>This is, no doubt, because land once given as patronage provides the basis for autonomy. As long as the status of these farmers’ land is unspecified, they continue to feel beholden to patronage bosses within the state for rights to their land. This also leaves more scope for manipulation.

<sup>42</sup>These cases appeared in published form in Klopp (2000)

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 (Author's interview, Nairobi 16 June 1998).

The Town Clerk tried to obstruct the council meeting by failing to put the allocation issue on the agenda, but the councillors 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 homework 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 (Author's interview, Nairobi 16 June 1998).

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

Close to Nairobi, and historically a center of land based resistance as one of the areas of alienation and dislocation during the colonial period, the resistance to land grabbing might have been expected from Kiambu. However, in Kakamega, Western Province, around 300 km outside of Nairobi and nestled in a predominantly KANU area, there has also been resistance. During the tenure of DC Peter Raberu, the area experienced an unprecedented amount of grabbing similar to trends in Nairobi and other areas. Lucrative plots that held houses for government employees were fenced in and the employees evicted. In one case, a "private developer" had built an immense fortress-like fence around his newly acquired land.

The approximately 16 acre Kakamega agricultural showground was deemed "too small" and was reallocated to "private developers." One hundred acres of the Kakamega national forest was allocated, ostensibly, for a new show ground, although it was hard



Figure V.5: Wall Built by "Private Developer" in Kakamega 1998

to imagine that in a period of economic decline an increase of showground by 500 per cent could be justified (COSAKAF 2000). When I visited the area, the land was being farmed by people who had rented the land. The grabbers were making rents off of the former national forest land.

These were merely a few of the most prominent and visible grabs that provoked rows between councillors and the local district commissioner and Town Clerk that hit the national news. The councillors, 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* (26 August 1997). This resistance was spawned by local opposition party 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 to take to their 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 key activist explained (Author Interview with Ford-K activist, Mmbaala

8 July 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, DC Raberu responded by threatening to arrest the defiant councillors. 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, the Office of the President promoted him to be a provincial commissioner, stationed in his home area of Nyanza. Even there he was warned by local people at his first public meeting not to grab. Raberu's promotion reflects complicity at the highest levels, a complicity that "private developers" in Kakamega count on to stay entrenched in their land. The status of the land is still contested.

In brief, rural areas experienced, perhaps in less concentrated form, the land grabbing mania. Movement between urban centers and rural communities spread consciousness of land grabbing as a national problem. For example, one member of the Westlands Market remarked, with some exaggeration, on the awareness of their struggle at the national level:

In fact, there is no one in this whole Republic who doesn't know. In fact, I remember traveling to Migori (Nyanza province) and I met someone who congratulated me saying "I see you are very good fighters and I see you have refused and defended a public plot." This was something national (Author Interview with Musonye 25 June 1998).

A succession of dramatic land grabbing cases in the capital would only intensify the sense that an inclusive Kenyan "nation" was under attack by land grabbers, that this was, indeed, a national question that required national level mobilization.

## Soweto: Catalyst for National Mobilization

Until 1996, resistance to evictions and the the related irregular appropriation of public lands was localized and mostly involved actors without organizational links to other groups. This would change with particularly violent attacks on the shantytown, Soweto. Taking place in the midst of a posh neighbourhood in the capital and broadcast over national television into middle class homes, Soweto became the catalyst for building a national anti-land-grabbing network. This case also demonstrates how higher level Moi clients repaid state protection for their land accumulation by contributing to election campaign funds in the multi-party era.

On the night of 1 October 1996, Soweto, a vibrant community of over 7,000 people on a patch of a little over one acre of land, was razed to the ground.<sup>43</sup> Two days later, Nairobi PC Francis Lekolool and Westlands MP Fred Gumo visited the site and told the villagers to reconstruct their homes. Reconstruction was interrupted on 22 November 1996 when DC Fatima Ahmed told the villagers to stop, because the president had given them land in Kayole, another slum area around 18 km away. One resident noted:

We were told that the president had set aside land for us in Kayole. The DO told us we should pay 500 shillings each to be registered and moved, and an additional 20 shillings to have the land cleared. But the DO said that the good news was that the plot would have a dispensary, a school, even a market (African Rights 1997: 5).

However, the residents of the Soweto community were clearly anxious and suspicious about a move. One elected representative of Soweto visited the DO to articulate the community concerns and was accused by the DC “of being in the opposition” and “of trying to politicise the Soweto problem” (African Rights 1997: 5). Most residents tried to find K.sh 500, a large sum for most, and many borrowed the money at high interest rates. Local chiefs collected the money, and the Sowetans received cards from

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<sup>43</sup>A number of the members of Westlands market lived in Soweto, experiencing both attacks.



the Office of the President, Westlands Division, signed by DO Ahmed and showing a plot number. Hopefully expecting a 6 by 12 metre plot of their very own in Kayole, many Sowetans cooperated with the chiefs who supervised their move to Kayole. Only three days after they arrived in Kayole, however, former MP Mwenje (KANU), PC Lekolool, and Mayor Dick Waweru showed up and informed the displaced Sowetans that the land they were on belonged to someone else and that they would have to move. The “squatters” were transferred to a cramped and unsanitary space next to a slaughterhouse, where many still live today without security of tenure.

Word quickly got back to those left behind, and about 150 Sowetans marched to State House to protest to the president. At State House, security men surrounded them and they met with the PC who claimed no knowledge of the money they had paid to his chiefs and DO and further told them they would have to wait until the government allocated them land. Without any guaranteed space to live and work, the Sowetans were put in an extremely vulnerable position. Their experience of government involvement in their dispossession provoked resistance to any attempt to dislodge them from the land they already had. Hence, many returned to Soweto and attempted to go on with their lives as best they could.

On the night of 10 December 1996 Soweto experienced the first of a series of violent attacks. Confronted with the spectre of landlessness or violence, many Sowetans chose to confront the violence with the only means at their disposal in a context where the state, including the police, were complicit with their attackers: counter-violence. In the *melée*, they captured some of the attackers. Under duress the captives confessed that Sara Njoki, daughter of Kiambu businessman Stanley Githunguria, “Moi’s point man” in Kiambu District, was behind the attacks.

The proximity of Githunguri to the president encouraged the use of extra-legal means to dispossess the Soweto community. Njoki paid the attackers K.sh 1000 each for demolishing Soweto. Ten days later, Njoki arrived at the site herself, flanked by private security men and administration police with guns. Faced with this display of force, the Sowetans alerted the press and watched as their village was being destroyed

in front of their eyes. However, at a particular moment, the experience appeared to cross a moral threshold, spontaneously triggering the Sowetans to spontaneously fight back. As one villager described it:

When they began demolishing the Catholic church, we became incensed. We forgot about the guns, we forgot about the guards and the weapons. We just went for them (African Rights 1997: 10).

The demolition turned into a full scale battle. When one hired security man, Peter Sande Ong'ong'o, became isolated, Sowetans surrounded him, beat him, and set him on fire in full view of the KTN cameras.

This shocking image was repeatedly broadcast into middle class homes across Kenya. Perhaps calculating that Kenyans would be appalled at the violence perpetrated by the slum dwellers, the government allowed the coverage of Soweto, including the lynching, to air on state controlled television. This back-fired when the brutality used against the Sowetans and the apparent denial of the basic right to existence of the Sowetans, violated many Kenyans' notion of moral community. One professor wondered aloud to me "whether the government expected these people to disappear?" Jane Weru, who would represent the slum dwellers in court, described the experience of the Soweto coverage as follows:

You saw the villagers, with a match, set fire to a man. I do not condone the killings but looking at the role of the police you understand why it happened. The killing was terrible; but the resistance of the villagers also caught the imagination because it is community action against the police and land grabbing.

Defending land is a very logical feeling-it is expressing faith in the right to live and the right to be. It's saying look, we are Kenyans, we are citizens and we can't be treated like this. It's saying, if the State is not going to stand up to this then we will. Land is a very, very important issue. Here, in Kenya, resources are land-bound and life is land-bound. It is a direct relationship between people and land. So seeing the courage of resistance in Soweto means something to

people. Eventually, guns had to be used against the Sowetans. That sort of resistance from squatters has not been seen before (African Rights 1997: 10).

Githunguri at no time went to the court to evict the squatters but, rather, approached the provincial administration for assistance. By 1996, when violence had become part of the land grabbing repertoire, Githunguri felt safe to attack the village and claim, not only the land that was registered in his name in 1975, but also the 7.4 acre portion set aside for the public road reserve. When members of Soweto brought the case to court in 1998, arguing for adverse possession<sup>44</sup> and asking for a court injunction against further action on the plot until the legal title be determined, Githunguri argued that the squatters “are not known to me and are not in occupation of my land”.<sup>45</sup> Further, he argued that the “real squatters” had moved to Kayole. Judge Joyce Aluoch in her ruling on the case argued that the exact identity of land was unknown, and, thus, she failed to order an injunction. Some Soweto residents explained their understanding of the ruling:

There was no one with enough proof to prove that it is his land. Githunguri and his daughter could not produce documents to show it was their land, and us, we were not able geographically to prove that the land (a specific plot) was what we were fighting for. The place was just left like that- either us or Githunguri could go on and use the land before the case is determined. We tried to re-occupy the land but we were chased away by the police (Interview by Grace Gathoni, Soweto residents 14 May 1999).

The residents of Soweto were scattered, some remaining in Kayole, others to Mwimoto, Kangemi, Wangigi in the Western periphery of the city, and into Kiambu District. The violent police rebuffs to the Sowetans' attempts to re-occupy their village set up obstacles to future collective action, as one resident clarified:

<sup>44</sup>Under Kenyan law, Law of Limitations (Cap 22, Laws of Kenya) a registered owner of piece of land can lose his claim to the land if someone else who did not previously have title has peacefully occupied the land for over 12 continuous years with the knowledge of the former owner.

<sup>45</sup>Republic of Kenya, High Court of Kenya Civil Suit. No. 228 of 1998 (OS).

When everyone is busy looking for food and shelter there is no time to think of meetings or fights. Again, people have been instilled with fear by the government (Interview by Grace Gathoni 14 May 1999).

The way the residents experienced the injustice of their situation was described as follows:

The injustice is being vacated from our land, being denied our basic rights, access to our properties and lack of shelter. We are not protected by the government. It only protects the rich- the grabbers. These are the injustices involved- those arrests during our battles to re-occupy Soweto. Even today, the ruling has not yet been done. They have caused over 4,000 people to be homeless. And the government knows this (Interview by Grace Gathoni 14 May 1999).

The residents clearly viewed the government as being in collusion with “land grabbers” and pointed to the way in which the police served Githunguri’s interests in the land dispute and consistently turned their backs or participated in the violence against them.

It was also common knowledge that the immensely wealthy owner of the Nairobi Safari Club, Githunguri, was close to the president. In fact, Githunguri, a former district officer and former National Bank of Kenya chairman,<sup>46</sup> had joined politics in the multi-party context as Kiambaa KANU sub-branch chairman. He would be the unsuccessful KANU contestant for the Kimbaa parliamentary seat in the 1997 elections and a member of the “Central Province Development Support Group”, a lobby group of wealthy Kikuyu businessmen behind Moi who toured Central Province in an attempt to buy Kikuyu votes for KANU (*Daily Nation* 17 May 1997).

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<sup>46</sup>He was embroiled in court cases in the 1970s after being accused of stealing K. sh 360 million [US\$60 million] during his tenure at the bank. Land deals between his firm, Tassia Coffee estate, and the National Social Security Fund were also riddled with irregularities.

This involved providing direct campaign contributions to Moi's election campaign. In May 1997, for example, Githunguri announced that he had donated K.sh 4 million [US\$ 70,000] to local women's groups, which would, in turn, be "their contribution to the Presidential Harambee for women's groups in the country" (Daily Nation 20 May 1997). This fund was blatantly used to buy support for the December election. As journalist Macharia Gaitho complained at the time, leading KANU figures, including Vice-President George Saitoti, "were "traversing their constituencies doling out monies drawn from the National Women's Development Fund" (*Economic Review* 1-7 December 1997). While Githunguri seemed to have gained the upperhand in this struggle through his influence with state actors, including the president, the violence around the eviction of Soweto residents and the image of their fierce resistance catalyzed efforts to create a national anti-land grabbing network on the part of Nairobi activists.

## National Anti-Land Grabbing Networks

In response to Soweto and the proliferation of struggles around public land, the National Council of NGOs, a coordinating body for Kenya's many non-profit associations, started a project called Operation Firimbi or Operation "Blow the Whistle". One of the project's first press features gives an indication of how Soweto impacted middle class activists (*Daily Nation* 11 October 1996):

Soweto burst dramatically into our consciousness as as a community. We had pictures of the pain, and shared words of compassion, as last week 7000 people were plunged into destitution and shelterlessness, by raging fire. It was right among us, not far away on CNN. It was in the middle of an affluent suburb of Nairobi, one ridge away from the United Nations Center for Human Settlement (Habitat).

The goal of Operation Firimbi is "to promote civic action for ensuring commitment to the rule of law and just governance for the management of public land and its

protection" (Operation Firimbi 1996). Some of the most active groups under this umbrella are Mazangira Institute, Kituo Cha Sheria (a legal aid organization), Public Law Institute, Kenya Human Rights Commission (Land Rights Program) and Release Political Prisoners.<sup>47</sup>

These groups formed a loose organizational network, with an implicit division of labour. The Mwazangira Institute serves to spread awareness and set up a data base of land grabbing cases, although its use of primarily English press to do so appeals to largely middle class audiences (Author Interview with Program Officer Karim, Nairobi 2 July 1998). The Land Rights Program of the Kenya Human Rights Commission has a civic education campaign that informs local communities about the laws governing vulnerable trust lands and give support to those fighting land grabbing. Release Political Prisoners, originally a network of activists attempting to free political prisoners, provides critical support, including civic education, protests, advice, and bail for people imprisoned and attacked for resisting land grabbing, support that focuses on rural and urban communities, particularly the poor. Kituo Cha Sheria, founded in 1973 as the first free legal aid clinic in Kenya, provides legal advice to many poor communities, particularly in the Nairobi area, facing eviction linked to land grabbing.

Efforts among this network of organizations to assist squatters in their ongoing resistance against eviction from public land provoked the formation of an umbrella body for squatters living in slums ringing the capital city, an estimated 60 percent of the city's population on only 5 per cent of the land. Initially called Community Action Against Forced Eviction and Land Grabbing, now *Muungano wa Wanavijiji* (Swahili for association of villagers/slumdweller), this group represents eighty-six communities with aspirations to "reach out to other slum areas across the republic" (*Muungano wa Wanavijiji* 1997). The mission statement *Muungano* expressed in its manifesto launched on 26 September 1997 is:

-to end eviction, illegal allocation of land and to promote access to urban land

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<sup>47</sup>RPP operates under the KHRC umbrella, because the government would not register it.

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 irregular allocation of the land under their feet with a notion of a public sphere that involves deliberation, participation, respect for legal procedure and principles of justice.

At the launch of the manifesto, *Muungano* members attacked KANU's version of history and, hence, one of its claims to legitimacy. The gathering was filled with cries of "*bado uhuru*" (not yet freedom or independence) and "*bado ukoloni*" (still a colony) that took on class and nationalist overtones. Particularly revealing of this were the rhetorical questions asked by a stream of speakers: "*Hapa ni Kwako?*" (Is this our home?) and "*Mali ya Kenya ni ya Wakenya?*" (Is the wealth of Kenyans for Kenyans?). The "private developers" associated with the KANU government were viewed as colonialists of sorts, as usurpers of the Kenyan national community and of the independence struggle. Such complaints were echoed by many of the victims of the "ethnic clashes". For example, in front of the Akiwumi Commission, James Ndhore, displaced from his home in the Rift Valley-Nyanza violence "described as colonial mentality the attitude of some government departments which chose to refer to them as squatters in their own country" (*Daily Nation* 11 March 1999).

Like squatters in the 1950s, contemporary squatters see access to and some control over land as their right to subsist and participate in civic life as members of the Kenyan community. While affirming a notion of the "rule of law" and the right to fair treatment under this law, the *Muungano* members, like squatters throughout the country, are also appealing to notions of class oppression and an indigenous morality 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 community outsiders. This nationalist tone to anti-land grabbing resistance is not confined to squatters. A wide cross-section of Kenyans echo the sentiments of Hassan Haji, commandant of the Nyanza Administration Police Training College, who suggested that "land grabbers have no sense of belonging to this country" (*Daily Nation* 12 November 1998).

In the past, an important aspect of KANU's legitimation of its rule was its claim to be the agent of development. It publicly displayed this role through its involvement in the Harambee or self-help movement. Undergirding this movement was the idea that Kenyans must pull together (or harambee) to provide development in the form of badly needed services such as schools or clinics. In practice, in Harambee events KANU politicians, seeing an opportunity to build clientelistic based political support, would often arrive with wads of bills in hand and, in fact, the government was expected to provide necessary support for community projects. Regardless of the embeddedness of this process in patron-client ties, this Harambee movement has, in the past, forced the Kenyan state to be "minimally accountable to the public realm in the form of social services" (Barkan and Holmquist 1989: 361). The resulting government supported community services, such as schools, 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 is a striking reversal of Harambee as a recognition of state responsibility for public services and an assault on KANU claims to represent a national community.<sup>48</sup> 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 the local communities. Indeed the parallels are striking and the symbolism involved in

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<sup>48</sup>There are other problems with Harambee as it is experienced in today's Kenya. Besides providing an excuse for local officials in rural areas to appropriate from farmers, "harambees" are becoming desperate attempts to provide a social network as public services deteriorate and are replaced by very expensive private services.



the appropriations powerfully suggest an attack on the gains of independence and the very notion of national community. Further, the fact that the appropriated resources are in the form of land is highly significant in light of Kenya's history. As we have seen in Chapter II, land was "the emotional bedrock of dominance and subordination" in the colonial period (Berman 1996: 333).

If "creating a symbol, or more commonly by identifying oneself with a popular symbol can be a potent means of gaining and keeping power" (Kertzer 1988: 188), the converse may also be true. Attacking popular symbols, such as highly visible public sites, can be a potent way of losing power. The attack by elements of the KANU government on the fruits of independence in the form of land is seriously undermining its already waning legitimacy and accelerating anti-KANU mobilization. Two examples are particularly illustrative of the potent symbolism involved in land grabbing.

Consider the case of a Nakuru primary school.<sup>49</sup> The KANU supporter allocated the plot claimed his new land on Friday. This is the day throughout Kenya when the entire school community gathers to watch the national flag being raised and to sing the national anthem. It is a moment of recognition on the part of students and staff that they belong to a wider national community and that they are enjoying the fruits of independence.<sup>50</sup> The new owner, a KANU party activist, pulled the flag down and demanded the dispersal of the entire school community (Personal Communication with former Kenya Human Rights Commission officer Janai Orina February 1999). After they were violently evicted, the students protested for over a week, but to no avail. The matter was "ended quietly in court with the vindication of the legal

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<sup>49</sup>In my interviews with activists this was another case that they found particularly perturbing. Nakuru appears to have experienced a great deal of irregular appropriation of school grounds (Okwany 2000).

<sup>50</sup>The struggle for the school was an essential part of the anti-colonial struggle. Also the Teacher Service Commission appoints teachers to schools and pays their salaries. These teachers often come from all over Kenya and, hence, the school is a little microcosm through which the national community is experienced at the local level.

title-holder" (Operation Firimbi 1997).

Another dramatic example of the powerful symbolism involved in this struggle was the attempted appropriation of the Kamukunji grounds, a large public space in Nairobi, rich in historical significance. This is where Kenyatta and other nationalist leaders once delivered fiery speeches demanding freedom for the newly invented nation of Kenya. These grounds continue to be a place where Kenyans gather to protest and demand political change. In the early 1990s, as the *Economic Review* (26 August-1 September 1996) remarked, the site "became the symbolic venue for some of the cathartic events of the multi-party campaign... reaching its zenith with the hosting of the largest ever post-independence rally". In 1996, rumors circulated that some appointed city councillors 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, to grab this land was, at a symbolic level, to grab independence itself.

Mobilizing at a national level against land grabbing still faces many obstacles. These include continuing repression and a climate of fear produced through state violence. However, as accumulation "from above" encroaches on middle class domains, the potential for highly effective cross-class and cross-ethnic, in essence, nationalist movements, has increased. Currently, these various scattered mobilizations are not linked to a unified and coherent national movement. However, as I will show in the final two very important case studies, one urban, one rural, important rural-urban, local-national linkages are being made. Both these cases reveal that as a counter to the old politics of unaccountable accumulation and ethnicized tactics of "divide and rule", a cosmopolitan politics, rooted in locally articulated discourses of accountability, is struggling to be born.

## The Struggle Over Karura Forest

Who can imagine New Yorkers waking up one day and finding a chunk of Central park, Manhattan, cut off for private development? Kang'ethe Mungai<sup>51</sup>

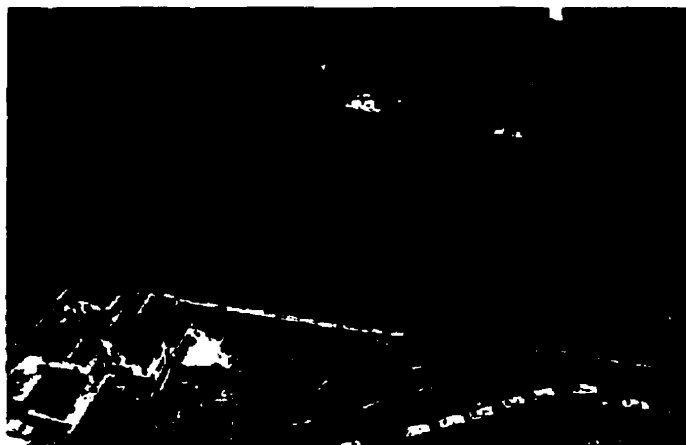


Figure V.6: Courtesy *Daily Nation* 9 October 1998

Covering 2,580 acres on the northern edge of the the Nairobi city boundary, Karura forest is one of the few remaining patches of what was once a large indigenous forest. It is a water catchment area for four rivers<sup>52</sup>, home to rare local trees and rich in biodiversity. It was officially legislated as a national forest. In September 1998, Kenya Television Network journalist Linus Kaikai broke the story that a large part of the forest had been “grabbed.” Further investigation revealed that the Forest Department officials working at Karura were issued with “quit” notices by “private developers”. A team of reporters from Kenya’s most widely read newspaper, the *Daily Nation*, chartered a helicopter and reported back to their readers that:

Huge swathes have been cut out of the virgin forest- believed by environem-  
talists to be a national asset- to create access roads and drainage systems for  
an upmarket housing estate. More land had been cleared for a site office area

<sup>51</sup>Letter sent to President Moi from the Programme Officer of RPP 3 October 1998.

<sup>52</sup>The Thigiri, Karura, Ruiruaka and Gatathuru rivers.

from where the development of each plot will be controlled (*Daily Nation* 9 October 1998).

The daring of this “grab” which took place in the capital, the heart of the opposition and NGO community, and under the eyes of the United Nations Environmental Program offices bordering the forest, provoked an unusually strong response from within Kenyan society. For many, the struggle for Karura became identified with a struggle against land grabbing itself.

On 7 October 1998, the first large demonstration took place. Activists drawn from the Green Belt Movement, Release Political Prisoners and Kenya Human Rights Commission, as well as from the neighbouring Huruma slums, approached the part of the forest that was surrounded by fencing. By planting trees they symbolically reclaimed the land as a national forest. They asked the contractors to remove their equipment and started planting trees on the feeder roads cut through the forest. Stephen Mwangi, a sub-contractor for the “private developers”, confronted the protesters, shouting “We have been here for three years, this is private property and you should move away!” (*Daily Nation* 8 October 1998). However, the fifty armed guards hired to protect the plot had not been paid and, when confronted with protesters, opted to lock up Mwangi in protest. The demonstrators proceeded to pull down the gate and set fire to construction equipment estimated to be worth 40 to 80 million K.sh [US\$ 1 million]. The activists were later joined by 12 opposition MPs drawn from a number of different parties and ethnic communities<sup>53</sup>, as well as hundreds of youths who, armed with crude weapons, destroyed the drainage channels and made away with corrugated iron sheets. Demonstrators sang songs urging God to protect them “from the hands of the corrupt and greedy” (*Daily Nation* 8 October 1998). This marked the beginning of a protracted struggle.

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<sup>53</sup>The MPs included Paul Muite (Safina), James Orengo (Ford-K), George Nyanja (NDP), Mukhisa Kituyi (Ford-K), Phillip Gitonga (Safina), Ngenye Kariuki (Safina), Maoka Maore (DP), Anyang' Nyong'o (SDP) Njehu Gatabaki (SDP), Maina Kamanda (DP), and David Mwenje (DP).

The National Council of Churches of Kenya, The Law Society of Kenya, the Architectural Association of Kenya and the Kenya Human Rights Association joined a clamour of voices demanding to know who allegedly had been allocated the forest. Under pressure by opposition MPs, who vociferously demanded that the Minister of Lands and the Attorney-General reveal the names of the companies that had been allocated the land, the Minister of Lands tabled an initial list of sixty-seven companies without naming their directors. He further claimed that less than half the forest, according to the government, remained public land. Following questioning, the minister admitted in parliament that he "did not have the list of purchasers, as the ministry is normally not consulted in these transactions" (*Daily Nation* 13 November 1998).

This served to underscore the illicit nature of the land allocation. When forests are excised, the land legally reverts to the Ministry of Lands and Settlement for allocation (Forests Act Cap 385). Commenting on the minister's statement for the *Daily Nation*, Mutegi Njau, noted that, "for those firms to be allocated land, someone must have signed a letter of application to him, and all companies have directors listed with the Registrar of Companies" (*Daily Nation* 13 November 1998). However, an attempt by *Daily Nation* reporters to investigate those behind the companies at the Registrar General's office revealed that many files were unavailable (*Daily Nation* 14 November 1998) and only ten of the firms listed were traceable through the Registry or the Kenya Gazette (*Daily Nation* 16 November 1998). Those firms which were listed in the Kenya gazette showed that they were all created between 1995 and 1996. Further, when thirty-four more files eventually surfaced at the Registry, it became apparent that a number of companies were created on the same day, shared an office and directors, and had their articles of association drawn up by the same lawyer, Tom Okundi of a prominent Nairobi law firm, Oraro, Rachier and Associates. The nominal share capital for Aspen Development Company was only K.sh 2,000 [US\$ 30] and for Ikanawa, Epsom, Ballistic Missile Investment Ltd and Fired Earth Company Ltd,

K.sh 100,000 [US\$ 1700].<sup>54</sup> Twenty-one files from the registrar remained “missing.” As reflected by Gado, the *Daily Nation* cartoonist, this was taken to mean that deliberate bureaucratic obstruction was involved.



Figure V.7: Courtesy of Gado and the *Daily Nation* 19 November 1998

Later, it would be discovered that the list of companies passed to the minister contained fictitious directors. *Daily Nation* reporters, with cooperation from sympathetic bureaucrats, discovered that Karura land was allocated to twenty-one companies associated with high powered Moi client, nominated MP Rashid Sajjad and his Mombasa-based company M.S. Bawazir and Co (1993) Ltd (*Daily Nation* 11 February).<sup>55</sup>

As evidence of wrong-doing accumulated, the pressure on the government as well as the “private developers” intensified. The Architectural Society of Kenya, the Accountants Association and the Kenya Valuers and Estate Agents Association issued warnings that any member involved in Karura would be disciplined. Similarly, the Law Society of Kenya demanded that the Attorney General investigate the physical existence of directors of companies. If the directors did not exist, then the allocations

<sup>54</sup>For more details including a full list of the companies see *Daily Nation* 15-18 November 1998.

<sup>55</sup>Sajjad was identified by participants in the Coastal “clashes” as a funder and organizer of the youth militias terrorizing migrant voters around Mombasa (Kenya Human Rights Commission 1997, 1998b). It is sobering to realise how national resources are used to finance violence.

were obviously null and void. Further, they threatened to de-register any lawyer found to have breached professional ethics in the Karura controversy. Indeed, despite his claims to have been “duped”, Tom Okundi, the lawyer at Oraro, Rachier and Associates who drew up the incorporation papers for the Karura companies, was dismissed (*Daily Nation* 18 November 1998).

On 8 January 1999, activists, including Dr. Maathai and a group of opposition MPs, once again went to plant trees at Karura. They were confronted by 200 security guards and badly beaten (*Daily Nation* 9 January 1999). The attack on Dr. Maathai, well known at the United Nations, raised the concern of the UN Secretary General Kofi Annan who publicly condemned the violence. This intervention by the UN, an important supplier of humanitarian aid to Kenya, prompted a quick response from the Attorney General who met with and apologized to Dr. Maathai.<sup>56</sup> While this struggle was raging, President Moi was initially silent. However, a number of top officials continued to emphasize that the Karura plots were private property and, therefore, as Police Chief Wachira reiterated, must be protected from the protesters (*Weekly Review* 15 January 1999).

On 28 January 1999, the Student's Organisation of Nairobi University (SONU) issued an “ultimatum” to the government demanding the arrest of Dr. Maathai's attackers, the revocation of the Karura plots, and the dismissal of Minister for Natural Resources and the Environment Francis Lotodo, Attorney General Amos Wako, and Police Chief Wachira. Two days later, a crowd of around two thousand students marched to Karura to plant seedlings and were confronted by police in full anti-riot gear. A violent struggle ensued that started a three day riot in the capital. In a fit of anger, students attacked a number of bystanders, including members of the UN and Japanese embassy, and destroyed passing vehicles. The police violently beat the students, and a number of officers were hurt when students fought back. A

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<sup>56</sup>The Attorney General himself has many connections to the UN and was once appointed as the Special Rapporteur on Torture. Hence, it was likely that he was attempting to defend his personal position as well as the government from attack.

reporter noted, "one girl student was clobbered senseless with blows to the head and bled profusely as she repeatedly shouted 'Karura is public land!' " (*Standard* 31 January 1999). At least two people died in the official count and over 200 people were injured. A day later, the University of Nairobi was closed, but defiant SONU members claimed that "they had succeeded in showing the world that the grabbing of Karura had political backing due to the huge presence of anti-riot police officers who denied them entry into the forest" (*The People* 1 February 1999).

The resistance to the Karura allocation, particularly the violence of the riots, made the situation difficult for the anonymous "private developers" who, with the exception of one company, had not yet dared to put up a fence. Directors of Orbit Enterprises, the company which lost equipment and site offices in the demonstrations, announced that they were pulling out of Karura forest "to clear their company's name" (*Standard* 2 February 1999). The same day, in a letter to the KANU owned *Kenya Times*, Robert Maingi, "for and on behalf of Whispers Estate Development and Owners", the "private developer" involved in the contested site, wrote an open letter to Dr. Maathai. The letter is worth quoting at length, because it is the first response by a higher level "private developer" to national public pressure<sup>57</sup>:

After careful analysis, five months of long considerations and much anguish, we have come to the very painful decision of writing to you. Painful because you do not and you are not supposed to come between us and our property. However, because you have so successfully used the media to try to convict us and also succeeded in playing into mass psychology to execute mob justice, we agonise as we sit back to write to you...

The facts surrounding Karura are as follows:

It is a fact that in the year 1850 today what is now Nairobi City was all forest.

It is a fact in 1899 the forest was planned by the colonialists to provide for big chunks of land to be reserved for use by the railway line and for establishing a town which is now known as Nairobi City.

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<sup>57</sup>The full letter is reproduced in Appendix D.



It is a fact that the very first allottees (grabbers to use the term that will please you) were the Holy Ghost Fathers and St. Austin Construction Company who were allocated, “grabbed” the area today known as Muthangari, Lavington, Riverside, Kileleshwa etcetera.

It is a fact that the second allottee (“grabber” for that matter) was Col. Grogan<sup>58</sup> who was allocated (grabbed) the whole forest area which is today known as Grogan which covers the area along Kirinyaga and Kijabe streets...

It is a fact that once a forest has been legally degazetted, it is hence private property and you can purchase it as such.

It is a fact that parts of Karura forest were degazetted in 1994.

Which brings us to the million dollar question: why Karura and why this particular time?...

Please be warned. We kept quiet when you unashamedly trespassed into our property and unconstitutionally committed illegal acts. We will never, ever allow you to do that again. Maybe it will interest you to know that we also have the capacity to invade private property...

The letter evokes the colonial history of allocations to justify current practice around land privatization. In effect, the “private developer” threatened to call into question all past allocations and hence the regime of private property rights. Further, to make this destabilization threat more salient, Whispers Estate suggested that they have “the capacity to invade private property”. While stressing the legality of their private rights to a piece of Karura forest, it is intriguing that they chose to engage in this form of public contestation rather than bring the case to the courts, which they threatened. Most likely, this was because, as the Kenya Forest Working Group

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<sup>58</sup>Even in the context of colonial Kenya, the forest concession given to Grogan by Governor Eliot appalled the Conservator of Forests. As Anderson has written with reference to dealings around Lembus forest, “the government found that the forest concession lay at the centre of a tangled web of land dealings involving Grogan, none of which seemed to accrue any great benefit to the government or the colony” (1987: 254).

found when they investigated the matter, legal procedures had not been followed. For example, legal Notice No. 43 of the Kenya Gazette which announced excisions of Karura forest used a boundary plan for East Mau forest (*Daily Nation* 7 February 1999, Greenbelt Movement 1999).<sup>59</sup> In this public contestation the “private developers” chose to emphasize the importance of private property rights and to portray the protesters as threatening these rights. Further, following official government rhetoric closely, they attempted to suggest that Dr. Maathai, a Kikuyu, was agitating largely for herself, to gain both material assistance from donors and political support among her ethnic constituency.

Provoked by the riots, Moi broke his silence. The president blamed the violence on “hatred and tribalism,” suggested that Maathai was a Kikuyu tribalist (*Daily Nation* 2 February 1999), and reaffirmed the claim that the allocations were lawful (*People* 7 February 1999). Further, he warned that “those who want to march to Karura forest will have themselves to blame for any consequences” (*Daily Nation* 9 February 1999). The government arrested Maathai’s co-worker, John Makanga, and three MPs, James Orengo, Gatabaki, and Mwenje, and charged them with inciting students to riot and disobeying the law. When they were released on bail, twenty-two MPs, including one from KANU, made a statement countering the rhetoric of both the president and Whispers Estates. The statement refuted the ethnicized version of events and, further, emphasized that “the argument that the other forests have been stolen and therefore Karura is not unique suggests that once you have gotten away with past theft, you are free to steal” (*Sunday Nation* 7 February 1999).

At the same time, pressure on the government continued. The Kenya National Union of Teachers Secretary General announced his opposition to the allocation (*Daily Nation* 2 February 1999). Increasing the pressure on the government, Anglican Church of Kenya Archbishop David Gitari announced the organization of an inter-denominational mass and tree planting at Karura forest on 31 March 1999 and

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<sup>59</sup>Large swathes of East Mau forest were excised and doled out to Kipsigis “warriors” as a reward for their role in the “ethnic clashes.”

representatives from the National Convention Executive Council, the umbrella group of organizations and opposition activists, told the press that the government “was using force under the guise of protecting private property, but the truth of the matter is that through these allocations the government is killing the nation” (*The People* 3 February 1999).

This impression that allocations, symbolized by Karura forest, were “killing the nation” reiterated one of the central themes in the emergent anti-land grabbing discourse. In the Karura case, besides the high level of mobilization, it is striking that the *Daily Nation* attempted to formulate a genuinely national public opinion through one of its first polls since early independence. The paper asked a random sample of Kenyans what should be done about the Karura allocation.<sup>60</sup> Seventy-two percent of the respondents from all over the country wanted the government to revoke the allocation (*Daily Nation* 23 March 1999). Intriguingly, ninety-six percent of those polled in the largely pastoralist and pro-KANU North Eastern province wanted the allocation revoked.<sup>61</sup> Activists were stressing the environmental consequences of deforestation that would affect Kenya as a whole as well as the particular private interests which were set to benefit. Once again this is aptly reflected in Gado’s cartoon at the time.

This anti-land grabbing rhetoric meshed well with indigenous notions concerning the importance and, in fact, sacred nature of forests. The middle-class activists of the Greenbelt Movement claimed that Karura was a “sacred forest” belonging to the *mbari ya Kihara* a local Kikuyu lineage that could be traced back to 1900. The forest was preserved because of a death-bed threat by the four founders of this

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<sup>60</sup>A team of trained pollsters conducted interviews in streets, market centers, and other public places. They polled 5,000 Kenyans, with the geographical distribution weighted according to the adult population registered to vote in the 1997 election, using the most recent statistics available at the time (which, if biased, would be in favour of pro-KANU areas). For further details see *Daily Nation* 23 March 1999.

<sup>61</sup>This suggests the extension of indigenous notions concerning the sacred nature of forests, which many pastoralists share with non-pastoralists, to the Kenyan nation as a whole, but this is a matter for further exploration.



Figure V.8: Courtesy: Gado and the *Daily Nation* 3 February 1999

lineage. Rather than reinforcing KANU rhetoric implying the “Kikuyu community” has eaten forests and now wanted to prevent others from eating, this appeal to Kikuyu moral ethnicity may have resonated with pastoralists and other communities facing similar devastation. In any case, the KANU rhetoric failed to elicit much support even within pro-KANU areas and only served to draw attention to similar attacks on forests by well-connected “private developers” across the country. Such forests include Nyeri forest, Mt. Kenya (Central Province), Kaloleni *kaya* or forest shrines and hundreds of formerly protected mangrove forests on Makazi and Funzi Islands (Coast Province), Ngong forest, Marmanet forest, Ololua forest (Nairobi), Mt. Elgon forest, Kakamega forest, Maragoli forest (already gone) (Western Province) and East Mau forest, Siongiroi forest and Sururu forest (Rift Valley). A year later, on 1 March 2000, in what appeared to be a sign of retreat, Whispers Estate Development quietly withdrew the private security forces protecting the Karura land (*The People* 2 March 2000). A nationalist movement that included a broad class and ethnic alliance, in this instance, faced down the Moi patronage hierarchy and its clients.

## EATEC, Rural Resistance and the Significance of Nandi Nationalism

If the government can allow Eatec to speculate with its land, the Nandi will speculate with their votes.

KANU MP John Sambu.<sup>62</sup>

While the Karura struggle was raging in the capital, a profoundly significant struggle was raging in the KANU and “Kalenjin” rural heartland over EATEC (East African Tanning Extract Company) farm land in Uasin Gishu District. This conflict strikingly reveals how land struggles in the current electoral context can challenge the old rules of patrimonial politics. As the following case study of the conflict illustrates, the contradictions between accumulation of land embedded in higher level patronage networks and the *majimboist* rhetoric emerged in raw, stark form, into the public realm. In the turbulence of this struggle, one could discern the birth of a cosmopolitan politics and an important set of new political alignments. What began as a bargaining strategy of a faction within KANU transmuted into an altogether different and potentially more democratic and tolerant politics.

### The Setting: Uasin Gishu District

Uasin Gishu district is in the “Kalenjin” heartland with the majority of the top “Kalenjin” politicians, civil servants and parastatal heads living in and around the district’s largest city, Eldoret. This, combined with intense “ethnic clashes” in the area, made the district a “KANU zone” in the 1992 elections. Originally Uasin Gishu was once the grazing lands of the Uasin Gishu Maasai. The Nandi decisively defeated them in 1880 and were continuing to expand into the area when colonialism intervened (Oboler 1985: 19). After fierce resistance, colonial rule was established in 1906. The Nandi were moved into a reserve, and this separated them from important salt licks

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<sup>62</sup>Quoted in *Weekly Review* 20 June 1997.



Figure V.9: Uasin Gishu District Source: Republic of Kenya 1997

and grazing ground. The region's fertile land attracted settlers, who, under colonial protection, set up large farms, many on the former grazing grounds.

By 1913, a system of squatting similar to the arrangements between Kikuyu and settlers in other parts of the Rift Valley emerged. By grazing their cattle on the formerly Nandi pasture/settler land, many squatters initially prospered. Further, in this way, they were reclaiming rights to their former land. In contrast to the experience of Kikuyu squatters, labour controls were not as strictly enforced. In part, this was because availability of unused land in the area enhanced the bargaining position of squatters who could exit from labour or move to another farm if conditions were hostile. In light of protest movements against labour controls in other parts of the country, settlers were also cautious about enforcing them (Youé 1988).

After World War I, without consultation, 278km<sup>2</sup> of the most fertile land, one-seventh of the reserve, was hived off and given to soldiers under the Soldier Settlement

Scheme. Once again, this separated the Nandi from salt licks and important grazing lands and displaced 1,500 to 2,250 residents. The hardship this generated, along with a large rise in taxes, helped provoke resistance in 1923. Responding to a call from their spiritual leader, Nandi squatters left the settler farms en masse to attend a "traditional" gathering of the whole tribe. This withdrawal of labour, linked to a simmering campaign of non-cooperation, provoked a crack down on leading Nandi resisters, but also some concessions (Ellis 1976). By 1934, approximately 13,300 Nandi squatters, about one-quarter of the Nandi population at the time, had moved out of the reserve and onto European farms in Northern Rift Valley, including Uasin Gishu district. After the Kikuyu, the next largest group of Rift Valley squatters were Nandi (Van Zwanenberg 1975: 231).

In the 1940s, with squatter labour, Uasin Gishu District became a "bread basket of Kenya", producing large quantities of wheat and maize (Youé 1988). By 1961, around 561 settler farms existed in the area, with most farms in the 2,000 acres range. As in the rest of the Rift Valley, around this time there was a movement towards growing cash crops such as sisal, tea, coffee, and wattle. By 1961, these cash crops covered 89,100 acres of Uasin Gishu settler land and involved 17,700 African labourers and around 3,500 squatters without homes in the reserve. Wattle, used to produce an extract for tanning hides, was the predominant cash crop, covering 68,100 acres (Colony and Protectorate of Kenya 1961). Many settlers belonged to a farmer's cooperative, Plateau Wattle Co. Ltd which was eventually swallowed by the East African Tanning Extract Company (EATEC).<sup>63</sup> At the time, Plateau Wattle Co. sold land to EATEC for the price of K.sh 250/acre as set by the Central Agriculture Board. Eventually, in 1969, EATEC was taken over by the British multi-national Lonrho.

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<sup>63</sup>From 1933, EATEC was owned by Forestal Land and Timber Company whose British parent company was a dominant manufacturer of bark extract (Swainson 1978: 37). In 1969, Slater-Walker Securities purchased EATEC. Slater-Walker was purchased the same year by the large British multi-national corporation, Lonrho. In 1973, when EATEC took over its competitor, Kenya Tanning and Extract Company, a monopoly was established in the area.

As soon as Lonrho entered Kenya, along with many other multi-nationals in the 1960s, it forged relationships with the Kenyan government in order to guarantee political protection. Part of this strategy was to appoint key members of Kenya's ruling class to senior positions (Kareithi 1991: 203-204). During Kenyatta's time, his son-in-law Gecaga was appointed managing director of Lonrho East Africa. During Moi's time, the higher level patronage boss, nominated MP (and some believe Moi's son) Mark arap Too, was appointed deputy chairman of Lonrho and later chairman.<sup>64</sup> It was, perhaps, not surprising that EATEC (Lonrho) got land in 1971 at government controlled prices. Nor was it surprising that, in 1994, large pieces of the EATEC farm were transferred through a front company called Kenmosa to wealthy patronage bosses, including the president, who were then free to sell them at market prices. One large piece of EATEC land was opaquely sold to a private company which then sold it back to the government for the Eldoret airport at a highly inflated price, a matter investigated by the parliamentary Public Accounts Committee (Republic of Kenya 1999a). This was, perhaps, one of the most egregious examples of a thriving land racket.

Sales of EATEC land were carried out in a context of local land hunger. After independence, despite settlement schemes, land holdings in Uasin Gishu District remained highly skewed. In 1980, for example, the district still had 525 large farms covering 84 per cent of the total rural land area (Kanyinga 1998b: 209). Even taking into account subdivision of some of these farms into smaller holdings, the figures suggest that "relatively little land was turned over to land hungry peasants and that the reform did not solve the problem of high levels of landlessness that characterized the district from the colonial period" (Kanyinga 1998b: 213). Besides Nandi labourers, many migrants from neighbouring areas came to work in Uasin Gishu and ended up squatting on large-scale farms, including EATEC farm land. Today, these squatters make up a substantial part of the landless rural poor in the district (Republic of

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<sup>64</sup>As is fairly typical of higher level patronage bosses, in 1998, Too was also appointed to the Kenya Sugar Authority.



Kenya 1994-1996: 74).

In order to transfer all the lucrative land to his patrons and their clients, Mark arap Too attempted to evict former labourers squatting on various parts of the EATEC farm. The plight of these squatters deepened local resentment over the exclusionary nature of ongoing land transactions which were marginalizing locals, particularly young Nandi who were outside of these higher level networks. This is how Henry Maiyo, one squatter from an EATEC settlement 10 km out of Eldoret called Kampi Nandi, narrated his understanding of the situation in a protest letter, interestingly, to the British High Commission:<sup>65</sup>

Our ancestors lived at Kampi Nandi as early as 1920s and they were later turned into labourers on their own farm by the British colonial regime, under the Native Labourer's Ordinance (Cap 113) which governed relations between land owners and 'residents' labourers. Thus the remains of our ancestors have been buried here. Likewise we shall be buried on the same land.

Labourers and their male offspring (aged above 16) were required to supply labour to the land owners for at least 180 days per year. In return they were paid a nominal fee and allowed to farm and graze at pleasure of the landowner. The women folk tended domestic plots. This was the arrangement that was maintained in the early 1950s when EATEC took possession of the land on which we lived and worked.

When the Swynnerton Plan of colonial government introduced consolidation and adjudication of the native reserves in 1958, we were shielded from its provisions by the security offered by our employer, EATEC. Consequently we do not have anything else to call our ancestral land, since it is that on which we were squatting and offering labour. In 1984 EATEC unilaterally decided to move us (the Nandi labourers) into labour camps hitherto occupied by labourers who had come to work here from outside. We declined... The determination

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<sup>65</sup>The letter was dated 14 May 1999. A slightly revised letter, reproduced in the RPP newsletter, *Mtetezi*, appears in Appendix E. It is likely that Maiyo received some assistance from the activists at RPP in writing this letter.

by EATEC to evict has only been matched by our determination not to be evicted. We have nowhere to go!

The plight of Kampi Nandi squatters has not been unique as landlessness is rampant among the Nandi. Also experienced in Kenya now is the land grabbing mania. In 1990s EATEC offered 40, 000 acres for sale, requiring people to register for shs 5, 000 (non refundable) fee. Nearly 10,000 people responded to this noble opportunity. Yet the outcome of this proposal has been totally disheartening. Whereas the exercise has been completed there is an instance where ten houses-holds (sic) ended up on one acre of land, while senior government officials have acquired substantial holdings in more than one such scheme!

We squatters detest collusion between EATEC and our predator government. The area of Kampi Nandi is targeted for sale but there is collusion to bring in wealthy outsiders, instead of resolving our plight. We know, for example, that President Moi himself has acquired part of EATEC land (LR. NO 77339/16-Original No. 7739/2/2 18.88 Hectares (dated 30-11-93).<sup>66</sup> Mark Too LR NO 744-1756 Hectares (dated 6-5-82) [sic] and is pressurising for his own Tugen and neighbouring Keiyo people to be brought from as far as 50 and 100 miles, even though they are not landless (or squatters) to be settled here.

What is striking about this narrative is the inextricability of claims to land based on the "customary" or ancestral rights and on the "moral contract" sealed by labour. The squatters claimed rights as the deserving poor who have laboured as agreed to by the law and who have buried past generations in the land. Both are seen as mutually reinforcing moral underpinnings to the squatter community's right to land for subsistence. Further, one sees the awareness of class consciousness wrapped within an ethnic language. The problem of landlessness was not a problem of the squatter families alone but of the wider imagined ethnic community against wealthy, well-

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<sup>66</sup>For title deeds and land registry records to back up these claims see Appendix F. Maiyo attempted to put a caveat on the land acquired by Moi in order to contest the land ownership in court but, in what was clearly an extraordinary measure, was told that the land was already owned and therefore he was not able to effect a caveat. See also Appendix F.

connected outsiders, *who were not landless (squatters)*, a problem that is part of the land grabbing mania affecting the nation as a whole.<sup>67</sup>

The squatters of Kampi Nandi did not deny the land rights of the multi-ethnic squatters in the Northern camp, and, in fact, sympathized with their plight as genuine landless like themselves. However, they protested the attempt to place both groups together, diluting the Kampi Nandi claims to “ancestral land”. Indeed, the Kampi Nandi squatters also included a small number of Luhya and Turkana who were, for all intents and purposes, part of the Nandi community and whose claims to land were respected. Interestingly, Mark arap Too, born and raised in the area and speaking the local dialect, was depicted as an “outsider”. Local Nandi resurrected the importance of the Tugen strand of his lineage to depict him as part of Moi’s group which, along with Biwott’s Keiyo sub-group, were seen to be encroaching on the land in the area. Once again, this encroachment took the form of opaque allocations of post-independence settlement schemes supervised by the provincial administration and, hence, outside of local control (Kanyinga 1998b: 230). Thus, the squatter notion of a “Nandi community” was not an entirely exclusive one. Instead, it became a means to articulate class grievances while appealing to a wider constituency, *both locally and nationally*, to recognize their plight as poor landless labourers/farmers.

In an interview a squatter leader who had been actively networking with Nairobi anti-land grabbing organizations and, no doubt, had been influenced by this encounter, made the class distinctions involved quite clear. Here is part of the transcript of an interview I did on 30 June 1998 in the RPP office in Nairobi (emphasis added):

S: Moi wants to grab *for his people not for his community*. It is for he, himself and his people.

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<sup>67</sup>This only appears a contradiction if one has a liberal view of the nation as opposed to the more communitarian, yet potentially pluralistic view, held by most Kenyans that their nation is a community of communities. The tensions between formal national citizenship based on liberal principles and local ethnic based citizenship are well explored by Ndegwa (1997). However, as we shall see, the illiberal way ethnic nationalism is articulated from above by the ruling clique can differ from the way it is articulated from those at the bottom of the hierarchy of power.

J: When you say "his people" you mean?

S: *Ministers who are protecting him, his family- not his community.*

J: Not even the Tugen community?

S: Yes, when we come to his community there are people like Kiplenge (A Nakuru based lawyer and land rights activist). He is Tugen and he is fighting against Moi.

The movement around Nandi "ancestral land" was not only about ethnic domains but was also part of a class-based struggle pitting land accumulators, including Moi himself, against a Nandi underclass. This class dimension facilitated the recognition of the claims of the Turkana and Luhya squatters at Kampi Nandi as genuine landless. Nandi nationalism involved reappropriating the past for use in a highly unequal struggle in which, as with the other land struggles we have already discussed, legal and bureaucratic avenues, entitlements of national citizenship, are appealed to and too often unmasked as hollow promise.

### **Articulation of the Nandi Movement within Multi-Party Politics**

In the multi-party context, the claims and grievances of EATEC squatters and Nandi land poor became a central election issue that generated a fractious break within KANU between its most powerful Kalenjin political bosses, including the president, who were accumulating EATEC land, and younger MPs, Kirwa (Cherengany in multi-ethnic Trans-Nzoia), Sambu (Mosop in Nandi District) and Ruto (multi-ethnic Eldoret North in Uasin Gishu District).<sup>68</sup> The Nandi MPs took up the squatters' plight as a cause célèbre. Kirwa told the *Weekly Review* (23 August 1996):

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<sup>68</sup>The Kenya Cooperative Creameries issue was similarly divisive. The management of the Cooperative was passed into the hands of Moi clients, who were running it into the ground. Their patron was aiming at privatizing it by selling it to clients at throw away prices. In 1996, Factional struggle emerged around this issue. Reconciliation occurred when Moi backed down.

What I know is that the land was owned by Lonrho on a 99-year leasehold. Lonrho has not renewed this lease and the land should revert back to the government. Is this company (Kenmosa)<sup>69</sup> now selling government land?

A number of the Nandi elders continued to assert “community rights” to the land based on patrimonial logics. For example, at one meeting a Nandi elder told the audience, “during Kenyatta’s time his people benefited from such things (land). This should have been our time, but, surprisingly, our own people whose days are numbered in the government have kept on undermining us” (*People* 26 February 2000). MP Sambu, who, in 1993, was part of Ntimama’s “environmental tour” of the Enosupukia community at Narok prior to the violence there, expressed his displeasure in the familiar bargaining language of patrimonial politics which, nevertheless, criticized the *majimboist* rhetoric and expressed a certain degree of disillusionment (*Weekly Review* 20 June 1997):

In 1992 we were promised many goodies if we only stayed solidly behind President Moi and the ruling party. We were told if opposition tribes took over, the Kalenjin would be wiped out. The promises have not been fulfilled and the future looks bleak for us if we maintain this notion of Kalenjin solidarity against other tribes. If the government can allow Eatec to speculate with its land, the Nandi will also speculate with their votes. It is as simple as that.

In contrast, Kirwa and squatter activist Maiyo articulated a Nandi nationalism imbricated in class as opposed to these purely patrimonial logics. For example, at the meeting with the Nandi elders Kirwa countered the language of “the belly” by saying that what the Nandi wanted was a fair price for the EATEC land and that “Nandis and their neighbours must be given priority and not any other rich individuals who had all along been exploiting poor Kenyans” (*People* 26 February 2000).

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<sup>69</sup>Neither the *Weekly Review* nor the squatter activist Henry Maiyo were able to find this company in the registrar’s office.

EATEC was not the only piece of land in the area provoking a deepening of the factional dispute within KANU in Uasin Gishu district. Biwott was accused by local small-holder farmers of cheating them out of Goetzee farm.<sup>70</sup> Their anger was directed at local Biwott client Jackson Kibor, Uasin Gishu KANU Chairman. Biwott, unwilling to concede to the remonstrations of a lower level client, left Kibor no choice but to plead with the president. In a public rally, however, the president effectively supported Biwott (*Weekly Review* 13 August 1993). Another dispute in neighbouring Trans-Nzoia district provoked a similar predicament for Kirwa. In 1993, the Agricultural Development Corporation, a government farm in Kirwa's constituency, was in the process of being doled out to "prominent personalities", once again, linked to Biwott. Kirwa, a Biwott client at the time, was also facing strong local pressures to prevent encroachment on these farms.<sup>71</sup>

Kirwa, Sambu, and Ruto could have taken a cut of land, which was offered to at least one of them, and stayed silently out of the path of the most powerful KANU faction around Moi and Biwott and, in this way, remained beholden to them as lower level clients. The fact that they chose not to take this path stemmed from strong pressures from below in the form of rebuke and censure including potential

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<sup>70</sup>Biwott was dramatically accused of being a "land grabber" by members of his own Kerio South constituency. Having acted as an intermediary between the Kenya Fluorspar Co. mining company and 1,400 families who were occupying land targeted by the company for mining, Biwott had the families moved off and then used the compensation money to buy a farm for himself. When he called a rally in August 1990 to deny that he was a land-grabber, he ended up chastised. Challenging anyone in the audience to come up and call him a land-grabber, he was astounded when a certain Mr. Nathaniel Sogei immediately rose to the occasion. Sogei was arrested before he reached the dais (*Weekly Review* 29 November 1991).

<sup>71</sup>By May 2000, the rift between the Biwott faction and Kirwa was enormous. When Marakwet squatters invaded the ADC farm and set up a council of elders to allocate land outside of state institutions, Kirwa strongly backed them. He emphasized that it was "the rich persons ... who should be receiving the marching orders" (*People* 21 May 2000). Some of these prominent personalities included former Provincial Commissioner of the Rift Valley who was promoted to nominated MP Mohammed Haji, North Eastern PC Maurice Makhanu, and two former DCs.

electoral defeat. Indeed, even Assistant Minister MP Jesse Mais (Eldoret South), who had been actively attempting to divide the Kampi Nandi squatters, felt he could no longer remain silent if he wanted to stay elected and, finally, came out in support of the renegades' position on EATEC.<sup>72</sup> These popular pressures were a powerful tool for the nationalists in their struggle against the immensely powerful Moi-Biwott-Too faction.

Public pressures around this issue became an alternate source of power. By taking up the land issue, these maverick KANU MPs wielded their supporters, mostly KANU voters, like a stick against the patronage hierarchy.<sup>73</sup> Multi-party politics precipitated a stark confrontation between a weaker KANU faction and the most powerful land accumulators over their irregular, opaque and inequitable transactions. The presence of the opposition gave teeth to these pressures for local resistance to the machinations of the trio of patronage bosses Moi, Biwott and Too.

As we have already stressed, the land issue is one of the most deeply felt problems across communities, one that provokes moral questions about nation, ethnicity, class, civic virtue and justice. The allocations of EATEC land to high powered "outsider" patronage bosses while local people were suffering from landlessness and the associated material and social deprivation, was an affront to local notions of justice. This provided the force behind EATEC as a political issue within the wider community, even among those who would not directly benefit from the land. Indeed, these issues were alive in almost all constituencies in the region if not, as we have seen, in the country as a whole. Locally, Nyayo Tea Zones, national forest, and plantations, targets of the "land grabbing mania", were being irregularly privatized over the heads of local communities with large numbers of landless.

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<sup>72</sup>MP Kosgey (Tinderet), MP Leting (Emng'wen), and Mr. Kiptum Choge (Aldai), while Moi clients, were also afraid to openly criticize the "nationalists" for fear of losing local support.

<sup>73</sup>In this respect, the decision not to defect to the opposition was a source of power. As opposition candidates, they were more likely to face problems both from above and below as voters would now have to consider whether they wanted to risk changing the president altogether. Given the heavy "clashes" in the area, issues of retribution among others would come to the fore.

The EATEC controversy raised the cutting question of local accountability and transparency in land transactions, challenging the historical exclusions that have taken place around land. The multi-party context, with its new political spaces for mobilization and organization, provided the means for EATEC to emerge with great force as an election issue. Local nationalist MPs upped the ante on Moi by threatening to quit KANU to form the new party, the United Democratic Front (UDF). While Moi abused the young MPs, appealing to his elder status in the face of their junior status, he could ill afford to risk losing these MPs with their constituencies to the opposition. As a delaying tactic, he resorted to the colonial strategy of denying the UDF registration. Old forms of discipline through the party, however, no longer existed. To rig the KANU nominations would risk driving the MPs and their constituents into the opposition. Indeed, the renegade MPs made clear what would happen if they were rigged out; they would “urge the Nandi to vote for opposition presidential candidates and they themselves will join other political parties” (*Weekly Review* 20 June 1997).

The “Nandi nationalist movement” unleashed by the irregular allocation of EATEC land, has been described by urban-based commentators as “all inter-tribal politics” (*Daily Nation* 25 March 2000). Indeed, the movement was tearing at the fragile seams of the “Kalenjin coalition.” While “prominent politicians, including Moi, asserted and invigorated the integrity of Kalenjin ethnicity, claiming that there was no such identity as Nandi, Tugen, and Kipsigis... -only Kalenjin” (Ndegwa 1997: 609), most Nandi refused to give Moi “the power of ethnic naming” (Worby 1994: 376) which would have affirmed Moi, Biwott, and Too as “insiders” who were somehow benefiting the “community” by allocating themselves land.

At a well attended meeting in Eldoret organized to discuss EATEC land, Nandi elders told the crowd:

We have been abused to an extent which we can no longer bear. Nandis shall not accept to be part of the Kalenjin collection of sub-tribes if our role is to be used politically and then dumped without even being given our basic rights



(*The People* 8 March 2000).

This emerging cleavage around land was set to benefit the opposition, many of whom enthusiastically backed the renegade KANU MPs and their stance on EATEC land. However, this was more than sheer opportunism, for many opposition leaders were struggling to find allies against persisting ethnicized violence against their constituencies.

Just as the Westlands market community declared that their struggle was “something national”, the Nandi squatters and their leaders alike reached out to a national arena for alliances, support, and recognition for their struggle. EATEC squatters sent representatives to Nairobi to consult with the Land Rights officer at the Kenya Human Rights Commission and the legal aid organization, Kituo Cha Sheria, which agreed to sue the company on their behalf, and Release Political Prisoners (RPP). Indeed, RPP sent representatives to EATEC squatter meetings where they offered support and advice on strategy. In at least one meeting, they brought along Kikuyu squatter, Mrs Sabina Wanjiku of the Nairobi-based *Muungano wa Wanavijiji* (*The People* 7-13 August 1998). This was a clear indication that a certain degree of common cause was being made with the struggles of the primarily Kikuyu squatters in Nairobi who also saw their struggle of national significance. In the interaction, at least some of the Nandi squatters, such as the activist interviewed at RPP, appeared to pick up a stronger class as well as nationalist language and perception of their struggle.

Kirwa's campaign for Nandi rights did not appear to contradict his deliberate attempt to court voters from all ethnic communities. Indeed, his popularity in the multi-ethnic Cherengany constituency, where the Luhya, Kalenjin, and a mixture of Kikuyu, Kisii and Turkana voters each represent approximately a third of the electorate, increased. He won the December 1997 election with a comfortable 63.43 per cent of the vote. Kirwa had made a deliberate and electorally successful policy of seeking trans-ethnic issues and promoting a tolerant cosmopolitanism. An avid campaigner, he crisscrossed his constituency prior to the elections with “a policy to

embrace all, including those who voted against me". His strategy of seeking inter-ethnic cooperation led KANU critics to call him an "opposition mole." He countered by suggesting that his criticism of the top level patronage hierarchy and *majimboism* has a "principled foundation" (*Weekly Review* 27 June 1997). When the president on tour in Trans Nzoia District, depicted the nationalists as "enemies within KANU", the nationalists told him to "stick to the issues they had been raising" (*Weekly Review* 12 June 1998).

In January 1998, when Kibaki pressed ahead with the election petition against Moi, and on the same day as Biwott warned that Kibaki's petition was an affront to the whole Kalenjin community, a group of Nandi politicians, led by Minister for Tourism Henry Kosgey, echoed Ntimama and Kones' threat of violence against the Kikuyu. This time, however, the threatening rhetoric was countered by a Nandi coalition within the "Kalenjin" who issued a strong press release in condemnation, shattering the notion of a united and belligerent "Kalenjin community":

#### PRESS RELEASE

LET it be clear at the onset that the Nandi community leaders have not held a meeting for noble causes like sorting out land messes in the area and fighting a fast creeping poverty bedeviling the society, let alone dam a flood of war songs. Election grievances are best addressed through petition courts which have the requisite machinery to deal with such matters...

The scenario and the aftermath of the 1991 clashes are still fresh in the minds of many, and anybody can seize the opportunity of such careless statements to precipitate a political disaster. History attests to the fact that Nandis though militant, never jump on any bandwagon of inciters. Logic has it that violence begets violence, and violence is not a wedding dance. We will therefore not allow anybody to misuse the name of the community for any parochial or selfish purposes. As Nandi leaders we care about the welfare of our people both in Nandi district and the diaspora. We have to think of what to bequeath to future generations...We are not by any stretch of the imagination condoning

insults targeted at any elected leader-the courts, but not rallies, are meant to address exactly that.

We strongly condemn the utterances of leaders who met in Nandi hills and totally disassociate members of our communities from any form of violence. Nandiland cannot be allowed to be a battle ground. And we wish to assure all communities living among the Nandi that we shall not allow our people to be misused. Mutual and peaceful co-existence with all people is what we advocate.

....Unity in diversity is paramount for stability and progress of this nation.

John K. Sambu MP Mosop

Jackson Kibor, National Co-ordinator, Ford (K)

Kipkorir Menjo, Chairman, Ford (K), Eldoret North

Paul Birech, Kanu assistant secretary, Uasin Gishu

Kipuro arap Kirwa, MP Cherangany

Two years later, the struggle was still raging. The trans-ethnic cooperative politics over EATEC was also expanding. Two Kikuyu municipal councillors from Eldoret, Peterson Mwangi and Paul Gicheru, issued a declaration that “the Kikuyu community would be risking too much if they went ahead and bought the EATEC farms without approval of the Nandi community” (*The People* 6 March 2000). While this was a response to fear of potential violence, particularly after the experience of “ethnic clashes”, it was also the beginning of a reciprocal politics which recognized that local claims to land needed to be respected and that land rights should be negotiated with a wider local public. This declaration came after Democratic Party legislator, Chege Mbutiru, brought in a bus full of wealthy prospective Kikuyu buyers to look at EATEC land. This prompted a hasty response from the local Kikuyu community representatives to distance themselves from these wealthy Kikuyu “outsiders” saying, “some people are trying to joke around with the sale of the land and that is why we have felt there is a need to let local community buy the farms and we, therefore, advise our people to keep off meanwhile” (*The People* 6 March 2000). It did not appear that

this move by DP's own land accumulators was sanctioned by Kibaki and the party as a whole who were grateful for Nandi support against the *majimbo* violence. In fact, Kibaki attended one of the EATEC land rallies, and by June 2000, the Uasin Gishu Democratic Party held a press conference in Eldoret to state their position. They said, "events around the sale were worrying" and urged the Government "to take charge if the lease between it and Lonrho (East Africa) had expired." Further, tapping into the class rhetoric embedded in the Nandi nationalist rhetoric to argue for inclusion, they said the "plight of landless Uasin Gishu District should be addressed urgently regardless of community" (*The People* 16 June 2000). Even a prominent Keiyo businessman, perhaps eyeing a political opening in the emerging public politics around land allocations, came out in strong support of the Nandi claims, criticizing the excessive presidential powers that led to unequal distributions of resources (*The People* 6 October 1999).

Moi, Biwott, and Too tried to counter this rising tide of multi-ethnic opposition based on Nandi "ancestral claims" by turning to a familiar liberal language. Private property rights needed to be protected, and the price of land would be determined on a "willing seller, willing buyer basis". They presented the privatization of the farm land as part of an impersonal market mechanism. On 24 February 2000, amidst much contention swirling around the land sales, EATEC general manager Jeremy Humes announced that plots on "Nandi District Estates" would go on sale and that "market prices would dictate prices in all transactions". Thus, he expected that the five acre plots would go for K.sh 150,000/acre in prime areas and K.sh 60,000/acre in interior areas (*The People* 26 February 2000). Opening the Eldoret Agricultural show on 2 March 2000, the president backed up the EATEC management, chaired by his own client Too, with a rhetoric of protecting private property rights and upholding the constitution which protects these rights:

Some people think there is free land for distribution in Kenya. This EATEC land is legally owned by the company and I have no powers to interfere if they have decided to sell it on a willing-buyer-willing-seller basis.

However, with the new political space made available in the multi-party context and the ability to publicly articulate and scrutinize the privatization of public land in detail, this legitimizing ideology was increasingly unmasked and challenged. For example, the EATEC squatters who accessed the Land Registry through the cooperation of local officers found that one of Moi's personal 957 year leases for 18.85 ha of EATEC land was at the annual rent of K.sh 56,640 or 1,216K.sh per acre per year, definitely not a market rate. Mark Too had 1,756 ha to his name as early as 1982, with payment made through exchange with another plot, undoubtedly of much lesser value. Both these transfers, along with others, took place before 1 March 2000, the new official sale date. This land was now being sold at between K.sh 60,000/acre and 150,000/acre, which would create a huge profit. In turn, buyers of this land, including the wealthy Kikuyu DP supporters, would depend on the KANU government to protect their property rights against local claimants, and could be expected to cooperate in a politics of local domination. This rhetoric around "protecting private property", however, was contradicted in an earlier statement. On a visit to Eldoret in 19 February 1998, Moi stated, "Some people are complaining about the sale of the farm...I have already told Mark to sell the farm at Shs 50,000 per acre... let it be known that this farm will not be sold to *Kiptoiyot* (derogatory reference for an immature or recently circumcised person)", referring to the youthful renegade MPs (*The People* 27 February - 5 March 1998).

## Escalating Confrontations and the "Tragedy of the Commons"

Pressures from such anti-land grabbing campaigns did push the regime into a number of public gestures. In 1996, for example, Moi asked the Attorney General, Amos Wako, to set up a task force to study the land issue. The Minister for Lands and Settlement at the time, Noah Ngala, declared that the task force was to protect public land from grabbers (Review 9-15 June 1997). However, it made no public appearance

and quietly disappeared. In November 1999, Minister of Lands and Settlements Joseph Nyagah announced the appointment of a new public commission on land, headed by recently rehabilitated former Attorney General, Charles Njonjo, to restore confidence in title deeds. The new public commission, consisting primarily of legal experts, is expected to table its report after two years of investigations and public and private inquiries. The general terms of reference for the commission were as follows:

Undertake a broad review of land issues in the country and recommend the main principles of a land policy framework which would foster an economically efficient, socially equitable and environmentally sustainable land tenure and land use system.

Undertake an analysis of the legal institutional framework of land tenure and land use in Kenya and recommend a programme or legislation that would give effect to such policies.

Recommend guidelines for a basic land law and complementary legislation and associated subsidiary legislation to address such issues as the systems of land tenure appropriate for the country, including land ownership and control, and the system of acquisition and disposition of land rights whether by inheritance and otherwise.

Echoing donor rhetoric in his statement about the commission, the Minister of Lands and Settlement emphasized the theme of “restructuring”. He noted that “the changes were only the beginning of widespread changes at Ardi House [Office of the Commissioner of Lands] and at all land offices in the country which will be streamlined and strengthened to ensure they offer quality services to Kenyans”. The need to examine past irregularities around land allocations was not explicitly articulated and, in fact, the use of legal experts reflects an attempt, much used during colonial times, to couch the sensitive political problems around land in the “neutral” and technical language of the law. When questioned by reporters, the minister admitted that the commission might be required to investigate these irregularities, although he added

that “*the emphasis will be on the future and not the past*” (*The People* 24 November 1999).

By June 2000, the situation took a more precarious turn for the KANU hierarchy. Biwott continued to evoke the constitutional principle of “the sanctity of life and property” along with the market principle of “willing seller, willing buyer” to justify the EATEC transactions to parliament (*Daily Nation* 15 June 2000). On the ground, Nandi youth and squatters were threatening invasion. Indeed, farm invasions by squatters and pastoralists were taking place with remarkable frequency, demonstrating how bereft of legitimacy this rhetoric of protecting private property rights had become in light of a decade of “ethnic clashes” and the land grabbing mania. Joining squatters were pastoralists, pushed into desperation by drought and famine, linked, in part, to environmental degradation and the ravages of *majimbo* politics. There was a certain tragic but poetic quality to the invasion of President Moi’s Laikipia farm, along with other large settler farms, by Maasai and their herds claiming it was their ancestral land.<sup>74</sup> Attempts to remove them, using the force of the GSU and provincial administration, and the subsequent decision to transfer them into the sacred Kikuyu forest Mt. Kenya, a critical water source, was also very much an allegory for the deep problems with Kenyan “land policy”.

By the end of the decade, Kenya was experiencing the increasingly clear implications of profoundly uneven land accumulation that characterized the country since its birth. Despotic rule removed land transactions from local scrutiny, negotiation, and

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<sup>74</sup>This was occurring at the same time as the farm invasions in Zimbabwe. Some Kikuyu politicians, Ndichu and Muite, picked up the anti-white settler rhetoric from events in Zimbabwe and encouraged the Maasai invaders in their claims to the land. This was a populist tactic and designed to put pressure on Moi and his regime. Moi and his white civil service head, Richard Leakey, were busy assuring donors, the British in particular, that Kenya was different from Zimbabwe and would “protect private property rights”. The Law Society of Kenya, in an open letter to Mugabe condemning the election violence, noted the difference in Western reactions to the invasions of *white large-scale farms* in Zimbabwe and the many invasions of *African peasant farms* in Kenya over the last decade (*People* 4 June 2000).

regulation. The end result was a “tragedy of the commons” that was very different from Hardin’s (1968) famous conceptualization. Protected by a despotic state, which disembedded Kenya’s commons from adequate community regulation and sanction, higher level patrons and their clients approached Kenya’s public lands as if they were an open access system. The consequence was rapid privatization without consideration for productivity, environment, or social sustainability.<sup>75</sup>

As we have seen, this process accelerated during the last decade of multi-party rule. Just as Kenyans pried open political space to articulate their opposition to “land grabbing”, irregular privatization was being attempted at a breath-taking pace. While well-connected land-grabbers, fearing a change in power, were quick to use their privileged positions in a despotic state to accumulate while they could, ultimately, they would rely on any future government to uphold their rights to land. Hence, at the same time they had a stronger stake in fighting change. As their liberal rhetoric of “protecting private property rights” strongly suggests, they were looking outwards for protection of their “land rights” in the eventuality that a new government would seek to reappropriate their land.

Despite the stalling tactic of the Njonjo Commission, control over the land policy agenda had significantly slipped out of government hands. Calling the commission a sham and realizing the gravity of the situation, 30 NGOs met in Nairobi to form a coalition, the Kenya Land Alliance, to agitate for land reform. Farm invasions by the swelling ranks of the poorest-squatters and pastoralists, both equally deprived, both converging in their demands to end “land grabbing” and seeking a moratorium on public land sales, were shifting the ground of debate on land. Moi made an emotional appeal to the the “nation”: “Please, my dear Kenyans, do not invade anybody’s farm” (*Daily Nation* 2 June 2000). By this time, in significant ways, the “nation” was no longer in the grip of Moi and his constellation of patronage bosses.

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<sup>75</sup>This useful concept is defined by Polèse and Stren 1995 (cited in Lee-Smith and Lamba (2000: 250)) as “the fostering of social integration of culturally diverse peoples, with improvements in quality of life for all segments of the population.”



## Chapter VI

# Conclusions: Beyond Electoral Despotism?

*The crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear.*

*Antonio Gramsci (1971: 276)*

Kenya's old despotic politics is transforming, and a new politics is struggling to be born. Morbid symptoms in the form of an emergent warlordism and the "land grabbing mania" have proliferated. Challenging dualistic notions of despotism and democracy, Kenya's politics of political liberalization has led to a heightened despotism *as well as democratic deepening*. However, the tendency of our theorizing to focus on one of these aspects while ignoring the other has resulted in a failure to grasp the dynamic of "patronage inflation" and resistance, which dialectically link these opposing trends and explain their co-existence. Indeed, as in Yugoslavia, violence in Kenya began "precisely because of the relative strength of homegrown pressure for political pluralism" (Gagnon 1994: 118). In Yugoslavia and Rwanda, cliques fashioned large-scale plans for genocidal "solutions" to the historically specific problems posed by a potential transition (Gagnon 1994, Des Forges 1999). In contrast, Kenya's ruling patronage bosses developed intermediary strategies to manage newly competitive elections by deepening despotism at the local level. Like Charles Taylor and his

clients in Liberia, except without a full-fledged war, they constructed a violent form of electoral despotism.

Kenya's patronage bosses initiated decentralized survival strategies to "protect themselves" from the diverse challenges posed by the new multi-party context. Ultimately, the president encouraged, channeled, and used these decentralized strategies in his struggle to stay in power and, ironically, to gain international legitimacy through winning the required multi-party elections. Operating on the nexus of the bifurcated world outlined by Mamdani (1996: 61), these bosses went from being "ethnic chiefs" in rural areas, speaking the language of "custom" over land, to protectors of "private property rights" in order to facilitate their accumulation. In light of the threat of political *abertura*, they tried to consolidate local domination by playing upon a dualistic legal and institutional nexus around land, as well as the techniques, rhetoric, and institutions of the colonial legacy.

This form of "decentralized electoral despotism" led to a confused and, at times, contradictory texture to Kenya's violence, which, in turn, reinforced the official explanation that multi-partyism had ushered in "tribal clashes". While the urban violence against the "popular sectors" was largely ignored, the "rural and seemingly primordial ethnic character of the clashes, their episodic occurrence, and the absence of a menacing government security force" muted international criticism (Holmquist and Ford 1995: 178). Indeed, the regime tried to present an acceptable image to the world and to civil, polite urban society. Patronage bosses went from rural rallies where they threatened violence against "outsiders" and professed tribal solidarity, to posh business luncheons at foreign missions where they discussed foreign investment and trade. Some of these contacts, through kick-backs and privileged information, provided the very resources used to reproduce patrimonial domination, increasingly undergirded as elsewhere, by growing numbers of private militias.

The dependence of Kenya's patronage hierarchy on rent-seeking through well-established international linkages did serve to make full fledged warlordism less attractive and create imperatives for them to continue playing multi-party electoral

politics for external legitimation. Tempering the violence to some degree was the fact that those at Kenya's highest apex of power, following the structural lines of Kenya's dependent economy, have extensive investments in Nairobi geared in significant ways towards foreigners- from high cost housing and office space to tourism and a dazzling array of service and financial businesses. However, by historical accident, the investments are located in a predominantly Kikuyu area and the locus of deep rooted resistance to incorporation into the patronage networks of the regime. While many of the Kikuyu landed class in the Democratic Party would very much like to reincorporate themselves into the patronage networks of the Moi regime, the majority of their highly disaffected and predominantly poor constituency, with newly won electoral clout, is preventing this from happening. There is a stalemate.

While violence continues to be meted out against settlement communities in the Rift Valley as collective punishment for electoral intransigence, violence of this form too close to Nairobi endangers a critical linkage to foreign resources and investments and would draw more international attention to the dynamics of the "clashes". Instead the stalemate in the Rift Valley has generated a simmering struggle. This has subjected Kikuyu communities, the majority, in fact, politically innocent children, to continuing violence just outside of Kibaki's Nyeri heartland. This violent pressure is accompanied by a persistent and, at times, highly vehement anti-Kikuyu rhetoric which exploits fears of Kikuyu domination and plays on colonial images of the Kikuyu as a "treacherous tribe".

In the capital, this dynamic manifests itself as an on-going violent struggle around urban land and space where Moi clients justify their attacks on, and appropriation of, settlements, forests, parks, and marketplaces using a liberal language of "protecting private property rights". The president and his clients unsuccessfully continue their attempts to clear the "urban crowd" from the posh Central Business District frequented by tourists, foreign NGOs, donors, and the Kenyan upper classes. This push to the periphery of the burgeoning multi-ethnic, but predominantly Kikuyu, poor, a good number of whom the regime has deliberately impoverished, reflects,

in miniature, the larger scale restructuring of the Kenyan political landscape with its deepening exclusions. This re-organization of politics through violence attempts to create spatial separation, a forced breakdown in communication, negotiation and trust: the classic signs of despotic rule.

This electoral despotism faces resistance. However, this resistance emerges in places conventional frameworks on transitions ignore. Across the country, thousands of local struggles rage as a constellation of community actors, the majority poor and marginal, mobilize to protect public land or make ongoing privatization of land a more inclusionary and equitable process. These attempts to bring opaque land transactions into the light of public debate constitute a very concrete challenge to patrimonial control, eroding one of the material bases of concentrated power. Further, by bringing the largely missing issue of equity into political debate about Kenya's national resources and by sporadically uniting people against a multi-ethnic constellation of land grabbers, the anti-land grabbing movement is one of the few counter-movements to fragmentation. These anti-land grabbing struggles constitute an effort to preserve a common heritage and the public spaces and national services that link local life to the nation. As the nationalist and popular discourses around these struggles suggest, these local struggles are widely perceived as for a nation and against those who would "kill it" to perpetuate their own survival.

The Kenyan nation under attack is not imagined along the lines of the liberal model informing much of our democratization theory, urban-based NGO and aid policy (Ndegwa 1997). Instead it is a communitarian vision, an imagined nation of communities. Hence, the vast majority of Kenyans approach the nation from the vantage points of their local, regional, and ethnic identities. However, as the anti-land grabbing discourse reveals, this nation, produced in a shared history of fighting the ravages of nature and then the ravages of colonialism, as well as through millions of interactions, inter-marriages and friendships, is to Kenyans imminently worth saving.

Much attention has been paid to the antithetical nature of national citizenship and ethnic or sub-national citizenship (Ndegwa 1997, Abwunza 1993). Yet, just as

one might be a good German and a good European, there is nothing intrinsically contradictory about being a good Kikuyu and being a good Kenyan. The profound problem is that linkages between communities are too often mediated by a despotic state. However, as in the struggle against colonialism, this situation is double-edged, providing a basis for conflict and manipulation but also a potential basis for common struggle.

Many local movements, including the Nandi nationalist movement, are defining civic virtue as a willingness to combat unaccountable land accumulation which is threatening the material reproduction of life and human flourishing. This is, necessarily, a national issue, not just because it is impacting every region of the country, but because it fundamentally challenges the form of power at the center and its linkages to local communities. As land accumulation from the top collides with the rhetoric of land for political "insiders", many Kenyans are redefining "insiders" and "outsiders" along alternative lines. "Outsiders" are increasingly the land accumulators, who are killing the nation, its public spaces, and ecological survival. "Insiders" are the vast majority of people outside of patronage networks, including the growing numbers of poor displaced by the process of accumulation.

This calls into question the strategies of both local NGOs and donors of promoting a primarily liberal vision of national citizenship in democratization struggles. This is not to deny the importance of liberal ideals and individual rights. Rather it is to recognize that all democracies have combinations of liberalism and civic republicanism; the question is one of emphasis. Taylor (1998: 151) has put it as follows:

Do we want a democracy that focuses on choice and on individual freedom, or one that centers on participation and shared self-government? Both elements have been present in liberal democracy throughout the past two centuries and still remain present today. Only the balance has shifted so strongly in the direction of individualism that the civic element risks being forgotten altogether.

Besides failing to correspond to the imagined nation of most Kenyans, liberal language, particularly the insistence on "protecting private property rights," has a no-

torious history in the Kenyan context. What is now required is a recognition of the need to redress historical exclusions, a focus on reconciliation and justice. The liberal program should be balanced with a complimentary emphasis on participation and shared self-government and a recognition of deep historical exclusions, involving the indigenous coast communities, pastoralists, and squatters. Indeed, this politics of recognition would be a critical part of any counter-politics to the *majimboist* rhetoric of Kenya's emerging warlords which play on real grievances and exclusions. Liberal answers to *majimboism* quite simply fail to properly counter this despotic strategy.

Profound differences are unlikely to be solved by insisting on liberal citizenship rights that focus on individual rights and 'market' forces. This is particularly the case when state actors, who have accumulated large amounts of public property including land, can easily turn around and use this same language, in a clear appeal to an international community, to legitimize their rights to property. Indeed, in light of Kenya's history, this is a fairly reasonable strategy. The predominant donor strategy of relying on privatization and the "market" as an avenue to accountability, without an explicit attempt to counter this with an equally strong emphasis on *local* mechanisms to protect public property, all public property, from unscrupulous privatization, gives, perhaps, unintended, rhetorical support to the land accumulators. This is particularly the case if land remains outside of the purview of corruption conditionalities.

In general, the public and private and their intricate linkages need to be more carefully scrutinized and theorized. Liberal approaches tend to assume a private and public boundary, while theorists of neo-patrimonialism tend to too easily assume a public/private fusion. As we have seen, profound contestation around private/public boundaries are critical to democratic struggles and the emergence of an accountable public realm, a realm that is essential to realising anti-corruption goals. Most significantly, without adequate protection for public property, maintaining a private property regime gets increasingly difficult. This is not only because the exclusions produce a situation where subsistence is threatened and revolt deemed justified, but also because when large numbers of property transactions are perceived as fraudu-

lent and based on overt coercion, the whole system loses the legitimacy necessary for upholding it. Recent escalation of farm invasions, populist mobilizations around reappropriating land and violence suggest that this process of delegitimization is destabilizing property rights in Kenya, a process that despite strong official statements to the contrary, has parallels to ongoing land invasions in Zimbabwe. Dramatic attacks on private property rights of largely poor small-holders and squatters, as part of Kenya's despotic electoral politics, substantially accelerates this delegitimization and destabilization.

Once again, the anti-land grabbing movement, by putting friction in the process of irregular privatization, and, in rare triumphs, preserving public property altogether, is an important countervailing politics. A central demand in these struggles is for the transformation of the state in a manner that enhances participation in decision-making about allocation and use of resources, particularly lands and forests. This is creating pressures to embed Kenya's commons in a system of local regulation and control, and, hence, curb Kenya's "tragedy of the commons". An implementation of the demands of the anti-land grabbing movement, more than the rhetoric of protecting private property rights, would create the long term stability of property rights, whether customary or private, required for production. Thus, I converge with Firmen-Sellers (1996: 152), whose study on the transformation of property rights in West Africa also concludes that local political institutions and decision-making abilities must be strengthened. However, her elite-focussed approach gives no indication of where the pressures and dynamics are to emerge that would push national governments to concede to this diminution of power.

Finally, why have the profound material and symbolic struggles around land largely been ignored by theorists of Kenya's current transition, even though there is a remarkably rich scholarship on the historical centrality of land in Kenyan politics? This indicates several serious flaws in most contemporary approaches to political change in Africa. First, the search for "democratic princes" involved in the dominant technocratic approach to democratization, aptly analyzed by Carothers (1999), ob-

scures the dynamics of struggle which integrally involve material issues and agents who are not part of the political class as middle class members of NGOs or party politics. As I have highlighted, the poorer majority of Kenyans, often in alliance with middle class activists, play a central role in the drama of the fight for and against democratization. They have borne the brunt of higher level strategies to counter democratization, including loss of basic subsistence rights, denial of access to public property for survival as well as gross violations of private property rights. Relegating Kenya's poorer citizens and their struggles to the margins of political analysis necessarily obscures a large part of the logics of despotism.

Second, there has been a related reluctance to seriously analyze the dynamics and implications of Kenya's unprecedented violence in the multi-party context, a violence that has disproportionately impacted the small-scale farmer, trader, pastoralist, and squatter. This indicates a tendency to see violent politics as "abnormal" (Tilly 2000) and exclude it from theorizing on transitions. Rather paradoxically, this helps to routinize this violence as part of "normal" political practice. In this way, our analyses are uncomfortably close to complicity in the ruling hierarchy's strategies of power. Indeed, the lack of attention paid to this violence can only encourage the sense of impunity on the part of dominant actors as they hide behind deliberate obfuscation, confusion, and rumour production. This thesis is very much meant to be a catalyst for further research on the details of the new uses of violence in Kenyan politics.

Are there lessons to be learned for donor interventions? Certainly, there is need to develop a more sophisticated understanding of ways in which patrimonial rulers develop counter-strategies to existing forms of conditionalities. There is also need to scrutinize incentives in the structures of external pressures and recognize that, perhaps inadvertently, by following a narrow "anti-corruption" agenda, this encourages a move towards the increasing use of violence and accumulation strategies that impact internationally less visible sectors of the population. It makes very little sense, for example, for the World Bank to embark on poverty alleviation strategies with government participation if the World Bank fails to condemn, in the language of aid that



Kenya's rulers understand, the killing of thousands of citizens, the active destruction of enormous quantities of public and private property, and the elimination of the livelihoods of over 150,000 people and the resulting poverty this produces.

Sadly, the dynamics of electoral despotism suggest the likelihood of more violence around future elections, particularly as dissent surfaces within "KANU zones." Kenya's patronage bosses have learned over the first decade of multi-party politics that the international costs of this violence are minimal. As long as they act on certain economic reforms, "protect private property rights", and maintain stability with a veneer of democratic forms, criticism of violence against Kenya's more internationally invisible peoples, the "popular sectors" and small-scale farmers, by the most powerful donors and international financial institutions, will be muted. These lessons are not the lessons of Kenya alone, but have been powerfully stated in the tragic case of Rwanda (Uvin 1998, Des Forges 1999). To end on a more hopeful note, this work has shown the existence of vibrant and courageous resistance to electoral despotism and the wider patrimonial control that undergirds it, a resistance that involves not only urban elites but many extra-ordinary "ordinary" Kenyans. It is in these struggles over land and nation that we glimpse a vision of a democratic future beyond electoral despotism.



# Appendices

## Appendix A

CR NO. 2511/98

11057  
OFFICER IN CHARGE  
NAIROBI DISTRICT ALL  
12/5/98  
12/5/98

Read and Not Read.

REPUBLIC OF KENYA

IN THE PM's COURT 3  
AT Waters  
David Maina NBI west  
Phangg alarming publication  
Sec 66(a) P. Code

and after inquiry required to appear before the Judge/Magistrate at Waters  
and after inquiry called upon to enter into my own recognizance to appear before the Court  
I hereby bind myself to appear in the Court at 8:30  
on the 20th day of April 1998  
or whenever required and as he continues to attend until otherwise directed by the Court.  
In answer further to the said charge and in case of my making default herein, I bind myself to forfeit the sum of Shillings 100000  
I bind this 9th day of April 1998

Witness + Signature Frank Karuri Mwangi  
Frank Karuri Mwangi muwanga  
I hereby declare myself surety for the above-named above  
that he shall attend at Waters  
on the 20th day of April 1998  
or whenever required and as he may hereafter be required to attend, further to answer to the Court.  
In case of my making default therein, I hereby bind myself to forfeit the sum of Shillings 100000  
I bind this 9th day of April 1998


 Signature Wingi

Figure 1: Section 66(a) of the Penal Code is used to curb activists, in this case a Nairobi kiosk owner and Ford-A member.

## Appendix B

This is a compilation of land grabbing cases, from a variety of sources, including press reports, government and NGO sources, which are provided below. While this sample may not be statistically representative, it does serve to give a sense of what kinds of land allocations are being contested and demonstrates that they are spread over every region in the country.

### SOURCES KEY

DN *The Daily Nation*, ER *Economic Review*, KT *Kenya Times*

P *The People*, S *The Standard*, St *The Star*, WR *Weekly Review*

PAC *Public Accounts Committee Report, Republic of Kenya*

PIC *Public Investments Committee Report, Republic of Kenya*

Okwany 2000 *Land Grabbing and Schools in Nakuru*

GBM Green Belt Movement 1999

KHRC Kenya Human Rights Commission Reports.

### CENTRAL PROVINCE

- 1) Kiambu, six Kenya National Jua Kali Association plots (P 16 March 1999).
- 2) Nyeri Town, part of a public cemetery (DN 14 September 1998).
- 3) Kabete, Kikuyu Springs, 24 acre water catchment area (DN 11 Sept 1998).
- 4) Wangige market, Kikuyu, public toilets (DN 23 Feb 1998).
- 5) Kiboko Settlement Scheme, Kibwezi, ten acres allocated to PC (DN 12 Nov 1998).
- 6) Chuka Municipality, Tharaka Nithi District, town's bus park (DN 19 Jan 1999).
- 7) Limuru public utility plots (DN 19 May 1998).
- 8) Thika public park as well as part of government land on Thika DC official residence (WR 2 Aug 1996).
- 9) Nyeri forest land on the Kieni side (St 25 June 1998).

- 10) Kangema, Murang'a 5 ha plot reserved for extension of Muguru Primary School, 1 ha site for nursery school, 1 ha plot for community social hall and 0.5 ha plot for cattle dip (DN 21 March 1997).
- 11) Kawamanda village, Maragwa District, Murunga'a 20 acres for construction of primary school (DN 14 March 1997).
- 12) Lari, Kiambu District, Mirangi Primary School Land (DN 12 March 1997).
- 13) Murang'a Kambwira Nursery School, all 0.4 ha (DN 12 March 1997).
- 14) Nyeri town, civil servants quarters, 3 acres (DN 1,3 April 1999).
- 15) Kandara 90 plots outside of Kandara market, proposed site for Secondary school and sub-district hospital (DN 29 May 1999).
- 16) Kirinyaga District, Kutus Town utility plots (DN 10 April 1998).
- 17) Kabete Veterinary Laboratories 310 ha (DN 10 June 1999, PAC 1995/96).
- 18) Mt. Kenya 500 acres (DN April 15 1999, P 25 Oct 1999).
- 19) Kijipwa Settlement Scheme 300 acres (DN 3 Dec 1998).
- 20) Kamahuhu location, Murang'a, 45 public plots (DN 2 March 1999).
- 21) Nyeri-Nyehururu road reserve (DN 13 March 1999).
- 22) Thika municipality, 65 acre plot (WR 16 Aug 1991).
- 23) Kangema, Murang'a District utility plots including 5 acre tree seedling site used for reforestation initiatives (DN 17, 25 April 1997).
- 24) Nyeri, Nyeri Provincial General Hospital land reserved for expansion (DN 24 April 1997).
- 25) Nyeri, 6 acre plot used by hawkers (22 DN April 1997).
- 26) Murang'a town, Milimani Estate, Senior Civil Servants Quarters, including part of the DC's residence and pit latrines (11, 15 DN April 1997, KHRC 1997: 45).
- 27) Mwiega, Nyeri District, Samaki farm land (DN 3 April 1997).
- 28) Thika, Jiwani Estate play ground and parking bay (DN 3 April 1997).
- 29) Chuka Town, Tharaka Nithi District, DC office compound, District Lands Office, Law Courts and Water Offices (DN 30 May 1997, KHRC 1997: 46).
- 30) Tigoni, Limuru, National Potato Research Centre, 20 acres prime research land

(DN 28 May 1997).

- 31) Kagumo town, Kirinyaga District, town market plot (DN 3 May 1997).
- 32) Lari, Kiambu District, marsh land, water catchment area (DN 27 July 1999).
- 33) Nyandarua county council land including social halls and markets (DN 26 June 1998).
- 34) Kieni, 800 ha indigenous forest, Gathiuru Settlement Scheme (DN 2 Dec 1998).
- 35) Thika, Moi gardens with stalls (P 28 Oct 1999).
- 36) Ruring'u Stadium, Nyeri (St. 5-8 Feb 1999).
- 37) Nyandarua, Ol Kalou Settlement Scheme (DN 5 June 1990).
- 38) Limuru DO's residence and local law courts (DN 20 Nov 1996).
- 39) Githunguri, Kiambu District, 14 public plots (DN 20 Nov 1996).
- 40) Kiambu, Uthira trading center and jua kali plot (DN 18 Nov 1996).
- 41) Mugugu Zambezi, Kikuyu Public plot with clinic (DN Nov 14 1996).
- 42) Kerugoya Town, Kirinyaga District, (DN 12, 13 Nov 1996).
- 43) Nyandarua District, Nyandundo primary school land (DN 9 Jan 1992).

#### COAST PROVINCE

- 1) Mombasa Island, Official residence of the Coastal provincial police officer, Kizingo Estate, housing for senior officers (P, 14 April 1999, DN 12 May 1999).
- 2) Kongowea, Mombasa road reserve (DN 19 Jan 1999, P 17 March 1999).
- 3) Kinango, Kwale District-land for EPZ controversial (DN 10 June 1998).
- 4) Mombasa, Mama Ngina Gardens (DN 28 July 1998, DN 12, 29 May 29 1999).
- 5) Malindi, 100 Acre plot at Kikombe Tele (DN 28 July 1998).
- 6) Changamwe, Changamwe Estates, parking bays, access roads and playgrounds (DN 10 June 1998).
- 7) South of Mombasa, Shelly Beach access road (DN 5 June 1998).
- 8) Kilifi County, Ministry of Information and Broadcasting, Adiministration Police staff quarters, veterinary offices, Kenya Medical Research Institute, and part of District Commissioner's offices (DN 5 June 1998).

- 9) Mombasa's Old Town, Shree Jain Temple land, (DN 6 Nov 1998).
- 10) Mombasa, Municipal Council Public Health Dept. Parking Bay (DN 11 May 1998).
- 11) Malindi, Kisiwani Agricultural Development Corporation farm land (DN 22 Jan1999).
- 12) Malindi, part of Malindi municipal market (DN 12 May 1998).
- 13) Mtwapa, Kilifi District, plot reserved for development of Mtwapa police post. (DN 12 May 1998).
- 14) Kilifi District, Mariakani Milk plant (DN 24 April 1998).
- 15) Mombasa, Parts of Liwatoni Road, (DN 6 May 1998).
- 16) Mombasa, Kenya Farmer's Association land which was surrendered to Mombasa Municipal Council for construction of round-about (DN 10 April 1998).
- 17) Kwale, Land belonging to Kwale police station (WR 2 Aug 1996).
- 18) Changamwe, service line plot next to residents of Hamisi Estate (DN 15 Sept1997).
- 19) Diani, Diani police station land, 12 acres (St 26 June 1998).
- 20) Msambeni police station (St 26 June 1998).
- 21) Manda Island, 36 acres prime beach property (DN 13 July 1998).
- 22) Manda Island, 50 000 acres (S 22 Sept 1997). 23) Hola District Hospital plot used for TB camp (DN 11 June 1998).
- 24) Malindi, municipality land meant for cemetery extension (DN 19, 20 March 1997).
- 25) Malindi, Sabaki livestock holding grounds (DN 17, 27 March 1997).
- 26) Mombasa, Uhuru Gardens (DN 15 March 1997).
- 27) Malindi, Bay Beach Forest 20 acres (DN 14 March 1997).
- 28) Makasi and Funzi Islands, Kwale District, hundreds of ha of formerly protected mangrove forest (DN 11 March 1997).
- 29) Tana River District, Kurawa beach plots and others (DN March 19 1998, P 12 April 1999).
- 30) Mombasa, Jomo Kenyatta Public Beach and 5 other plots (DN 28 Nov 1998, DN 12 May 1999). 31) Chongogwe village land (DN 2 April 1999).
- 32) Kaloleni, Kilifi District forest shrines *kayas* (DN 31 May 1999).

- 33) Malindi, Ziwa la Furunzi (DN 10 Nov 1998).
- 34) Malindi District, Mjanaheri land (DN 16 Sept 1998).
- 35) Changagwe Division, 200 acre settlement scheme (DN 18 May 1999).
- 36) Lamu Island, sixteenth century historical building (DN 15 April 1999).
- 37) Kilifi District, Njoro Primary School plot (DN 6 Feb 1999).
- 38) Mweiga Town, Kieni Constituency, access road (DN 24 July 1998).
- 39) Kilifi public plots near Kilifi G.K Prisons (DN 5 June 1998).
- 40) Malindi, marine park land (WR 14 Nov 1997, DN 17 Sept 1997).
- 41) Kisauni-Magagoni, Mombasa 18 plots including road reserves and a plot set aside for a nursery school (DN 16 Nov 1998).
- 42) Malindi, Kisiwani Agricultural Development farms (DN Jan 22 1999). 43) Malindi municipal market plot (DN March 12 1998).
- 44) Mombasa, 0.4 ha plot set aside for expansion of Mombasa Law Courts expansion (DN May 30 1997, KHRC 1997:46).
- 45) Kwale Town, Kwale GH Prison, Civil Servants Club and Jamhuri Park land (DN 29 May 1997).
- 46) Msambweni, Msambweni District Hospital land (DN May 20 1997).
- 47) Tana River District, District Education Office land (DN 22 May 1997).
- 48) Kwale, 500 acres of Digo settlement land (DN 3 May 1997).
- 49) Madzayani District, Giriama "squatter" land (DN 4 Jan 2000).
- 50) Kadzanda Kafisi, Malindi 100 acres (S 6 June 1990).
- 51) Taveta, Jipe Settlement Scheme plots (DN 1 March 1997).
- 52) Mombasa, public plot bordering State House (DN 9 Dec 1998).
- 52) Mombasa, 0.370 acres of Mbaraki Primary School land (DN 9 Dec 1998).
- 53) Ukundu, Kwale District, 21 acres meant for Jihad Mosque (KHRC 1997: 64).
- 54) Mombasa old Town parking lot (KHRC 1997: 46).
- 55) Kilifi District, Kidutani Mwatutapa squatters land (DN 20 June 1997).
- 56) Malindi, 200 acres beach and second row plots (DN 20 Nov 1996).
- 57) Mombasa, DC's office, residence, open public garden outside Mombasa courts,



PC office (DN 20 Nov 1996).

58) Mombasa, Mbuyuwa Chapa village land (DN 7 Nov 1996).

59) Malindi, Bellhouse Gardens (DN 9 June 1992, 10 June 1992).

60) Malindi, 40 beach plots (DN 3 July 1992).

61) Chale Island, 50 ha Sacred Grove (Kaya) (DN 8 July 1992).

62) Watamu town, 400 plots (DN 18 July 1992).

63) Tana River Delta National Reserve land (DN 11 August 1992).

### EASTERN PROVINCE

1) Kangundo, Machakos District Staff Quarters (P 16 April 1999).

2) Machakos Local Show Ground, International Research Center and other plots, 3200 acres (P 10 March 1999).

3) Ukambani, Masongaleni Settlement Scheme (WR 5 July 1991, DN 18 Nov 1996, DN 11 June 1998).

4) Machakos, Government House for District Births and Deaths Registrar (DN 16 May 1998).

5) Machakos, cemetery and commonage (DN 11 June 1998).

6) Machakos, Yatta Division, National Youth Service Farm (DN 27 September 1998).

7) Meru Town, public utility land near Meru police station, Blue Bridge Commuter Taxi Stage (DN 12 Nov 1998).

8) Matuu town, Machakos District, Sophia market (DN 12 March 1997).

9) Meru, 15 acres Ngushishi Primary School, land for cattle dip (P 22 March 1999).

10) Embu District, Kairungu shrine land (DN 26 Sept 1997).

11) Machakos government houses (DN 16 May 1998).

12) Emali Trading Center, Makueni District, utility plots (DN 24 April 1997).

13) Timau, Meru District, Lewa Downs Settlement Scheme including land for a school and church (DN 1 May 1997).

14) Makueni District, Kiboko Settlement Scheme B plots (DN 5,8 Jan 2000).

15) Luondiek (Nanyuki), Machakos District, (Agricultural Development Corporation)

farm approximately 6000-7000 acres, (DN 28 May 1997).

16) Nzai, Machakos District Nzai Agricultural Development Corporation farm 6000-7000 acres, (DN 28 May 1997).

17) Machakos District, Katelembo "squatter" land (P 8 Oct 1999).

18) Meru, portion of Gitoro Conference Center (DN 9 Nov 1996).

19) Embu District 250 acres of Mwea Trust land (DN 30 Jan 30 1992).

## NAIROBI

1) Karura Forest (GBM 1999).

2) Westlands Market (DN 27 Oct 1998).

3) Kigali Market (DN 28 July 1998).

4) Kamae Village, Kahawa West (RPP, Interviews)

5) Dagoretti corner, City Inspectorate Quarters (DN 15 Oct 1998).

6) Kasarani, 338 acres government land set aside for the expansion of the Moi International Sports Complex (DN 10 June 1999 PAC).

7) Kamukunji grounds (ER 26 Aug -1 Sept 1996).

8) Lang'ata, children's playground (WR 2 Aug 1996).

9) Jogoo Road Estate, 3 acre utility plot used for staff houses of the Ministry of Works (WR 2 Aug 1996).

10) Loresho Estates, public utility land reserved for a shopping center, water reservoir, a police station, a nursery school and a water tower, (ER 5-11 May 1997).

11) A public utility plot situated on Suguti-Makueni Road junction at Kileleshwa, plot meant for the expansion of the city mortuary (ER 1-7 Sept 1997).

12) Mathare North Estate city council parking lot (KT 22 Sept 1997).

13) "Machakos Airport" Country bus stand (DN 23 Sept 1997).

14) Part of a busy road near Uhuru market (DN 16 March 1998).

15) Kamukunji Secondary School compound (DN 27 Jan 1998).

16) Highridge, Land on which Nairobi City Council Clinic stands (KT 25 Sept 1997).

- 17) Lang'ata women's prison land (DN 17 Jan 2000).
- 18) Soweto (African Rights 1997)
- 19) Kariobangi South, plot used by artisans (DN 17 March 1997).
- 20) Gikomba market (DN 5 March 1999).
- 21) Marmanet Forest, Laikipia 5000 acres, (DN 11 Oct 1998).
- 22) Nyayo market land (DN 12 April 1999).
- 23) Ngong Forest sections (WR 30 Oct 1998, DN 15 Oct 1998).
- 24) Ololua Forest sections (WR 30 Oct 1998, DN 16 Oct 1998).
- 25) Congo village land 20 acres (DN 16 July 1998).
- 26) Kenya Post and Telecommunications Corporations property , 14 prime Nairobi plots (DN 17 March 1999).
- 27) Woodley, public land used by Usafi Kiosks group (DN 30 April 1997).
- 30) Ruaraka, Nairobi City Council site for new fire engine station (DN 23 April 1997).
- 31) Mathare, road reserves, public utility plots, abandoned quarries and river beds (DN 19 April 1997).
- 32) Dagoretti, Ruthimitu Primary School playground and compound land (DN 3 April 1997).
- 33) Arboretum land (DN 1 April 1997).
- 34) Anwar park land (DN 1 April 1997).
- 35) 50 acres City Park (DN 7,8,17 May 1997).
- 36) Woodley Estate land along with 560 houses (DN 19 May 1997).
- 37) South B Residential Area 2 acre playground and 0.3663 ha public access road (P 27 Oct 1999).
- 38) Lanscaped open space behind International Casino (DN 29 May 1997).
- 39) Dagoretti-Waithaka health center land (DN 29 May 1997).
- 40) Kayole, plot reserved for primary school (DN 29 May 1997).
- 41) Westlands, council land near Bohra primary school (DN 29 May 1997).
- 42) Kariobangi, land adjacent to sewage treatment works (DN 29 May 1997).
- 43) Eastleigh, disused sewage plant near Biafra Estate (DN 29 May 1997).

45) City Inspectorate Department security offices near Pumwani Maternity Hospital (DN 29 May 1997).

46) Bomas of Kenya land with forest (P 5 Jan 1998).

47) Lang'ata Giraffe Sanctuary (DN 16,17,24 Jan 1992).

#### NORTH EASTERN PROVINCE

1) Land meant for future expansion of Garissa airstrip, Compound belonging to the Ministry of Water Resources (P 16 March 1999).

2) Garissa, Land proposed for fire station, social hall, county council yard and proposed Garissa District Headquarters (DN 14 March 1997).

3) Garrissa, car park and market (DN 12 Sept 1998).

4) Marsabit town, 6 acres of Trust land with 10 National Housing Corporation houses (St 5-8 Feb 1999).

#### NYANZA PROVINCE

1) Nyanza provincial headquarters (DN 16 April 1998).

2) Kisumu, Kenya Re-Insurance housing land surrendered to municipal council for road reserve and recreation (DN 22 March 1997).

3) Minara Division, Nyando 10 houses at divisional headquarters (DN 30 Jan 1999).

4) Kisumu town plots (P 16 April 1999).

5) Kisii, Kenya Agricultural Research Institute Land (DN 28 May 1997).

6) Muhoroni holding grounds land, 180 acres (PAC 1995/96).

#### RIFT VALLEY

1) Kenya Agricultural Research Land, Kitale, over 1200 acres (DN Dec 3 1998, Feb 13, 1999).

2) Molo, public utility plots earmarked for cemetery, sewage treatment plant and market (DN 30 May 1998).

- 3) Mwariki Estate, Nakuru District, public roads and parking bays (DN 3 May 1998).
- 4) Race Track Estate, Nakuru Parking Bay (DN 12 Sept 1998).
- 5) Kericho Vocational Rehabilitation Centre for handicapped Kenyans, 2.5 acres which houses staff (DN 12 October 1998).
- 6) Gatonga Farm, Subukia, Nakuru District, Hyrax Secondary School compound. (DN 25 September 1998).
- 7) Siongiroi Trading Center, public utility plots for expansion of a health center and primary school, encroachment on Siongiroi forest, Chepalungu. (DN 30 July 1998).
- 8) East Mau Forest, Ogiek ancestral lands, Nakuru (ER 1-7 Sept 1997).
- 9) Nandi Hills, Hospital land (DN 10 Nov 1998).
- 10) Nakuru, 60 acres Chabali farm (DN 20 July 1998).
- 11) Part of Uasin Gishu Secondary School land including land where there are teacher's houses (WR 2 Aug 1996).
- 12) Nakuru, St. John's Primary School, all of it (DN 5 Aug 1996, WR 2 Aug 1996).
- 13) Former EATEC land (See Chapter V).
- 14) Trans Nzoia District, Agricultural Development Corporation farms (DN 28 March 1997).
- 15) Riparian land around Lake Naivasha, Nakuru District (P 10-16 July 1998).
- 16) Xavier primary school land (DN 16 Dec 1998).
- 17) Eldoret High Court Grounds (DN 17 March 1999).
- 18) Ngong Township primary school, 11 acres (DN 19 May 1998).
- 19) Molo, Sirikwa Primary and Secondary School land (DN 20, 26 March 1997).
- 20) Nakuru, Road reserve between Kunste hotel and Nairobi/Nakuru road (DN 20 March 1997).
- 21) Kabiye trading center, Nandi district, mosque plot (DN 19 March 1997).
- 22) Uasin Gishu, Moiben, 20 acre plot set aside for Moiben sub-district hospital (DN 30 Jan 1999).
- 23) Subukia township, Nakuru District, portion of cemetery, 5 other plots intended for slaughterhouse, sewage, water reservoir and open air market (DN 2 April 1999).

- 24) Milimani estate plot and house, Nakuru (P 9 April 1999).
- 25) Nakuru, parking bay outside of Nakuru West market (DN 2 June 1999).
- 26) Kenya Cooperative Creameries plots (DN 31 July 1999).
- 27) Nandi/Kisumu border Chemase Holding Grounds 220 acres (DN 2 Aug 1999).
- 28) North Tinderet, Nakuru District, Nabkoi Farm (DN 18 Nov 1998).
- 29) Nakuru-Nyahuru Road Reserve, Nakuru (DN 22 Dec 1998).
- 30) Iten Town, public utility plot (DN 26 July 1998).
- 31) Nakuru, Rift Valley Institute of Science and Technology farm (DN 25 April 1997).
- 32) Sururu forest land allocated for settlement scheme, 15 acres for trading center and dam (DN 17 April 1997).
- 33) Segmer-Cherangany, Agricultural Development Corporation Milimani farm land (DN 13 May 1997).
- 34) Sipili, Laikipia, Sipili trading center plots (DN 10 Feb 1990).
- 35) Kipsigis, Kericho District, Kipsigis County Council Plots (DN 10 Feb 1990).
- 36) Chepchoina, Chepchoina farm (Agricultural Development Corporation) (DN 28 May 1997).
- 37) Oljorai, Oljorai farm (Agricultural Development Corporation) (DN 28 May 1997).
- 38) Ngata farm land (Agricultural Development Corporation) (DN 28 May 1997).
- 39) Kaptagat forest, Keiyo South, 56 acres-800 acres (P 20 March 1999, Aug 2, 6 1999).
- 40) Ngong, Kajiado District, 2000 acre ranch, a holding for Maasai livestock (DN 16 Oct 1998).
- 41) Soin location, Inamoi Division, Kericho District, Thessalia Holding Grounds, 395 acres (P 12 March 1999).
- 42) Nakuru, Road Reserves in front of Umoja Primary School (Okwany 2000).
- 43) Nakuru, Road Reserves in front of Harambee Primary School (Okwany 2000).
- 44) Nakuru, Road Reserves in front of Khalsa Primary School (Okwany 2000).
- 45) Nakuru, Road Reserves in front of Kariba Road Primary School (Okwany 2000).
- 46) Nakuru, Access Road Across Menegai High School (Okwany 2000).

- 47) Nakuru, Teacher's Estate Primary School land (Okwany 2000).
- 48) Nakuru, Mama Ngina Primary School land and house (Okwany 2000).
- 49) Kitale town, 11 acres of St. Joseph Primary School compound and Ministry of Public Works land (St 5-8 Feb 1999).
- 50) Eldoret, Moi National Teaching and Referral Hospital doctor's quarters (P 18 Jan 1999).
- 51) Kapsoit market, Kericho District (P 18 Jan 1999).
- 52) Kipsigis, Kericho District, public land set aside for a museum (P 18 Jan 1999).
- 53) Kericho, 8 acres belonging to Ministry of Public Works (P 18 Jan 1999).
- 54) Ol Pajeta outspan 72 ha (L.R. No. 2446) (PAC 1995/96).
- 55) Elementia Outspan 50 acres (L.R. 2834) (PAC 1995/96).

#### WESTERN PROVINCE

- 1) Kakamega town, Government staff housing (DN 26 Aug 1997)
- 2) Kakamega Forest, 100 acres (ER 18-24 August 1997).
- 3) Kakamega, former ADC showground (Interviews, COSAKAF 2000)
- 4) Chepkurkur, Mt. Elgon District, Emia Settlement Farm. (DN 5 Nov 1998).
- 5) Mt. Elgon, KK (WR 30 Oct 1998).
- 6) Lugari Settlement Scheme land (DN 21 Jan 1999).
- 7) Bungoma, Kanduyi Open Air Market (DN 19 Sept 1997).
- 8) Sirisia, Bungoma District, Anangwe Primary School compound (DN 1 June 1999).
- 9) Kakamega, 14 acre industrial land (DN 26 August 1997).
- 10) Kakamega, 8 acre plot next to the Kakamega Provincial Hospital (DN 15 Feb 1990).

## Appendix C

REPUBLIC OF KENYA  
 IN THE HIGH COURT OF KENYA  
 CIVIL CASE NO. 3623 OF 1995

Hj 14-3--

NAIROBI PERMANENT MARKET SOCIETY AND 11 OTHERS .....	V E R S U S	PLAINTIFFS
SALIMA ENTERPRISES LTD ) NAIROBI CITY COUNCIL ) REGISTRAR OF LANDS )	.....	DEFENDANTS

FURTHER AFFIDAVIT

I, JOHN KINGORI of P O Box 30075, Nairobi within the Republic of Kenya do hereby make oath and state as follows:-

1. That I am the Mayor of the 2nd defendant and have the authority to make this affidavit.
2. That the allotment of plots by the City Council can only be done consequent upon a resolution by the Council.
3. That there was no resolution as concerns the allotment of Land Reference 1870/IX/170 which is the subject of this suit.
4. That the lease between the 1st defendant and the 2nd defendant does not bear the seal of the 2nd defendant as is required by law.
5. That the lease agreement between the 1st defendant and the 2nd defendant does not bear my signature and at the time at the said signing I was not incapacitated or absent or in any state that warranted my deputy to sign the same.
6. That the said transaction as concerns the allocation of the said plot, the suit subject matter is riddled with irregularity.

...../2

Figure 2: Mayor King'ori's Affidavit for the Westlands Market case



- 2 -

7. That what I have deponed herein is true to the best of my knowledge information and belief.

DATED this 13<sup>th</sup> day of March 1996.

SWORN by the said  
JOHN KINYORI  
this 13<sup>th</sup> day of March 1996

DEPONENT




BEFORE ME

STATEMENT ON OATHS  
COMMISSIONER FOR OATHS  
P.O. BOX 6889  
NAIROBI  
A COMMISSIONER OF OATHS

Figure 3: Mayor King'ori's Affidavit Continued

**NAIROBI CITY COMMISSION**



TOWN CLERK'S DEPARTMENT

CITY HALL  
P.O. BOX 30075  
NAIROBI  
KENYA

SECRETARY/TOWN CLERK  
TELEPHONE: 274781 FAX  
TELEPHONE: 274781

REF. NO. CP/ARCH/001266

Francis Karani Elijah,  
P.O. BOX 20418, NAIROBI.

15th April, 1994

Dear Sir/Madam,

REF: LETTER OF ALLOTMENT - COMMERCIAL PLOT, WESTLANDS SHOPPING CENTRE

I have the honour to inform you that the City Commission offers you plot No. ..... in the above mentioned scheme subject to your written acceptance of the following conditions and to the payment of the charges as prescribed hereunder:

AREA: 0.1 ha. (approx.) ..... hectares (approximately)

TERM: Duration of this Commission's term of 99 years (less three days thereof).

STAND PREMIUM: Kshs. 1,000,000/=

ANNUAL RENT: Kshs. 100,000/= (Reviewable in accordance with the Government Lands Act)

This allotment is subject to the following conditions:-

1. The land shall only be used for commercial residential purposes and shall be developed in accordance with approved plans.
2. If the plot is sub-divided at the time you commence building work, must be exercised to ensure that any building or other works in connection with the boundaries of the plot and should they overstep the said boundaries, cost of removal and reconstruction must be borne by you.
3. The allottee shall pay rates and all other impositions as may be imposed, charged or assessed upon the land.
4. All special conditions imposed on the main title shall extend to this plot.

If these conditions are acceptable to you I would be obliged to require your written acceptance together with your cash payment or bankers cheque for the amount not below:-

Stand Premium	Kshs. 1,000,000/=
Annual Ground Rent	Kshs. 100,000/=
Survey Fees, Architectural Fees etc.	Kshs. ....
<b>TOTAL</b>	<b>Kshs. 1,100,000/=</b>

21/

Figure 4: Fraudulent Letter of Allotment (Note that the date is 1994, when the Nairobi City Commission no longer existed).



## Appendix E

*Squatters Plus*

### Save us from eviction at EATEC!

An open letter to the British High Commission

The High Commissioner  
Embassy of U.K.,  
Nairobi.  
Dear Sir,

RE: SETTLEMENT OF  
SQUATTERS KAMPI-NANDI,  
OUTSPAN ESTATE, EATEC.

I am writing to you on behalf of a group of squatters including my own family who until 1984 were loyal employees of EATEC. The squatting families seek your assistance because despite our loyal services since the early 1920s, EATEC, a subsidiary of British MNC-LONHRO-has recently turned against us.

Firstly it is denying us access to the only source of paid employment we have ever known for three generations in the family. Secondly, it's seeking to evict us from the only home the three generations of our family have ever known.

We are squatters at a village called Kampi-Nandi, on Outspan Estate, some 10 kilometres outside Eldoret on the Nairobi road. Our ancestors came to live at Kampi-Nandi in the early 1920s in their capacity as labourers under native ordinance Cap 113 which governed relations between land owners and residents.

Labourers and their male offspring (aged above 16) were required to supply labour to the land owners for least 180 days per year. In return, they were paid a nominal fee and allowed to farm and graze at the pleasure of the landowner.

The women folk tended the domestic plots. This was the arrangement that was maintained in the early 1950s, when EATEC took possession of the land on which we lived and worked.

When the Syberton Plan of colonial government introduced the consolidation

and adjudication of the native reserves in 1958, we were shielded from its provisions by the security offered by our employer, EATEC, consequently we do not have anything to call our ancestral land since it is that on which we were squatting and offering labour.

In 1984 EATEC unilaterally decided to move us, the Nandi labourer camps hitherto occupied by labourers who had come to work here from outside.

We declined the offer for several reasons. For it worked negatively on our interests by undermining our livelihoods. EATEC therefore issued an eviction order which we refused to comply with. The determination by EATEC to evict us has only been matched by our determination not to be evicted.

We have nowhere to go! Over the

**This contradicts the humanitarian and charitable work of other missions...**

years EATEC activities have enhanced the squatter and destitution under which we live. EATEC has denied us the right to construct decent or adequate housing. It has engendered insanitation by destroying our pit-latrines.

It has destroyed crops in the field and confiscated our livestock among other injustices.

This contradicts the humanitarian and charitable work of other missions of your country such as ODA DFIDEIC. This forces us to call for your intervention or at least your stand on this contentious issue.

The plight of Kampi-Nandi squatters has not been unique as landlessness is rampant among the Nandi.

In the 1990s EATEC offered 40,000 acres for sale. Requiring people to register for Shs. 5, 000 fee. Nearly 10,000 people responded to this noble opportunity.

Yet the outcome of this proposal has been totally disheartening. Whereas the exercise has been completed there is an instance where ten house holds have ended up on one acre of land, while senior government officers have acquired substantial holdings in more than one such scheme!

We squatters detest collusion between EATEC and a predator government.

The area of Kampi-Nandi is targeted for sale but there is collusion to bring in wealthy outsiders, instead of restoring our plight.

We know that president Moi himself having bought neighbouring EATEC land, is pressurising for his own Tugen and neighbouring Keiyo people to be brought, though they are not landless.

We pray that just as you and other donor governments have pressurised the Kenya government on issues like the Goldenberg scandal you will bring pressure on EATEC issue, so do what is just, which is to restore the landlessness of the squatters of Kampi Nandi (and other such cases).

I am hereby challenging you to give an official statement regarding this issue. It's only by this that we can be convinced to exonerate you from the efforts of this heartless company.

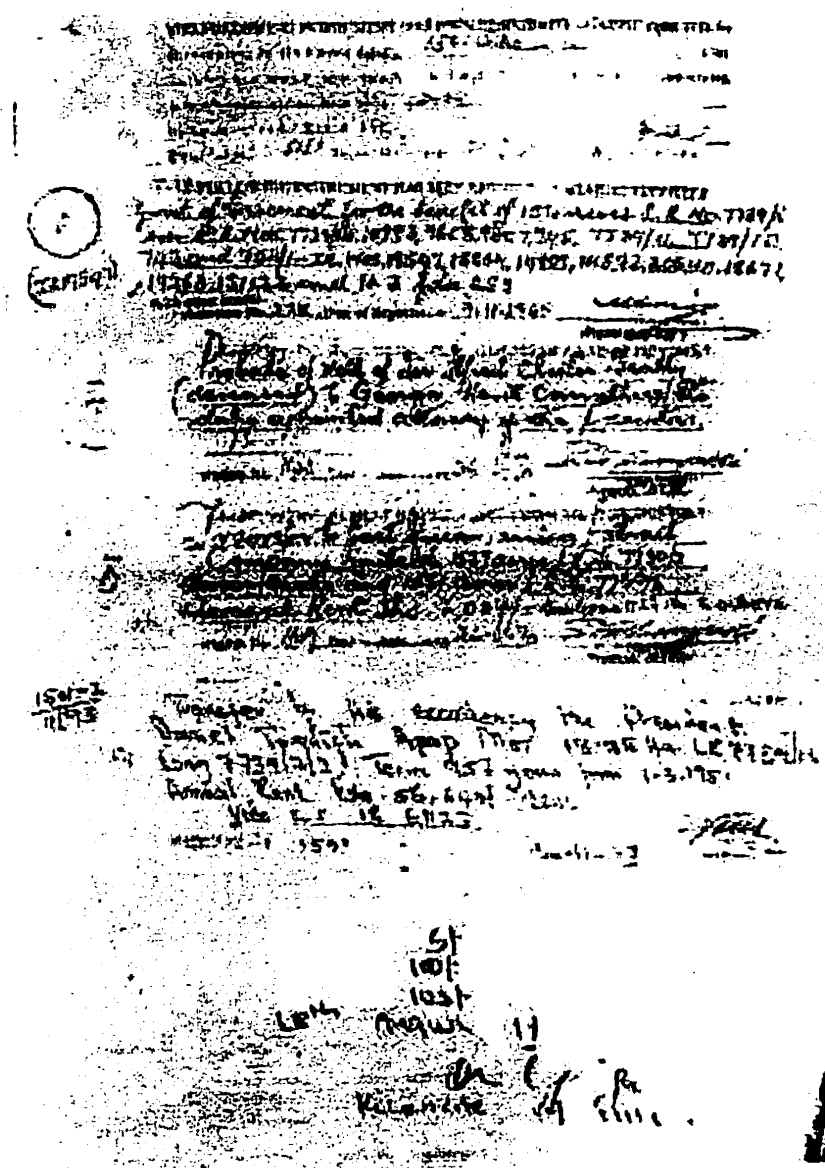
Sir, I believe you have powers to persuade EATEC to balance humanity and economic interests. Such a balance will stop this inhuman treatment meted against us.

- Henry Maiyo

(The family of the author lives at the EATEC farm)

Figure 9: Letter to British High Commission from EATEC squatter.





**Figure 12: Land Registry Entry for EATEC land LR 7739/6 Continued**

2. Caveat by East African Power & Lighting Co. Ltd. claiming a grant of easement. Vby virtue of an agreement dated 4-11-1975 and annexed to the caveat.  
294 8-3-76

3. THE FOLLOWING INSTRUMENTS WERE REGISTERED AT THE TIME THE TITLE WAS FIRST ENTERED IN THE REGISTER  
Transfer to Mark Kiptarbei Too  
For Kshs. 100,000/-  
In exchange for LR No. 12098 (LR 23530)  
subject to caveat regd. in Vol. 413 folio 301/21  
& No. 2 above  
Presentation No. 136 6-5-82

4. THE FOLLOWING INSTRUMENTS WERE REGISTERED AT THE TIME THE TITLE WAS FIRST ENTERED IN THE REGISTER  
Charge to Agricultural Finance Corporation  
For Kshs. 900,000/- Subject to caveat  
regd. in Vol. 413 folio 231/21  
Presentation No. 157 6-5-82

5. THE FOLLOWING INSTRUMENTS WERE REGISTERED AT THE TIME THE TITLE WAS FIRST ENTERED IN THE REGISTER  
Charge to The Standard Bank PLC  
For Kshs. 800,000/- Subject to Nos 2  
and 4 above and caveat registered in  
Vol. 413 folio 331/21  
Presentation No. 703 8-1-83

6. Discharge of Number 4 above  
Presentation No. 545 15-1-83

1221  
8/56 Further charge to Standard Chartered Bank Kenya Limited  
For Kshs. 15,200,000/-  
subject to Nos 2 and 5 above.  
1221 29-8-90

Figure 13: Land Registry Entry for EATEC land LR 744-1756

**TO BE RETAINED BY THE PRESENTOR**

*To the Presentor: I am unable to register the Caveat because the property belongs to somebody else.*

*Quiana*  
**REGISTRAR**

QUADRUPPLICATE

The Conditions on the Back of this Form shall be Complied with  
**REPUBLIC OF KENYA**

**APPLICATION FOR REGISTRATION**

of the undermentioned documents in the following order of priority:

Date of Documents	Description (1)	Land Reference Number (2)	Title Deed File Number (3)	Fee (4)	For Official Use only
23-9-97	CAVEAT	L.R. NO. 7739	I.R. NO. 8533/1	Sh. 250.00	
Number of new certificates of title required at Sh. 125 each					
Adhesive revenue stamps affixed hereto to the value of				250.00	

The following documents are enclosed for endorsement: (5)

Grant No. \_\_\_\_\_ Certificate of Title No. \_\_\_\_\_ Lease No. \_\_\_\_\_

The following supporting documents are also enclosed: (6)

Clearance Certificate ☐ Land Rent Certificate ☐

"Registration Copy" of Divisional Land Board Consent ☐

"Registration Copy" of the County Council's/Commissioner's Consent ☐

Valuation forms ☐ W. 70 ☐

The following consents are enclosed on the documents:

Commissioner of Lands or the Chief Engineer, Kenya Railways under the terms of the Grant ☐

Charges to surrender of lease under section 44 of the Registration of Titles Act (Cap. 281) ☐

Special instructions (including, if necessary, the name and address of the persons to whom the documents are to be sent if other than the presentor):

Signature *[Signature]*

Name in Block Capitals **HAMAM KURIA AKIPATU**

Date **24-9-97** 19 **97** Postal Address **P.O. BOX 51806, NAIROBI**

**TO BE SUBMITTED IN TRIPPLICATE**

Figure 14: Caveat on LR 7739 Denied



REPUBLIC OF KENYAIN THE MATTER OF OATH AND STATUTORY DECLARATIONS CAP 15 LAWS OF KENYAAFFIDAVIT

I, HENRY KIPNGETICH MAITO of Post Office Box Number 794 Eldoret in the Republic of Kenya make oath and say as follows:

1. T H A T I am a citizen of Kenya and holder of National Identity Card Number 8627551/71.
2. T H A T we have been staying on a parcel of Land known as Land Reference Number 7739/6 for more than seventy years.
3. T H A T my grand parents were buried on the said parcel of land.
4. T H A T proprietors M/s East African Tanning Extract Company are disposing off the land.
5. T H A T we are more than three hundred people staying on this parcel of land.
6. T H A T should this land be disposed off we shall have no where to stay.  
T H A T I swear this affidavit in support of registration of the caveat to safe guard our interests in the said land.
8. T H A T the facts deposed to herein are true to my best of knowledge information and belief.

SWORN by the said

HENRY KIPNGETICH MAITO

at Nairobi this 2<sup>nd</sup> day of July 1997

BEFORE ME:



COMMISSIONER FOR OATHS:

Figure 15: EATEC Resident Affidavit

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