

The Ndungu Report: Land & Graft in Kenya

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The following summary of the Report of the Ndungu Commission on Illegal and Irregular allocation of public land provides an insight into a critical, recent episode in the struggles over 'land' and 'graft' in Kenya. To put it in the latest context, it is first worth noting that on the 'graft' front, the Commission can chalk up one partial victory in that its exposures have led to the return of tracts of land to public action by politicians, including former President Moi. However, the limits of the larger fight against corruption was underlined when John Githong'o resigned his government position as Commissioner against Corruption. But the story the Ndungu Commission unfolded is also a chapter in another very broad issue in Kenya's political economy - land.

One of the few African countries to enact individual tenure of indigenous land, along with redistribution of chunks of the former 'white highlands', Kenya is faced with landlessness on a large scale and with recurrent land disputes among individuals and between communities. Government has just set in train a National Land Policy Formulation Process to try and sort out these underlying problems, including those thrown up by the Commission.

According to Transparency International (TI), things in contemporary Kenya have recently got better: corruption has improved from 'highly acute' to merely 'rampant'! Yet in commenting upon this, *The Economist* (18 December 2004) notes that Kenya remains one of the most corrupt countries in the world, and opines that following the example of former President Moi's cronies,

too many of the new ruling elite are out to get rich, rather than govern. Members of Parliament, in a country where the average annual income per head is a modest US \$400 a year, have awarded themselves an annual salary and allowances of \$169,625 and 'new patronage networks are replacing the old ones, as the well-connected appoint their chums and relatives to plum public posts.

To be sure, *The Economist* continues, Kenya is probably somewhat better off than it was under Moi, but President Kibaki's economic and political reforms have stuttered, with progress towards a new constitution which would reduce the powers of the presidency and enhance democratic accountability presently on hold. Meanwhile, although the new government has promised an end to the culture of impunity for the powerful that developed under Moi, several ministers involved in corruption scandals both new and old are going unpunished. Whilst Moi's Kenya African National Union (KANU) was roundly trounced in the general election of December 2002, the new government of the National Rainbow Coalition (NARC) includes powerful figures who - like Kibaki himself - formerly served under Moi and who jumped ship when it was clear that the latter's craft was sinking, and landed squarely on their feet in the new cabinet. For all that the government has established various investigations into abuses committed by former KANU politicians who are still in office (having established, notably, hearings into the Goldenberg scandal of the early 1990s in which former Vice-President and current Minister of Education, George Saitoti, is heavily implicated), it is the decision to give Moi himself immunity from corruption charges, on the grounds that ultimately he opted to leave office peacefully, which seems more likely to set the key precedent (Brown, 2004:335).

Even if, as many observers suggest, the NARC government's commitment to a cleansing of the Augean stables is likely to be more rhetorical than real, its eagerness to convince both the international investment and creditor community, as well as its own (increasingly skeptical) supporters, that it is doing *something* is likely to prove more than a little interesting. This is demonstrated by the recent release (December, 2004) of the *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land* (Government Printer, Nairobi), chaired by Paul Ndungu, presented to Kibaki six months previously, in which, inter alia, details are given concerning illegal land awards made to both the Kenyatta and Moi families, as well as to a raft of former ministers, MPs, judges, civil servants and military officers, with recommendations that the large majority of such awards should be revoked. However, whilst it is such juicy findings which have gained the headlines, it is the chapter and verse which the Report gives concerning the systematic way in which established procedures, designed to protect the public interest, were perverted to serve private and political ends which may well prove to be its most long lasting value.

The present brief piece seeks merely to highlight some of the Ndungu Report's findings. Such a review can only be preliminary, for at 244 pages with two annexures running to 976 (Appendix I) and 797 (Appendix II) pages, the prospect of analysing the mass of detailed evidence is as daunting as it could be illuminating. Nonetheless, even a cursory analysis serves to confirm earlier analyses that corruption and patronage have become thoroughly embedded in Kenya's politics.

Land & Demography in Kenya

The Ndungu Commission, which was composed of 20 prominent citizens, lawyers and civil servants (drawn from ministries particularly concerned with the land issue) was appointed by President Kibaki in June 2003, and was charged with inquiring into the unlawful allocation of public lands, ascertaining the beneficiaries, identifying public officials involved in illegal allocations, and making recommendations for appropriate measures for the restoration of illegally allocated lands to their proper purpose, for prevention of future illegal allocations, and for appropriate criminal prosecutions. It was but one of a series of measures designed to tackle the issue of corruption and to realise the fruits of a newly democratic era. Yet it was perhaps one of the most emotive of the reform initiatives taken by the NARC government, for as noted by the Commission (p.xvii):

land retains a focal point in Kenya's history. It was the basis upon which the struggle for independence was waged. It has traditionally dictated the pulse of our nationhood. It continues to command a pivotal position in the country's social, economic, political and legal relations.

Fundamental to the present importance of the land issue is the rapid growth in population. At the turn of the previous century, the colonial administration could justify its allocation of lands to European settlers by arguing that, with an African population of just some 4 million, there was plenty of space for all. By independence, the total population had grown to 8.2 million, and with one of the highest population growth rates in the world (around 2.9% per annum), reached some 30.7 million by 2001, of whom only around 1% were non-African ('Europeans', 'Indians' and 'Arabs'). Given the concentrations of population in the high rainfall areas of the Central Highlands and western Kenya (20% of Kenya's population lives in the drier 80% of the land in the north and east), the pressure upon land (not to mention the remaining wildlife) is increasingly evident, not least because of the scarcity of formal employment and the dependence of the overwhelming majority of the population upon peasant agriculture (which contributes some 50% of total agricultural production). In this context, access to land becomes critical to popular well-being, and the illegal appropriation of public land a peculiarly visible crime that has come to excite huge passion, not least because, as the Commission Report asserts, the practice of illegal allocations of land increased dramatically during the late 1980s and throughout the 1990s:

Land was no longer allocated for development purposes but as political reward and for speculation purposes ... 'land grabbing' became part and parcel of official grand corruption through which land meant for public purposes ... has been acquired by individuals and corporations (p.8).

The Law Relating to the Allocation of Land

The Commission's review of the land system as it developed under colonialism (based upon the Crown Lands Ordinance of 1915), stresses how the authority to allocate Crown lands (as distinct from lands reserved for African Customary Tenure) was vested in the Governor, and under him, the Commissioner of Lands. Under their prerogative, grants of agricultural leases (initially for 99, later for 999 years) were made to settlers, whilst commercial plots in townships and urban centres were initially allocated through a system of public auction while residential plots within municipalities were allocated through public tender. However, by the 1940s, the system of public auction - which had become dominated by wealthy cartels - had fallen out of favour, resulting in a change whereby commercial plots would be allocated by means of direct grant by the Commissioner with the assistance of a local committee, a system which had already informally replaced the public tender system with regard to residential land.

The principles which decided such allocations included notions of the public interest, as well as the ability of selected allottees to pay for land (sold at 20% of its estimated value to encourage development) within 30 days and to carry out intended developments within a prescribed time limit. As the Committee notes, for all that such procedures may have worked to restrict African opportunities to purchase land in 'white' areas, they served to control the 'mischief of land speculation'. However, in what is one of the

greatest ironies in the history of land allocation in Kenya, what appears to have succeeded in the colonial period (i.e. allocation by direct grant) is what later facilitated the massive illegal and irregular abandonment of public land by the Government after independence,

for it was to be the very officials and institutions charged with being the custodians of public land who were to become the facilitators of illegal allocations (pp.6-7). The colonial Doctrine of Public Trust, whereby Kenya's rulers administer land in trust for the people of Kenya, dissolved under independence, and land was to become granted for political reasons, or simply subject to 'outright plunder' by 'a few people at the great expense ... of the public' (pp.9-10).

What land has been involved? According to the Commission, all types. In Kenya, it explains, land is divided into the three categories of government land, trust land and private land. **Government land** comprises two sub-categories, unalienated (land which has not been leased or allocated) and alienated (land which has been leased to a private individual or body corporate, or which has been reserved for the use of a government department or corporation or institution, or which has been set aside for another public purpose). **Trust land** is held by County Councils on behalf of local communities, groups, families and individuals in accordance with applicable African Customary Law until it is registered under any land registration statutes, following which it is transformed into private land and becomes the sole property of the individual or group in favour of whom it is registered. Finally, **private land** is land which is registered in accordance with laws that provide for registration of title, and is registered in the name of an individual or a company, and may be created from either government land or trust land through registration after all legal procedures have been strictly followed (pp.44-45). According to these definitions, it is only government land which is public land, for trust land belongs to local communities. However, because trust land has long become victim to land grabbing, the Commission opted to regard all trust lands which had been illegally allocated as public land for its own investigative purposes (p. 46).

Under the law, it is only the President who has the right to allocate unalienated government lands, although he can delegate limited powers to the Commissioner of Lands. Yet even the President cannot exercise his powers without paying regard to the public interest. In practice, however, key responsibility falls upon the Commissioner of Lands and his officials, who under the Government Lands Act may cause township plots on unalienated land to be sold by auction (unless the President prescribes otherwise) for business or residential purposes (but only if it is not required for public purposes), whilst not even the President has the authority to allocate alienated government lands which have been set aside for a public purpose such as nature conservation, forests, play areas or by-passes.

In any process of allocation, a formal offer of sale is made to an approved purchaser by the Commissioner for Lands. Such a *letter of allotment* is only made to the person to whom it is addressed, lapses after 30 days, and has various conditions attached, and as such cannot be legally transferred to another person. Meanwhile, trust land can only be removed from the communal ownership of local people through legally prescribed adjudication processes, whereby local communities are given ample notice and opportunity to claim their ownership in accordance with their customary law. However, despite all these legally strict safeguards, 'it is in the allocation process that most of the corruption and fraudulent practices relating to land have occurred' (p.54).

The Commission's Findings

Upon the basis of detailed review of all laws relating to land, official reports concerning the land issue by government and non-government bodies, documents and records submitted by ministries and public bodies, and reports and memoranda by professional associations and members of the public, the Commission categorised its findings according to three broad types of public land: Urban, State Corporations' and Ministries' Lands; Settlement Schemes and Trust Land; and Forestlands, National Parks, Game Reserves, Wetlands, Riparian Reserves, Protected Areas, Museums and Historical Monuments.

I. Urban, State & Ministries' Land: The Commission indicated that numerous methods were used to grab land falling under this category.

There was found to have been widespread abuse of presidential discretion with regard to unalienated urban land, with 'in many instances' (both) Presidents Kenyatta and Moi making grants to land to individuals without any consideration to the public interest, for political reasons, and without proper pursuit of legal procedures,

whilst there was also extensive illegal allocation by the presidents of alienated land (viz, land which they did not have legal power to allocate). Various Commissioners of Lands had made direct grants of government land without any authority from the President. Forged letters and documents were used to allocate land in numerous instances, with many records at the Ministry of Lands and Settlements having been deliberately destroyed. Often, land was sold by grantees without any adherence to the conditions laid down by letters of allotment, and many illegal titles to public land were transferred to third parties, often State Corporations, for massive sums of money. Land compulsorily acquired, like that for the proposed Nairobi by-pass, was illegally allocated to individuals and companies, and then often sold on to third parties, whilst land reserved for public purposes such as schools, playgrounds, and hospitals etc had been sold off in blatant disregard of the law by both the Commissioner of Lands and numerous local authorities. In broad summary, the Commission found that the powers vested in the President had been grossly abused by both the President and successive Commissioners of Lands and their deputies over the years, under both previous regimes; there had been 'unbridled plunder' (Commission: p.81) of public land by local councillors and officials; illegal transactions were hugely facilitated by the extensive complicity of professionals (lawyers, surveyors, valuers, physical planners, engineers, architects, land registrars, estate agents and bankers) in the land and property market; and most high profile allocations of public land were made to companies incorporated specifically for that purpose, largely to shield the directors and shareholders of such entities from easy public view. Finally, and interestingly, the Commission found that 'most illegal allocations of public land took place before or soon after the multiparty general elections of 1992, 1997 and 2002', reinforcing its view that public land was allocated 'as political reward or patronage' (p.83).

With regard to the over 140 state corporations (inclusive of such institutions as universities and the Central Bank) and the 113 odd companies in which the government holds shares, the Commission noted that although the purchase and disposition of land is incidental to their business, many such entities have acted as if they were set up to deal in land and have participated in land grabbing schemes through which the public has lost 'colossal amounts of money' (p.87). Land allocated to state corporations is 'alienated land', but has been illegally allocated to individuals or companies in total disregard of the law. Such land was customarily sold at less than market value to allottees, who often proceeded to sell it other state corporations at amounts far in excess of market value (p. 89). A usual procedure would be for the senior management of the corporations to address a letter of surrender of land to the Commissioner of Lands, who would in short order receive an application for purchase of the same land from an individual or company. At other times, corporation land might be allocated by the Commissioner of Land to individuals without any reference to corporate management whatsoever. Through such methods, 'a civil servant, a politician, a political operative etc would transform from an ordinary Kenyan ... into a multi-millionaire' (p. 90).

Corporations which have lost large areas of land under such dubious circumstances include Kenya Railways, Kenya Agricultural Research Institute, the Power & Lighting Company, Kenya Airports Authority, and Kenya Industrial Estates, whilst other bodies such as the Kenya Food and Chemical Corporation which ended up in liquidation following mismanagement nonetheless proceeded to sell off their remaining assets, including land, at throw away prices (p.90). One such transaction can be cited by way of example. In January 1994, the Numerical Machining Complex Limited (owned wholly by Kenya Railways and the University of Nairobi (sic)) was allocated 840 hectares of land belonging to the Kenya Meat Commission for 'industrial purposes'. Within a few weeks, the then Head of the Public Service, Professor Philip Mbithi, who was a Director of the Company, wrote to the head of the National Social Security Fund (NSSF) informing him that the president had suggested that the NSSF purchase the land at market value. In February 1995, the NSSF proceeded to purchase 136 hectares of land at a cost of 268 million shillings, which was fully **8.5 times more than the professionally assessed value!** Today, the land purchased by the NSSF remains largely undeveloped, as does that remaining with Numerical Machining Complex (pp. 91-92).

This is illustrative of the further scam whereby state corporations were pressurised into making illegal purchases of public land, becoming 'captive buyers of land from politically connected allottees' (p. 92), the most abused corporation in this regard being the NSSF, which between 1990 and 1995 spent some 30 billion (n.b., not million!) shillings in buying both developed and undeveloped plots throughout the country. The Commission gives a full list of the transactions involved, many of the vendors being companies whose individual owners are not immediately evident.

The Commission made similar findings with regard to various government ministries which own large tracts of land, despite the fact that most of them claimed not to have lost land through illegal allocations. Again, loss of land might be triggered by a letter from an official of a ministry addressed to the Commissioner of Lands indicating that the ministry no longer required a certain tract of land, and the latter would in turn allot it to an applicant purchaser in excess of his authority. Prime offenders included the Ministry of Livestock and Fisheries Development which claimed only to have lost small fisheries land, while information provided by the public indicated that it has lost large tracts of its livestock holding grounds. Similarly, the National Youth Service is said to have lost thousands of acres of land in allocations to prominent politicians. Then, of course, there is the Kenyatta International Conference Centre (KICC). This was funded by the Ministry of Roads and Public Works between 1967 and 1974 for 79.7 million Kenya Shillings and subsequently managed by the Ministry of Tourism. In 1985, this was sold to KANU via a 99 year lease for just 1,680 shillings and a pepper corn rent, with the title being made out in favour of President Moi and Peter Oloo Aringo. Subsequently KANU took over the Centre, and assumed the role of landlord by collecting rent from tenants until February, 2003, when the new NARC administration took over the KICC on behalf of government. KICC now constitutes the subject of a court case concerning ownership between KANU and the government (pp.112-3).

Meanwhile, at a less exalted although far more pervasive level, the Commission found that many thousands of government houses and properties were illegally allocated to individuals and companies.

II. Settlement Schemes & Trust Lands: Trust land, including settlement scheme land purchased by government with international loans from European settlers for settlement by African smallholders or carved out of Trust land, has been similarly abused. The Commission found that, overall, whilst the establishment of settlement schemes and their subsequent allocation in the early years of independence generally conformed to the original objectives, in latter years there was extensive deviation, with much land having been allocated for purposes other than settlement and agricultural production.

Allocation of plots, formally conducted under Settlement Fund Trustees, devolves in practice upon District Plot Allocation Committees composed of the District Commissioner, District Settlement Officer, District Agricultural Officer, the area MP, the Chairman of the relevant County Council and the Clerk to Council. Settlement Fund Trustees appear to lack any supervisory powers over these committees, with the result that the local committees have been almost wholly unaccountable. The result has been predictable, with the interests of the landless having been ignored in favour of those of 'District officials, their relatives, members of parliament, councillors and prominent politicians from the area, Ministry of Lands and Settlement officials, other civil servants and ... so called 'politically correct' individuals' (p.127). And whilst the majority of deserving allottees received smaller plots, the undeserving often received large ones. Meanwhile farms belonging to the Agricultural Development Corporation, designed to provide an the needs of the agricultural industry by developing high quality seeds or livestock or undertaking research etc, have been illegally established as settlement schemes and subsequently illegally allocated to individuals and companies, often as political reward or patronage (Commission: pp. 134-5).

In addition to the above, extensive tracts of Trust Land have been illegally allocated, with county councillors having been the main beneficiaries. Whilst the Commission was able to provide some glaring examples of such abuse, it was hampered in its work by the failure or refusal of councils to submit relevant information (p.140). It concludes:

Instead of playing their role as custodians of public resources including land, county and municipal councils have posed the greatest danger to these resources ... the most pronounced land grabbers in these areas were the councillors them-selves...The corruption within central government has been replicated at the local level through the activities and omissions of county and municipal councillors (Commission: p.147).

III. Forestlands, National Parks, Game Reserves, Wetlands, Riparian Reserves & Protected Areas: After examination of the official reports and the 'scanty records' of responsible government departments and agencies (p.148), the Commission found that only 1.7% of the 3% of the country which was covered by gazetted forests at independence remains, most of the reduction having come about as a result of illegal and irregular excisions, usually made without any reference to scientific considerations or under the guise of settlement schemes. The beneficiaries of such excisions include (often private) schools, government institutions, and religious bodies as well as private individuals and companies. Similarly, many illegal allocations of land around riparian sites have been illegally allocated by the Kenya Wildlife Service, with many such allocations – such as those made since 1995 to some 14 beneficiaries around Lake Naivasha – being known to have severely affected the ecosystem.

Fortunately, the Commission finds that the National Parks and Reserves have been more effectively protected, yet nonetheless it provides some ten cases of illegal allocations within KWS protected areas, and 15 cases in KWS alienated plots beside them. Furthermore, the Commission also records 26 instances of illegal allocations of land from Nature Reserves falling under the domain of local authorities, whilst there are some 8 known cases of land set aside for national museums and monuments having been illegally allocated to private individuals. The latter include the allocation of Kongo Mosque site at Kwale to former President Moi in 1986 (p. 169). It comes as no surprise that land belonging to the military, and even land portions belonging to State Houses and lodges, have also been sold off.

Against this catalogue of corruption, it is not surprising that the Commission concludes that there has been systematic and widespread abuse of public trust by public officials, to the extent that many officials now fail to see anything morally wrong with their allocating land illegally. There were many centres of power which were responsible for the illegal allocation of land, yet the Commission makes it clear that the lead in public plunder has consistently been given from the top. Kenya, it concludes, has fallen into a state of 'moral decadence', this epitomised no more clearly than by the extensive participation in land grabbing by churches, mosques, temples and other faith institutions, these including such venerable institutions as the Catholic Archdiocese of Nairobi, the Church Commission of Kenya, and the Anglican Church (pp.182-3).

The Commission's Recommendations

Whilst making a series of sensible recommendations concerning, inter alia, the need for an inventory of public land and the computerisation of land records, as well as for a comprehensive land policy, the Commission also urges the establishment of a Land Titles Tribunal charged with reviewing each and every case of suspected illegal or irregular allocation of land, and hence embarking upon the process of revocation and rectification of such titles.

Reference to the weighty Annexes indicate that revocation would be a formidable task. Its specific recommendations, by way of example, include the following: revocation of 105 plots allocated from land reserved for the Nairobi bypass (Annex 3); of 551 allocations made by the Nairobi City Council (Annex 5); 86 allocations by Meru, 449 by Nakuru, 270 by Eldoret, 100 by Nyeri, 186 by Kisumu, 407 by Mombasa, 56 by Nyahururu, 67 by Kiambu, 30 by Kisii, 17 by Kapsabet, 187 by Kerugoya/Kutus and 118 by Kitale Councils, with further dubious allocations by all these councils also to be investigated (Annexes 7-23). Numerous improperly documented allocations of land by Kenya Railways should also be examined, whilst 229 allocations made by the Kenya Agricultural Research Institute, 31 by Kenya Pipelines, 572 made by Kenya Industrial Estates, and 178 by the prison authorities should be revoked, as well as smaller numbers of plots illegally allocated by other state corporations. There should also be revocation of titles of some 7 illegal allocations made by the judiciary (!), 57 by the Ministry of Cooperative Development and Marketing, 47 by the Ministry of Agriculture, 289 by the Ministry of Education, 73 by the Ministry of Labour and 22 by the Ministry of Energy (Annexes 41-49). The Commission also provides lists of thousands of houses which have been illegally allocated throughout the country, implying that title to these, too, should be revoked, as should those to hundreds of allocations of land made to individuals and companies from forests, game parks and reserves etc which are listed in Volume II of the Annexes.

Commentary

Some time ago, following Ajulu (1997) and Himbara (1994), I characterised Kenya as a kleptocracy characterised by a drive for primitive accumulation by those who controlled the post-colonial state, alongside the failure of an African business class to promote industrialisation and development. However, my primary emphasis was upon financial and commercial corruption, and whilst I recognised land-grabbing (especially by local councillors) as a phenomenon, I failed to appreciate how enormously extensive the illegal appropriation of public land was to the formation and consolidation of Kenya's political elite. In this regard, although less blinkered observers such as Jacqueline Klopp (2000) have written upon the issue, enormous credit is due to the Ndungu Commission for the compilation of a truly formidable body of documentation concerning land-grabbing. Yet what is lacking from its analysis, even if – strictly speaking – it may have gone beyond its terms of reference, is some assessment of what land grabbing may have had upon the economy, and whether, in particular, land which was illegally appropriated has been put to productive use. In this regard, no overall summary or analysis has been provided, even though, with regard to the majority of allocations, the Commission offers two columns which list, first, the officially intended use of the land, and in the second, its

current use. Even so, even an unsystematic thumbing through the pages of the annexures suggests that the overwhelming majority of allocations have been utilised for residential, commercial, industrial or building purposes, even if the majority of the sites grabbed from the Kenya Agricultural Research Institute, whose present use is listed as 'private', may well have been transformed into private farms.

In this regard, the report has little to tell us about 'the land issue' in the sense of our acquiring greater knowledge about the overall distribution of land between government, ethnic groups, classes, and corporations, let alone the extent to which it has contributed to the eating away of Kenya's already diminishing supply of arable farming land. Furthermore, only more detailed analysis will be able to tell us how much land-grabbing has contributed to the unregulated and under-serviced peri-urban sprawl which is today such a visible feature of Kenya's unfortunate development path.

I have two further concerns. One is that, perhaps through lack of time (the report was compiled in just eighteen months), the Commission has left the slog of identifying the vast bulk of individual political beneficiaries to other analysts. Yes, it makes mention at times of particular allocations to key figures such as Moi and the Kenyattas, and it provides the names of individual and corporate beneficiaries in its detailed charts of allocations, whether by councils, corporations or other bodies. Of course, this offers a host of raw material for researchers to pursue, enabling them to identify, through detailed cross-referencing to known occupancies of political office, how particular MPs, councillors and civil servants have benefited. Yet an uneasy suspicion remains that the Commission may well have pulled its punches in this regard, and that it could have caused considerably greater embarrassment to present political incumbents than it has done.

The second worry, of course, is that little will come of the Commission's hard work. Even though the Commission has made recommendations that many hundreds of land allocations should be revoked and investigated, there are not so many that a Land Commission with the right political backing could not sit in judgement over process and appeals. However, given that NARC has absorbed so many members of the former KANU regime, it seems unlikely in the extreme that Kenya's avaricious politicians, however much formally committed to democracy, will be prepared to unscramble the egg. More probably - save perhaps for a few show case revocations - they will want to draw a line under the past, and simply ordain that no further transgressions should be permitted, although even that aspiration seems unlikely to be realised given the continuing nature of Kenyan politics as ethnically manipulated and patronage based, especially if the Commission is correct in identifying illegal land allocations as regularly increasing around the time of competitive elections.

Professor Wangari Maathai was recently awarded the Nobel Peace Prize for her contribution to sustainable development and democracy, notably out of respect for her work in mobilising local communities to defend Kenya's rapidly diminishing forests and to planting trees. The Ndungu Commission's demonstration of the extent to which illegal land allocation is entangled with political office indicates that, without a doubt, the prime responsibility for defending remaining public land will continue to fall, willy nilly, upon the shoulders of civil society.

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Bibliographic Note

Ajulu R. (1998), 'Kenya's Democratic Experience: the 1997 Elections', *Review of African Political Economy*, no. 76.

Brown, S. (2004), 'Theorising Kenya's Protracted Transition to Democracy', *Journal of Contemporary African Studies*, 22, 3.

Himbara, D. (1994), *Kenyan Capitalists, the State and Development*, Nairobi: East African Educational Publishers.

Klopp, J. (2000), 'Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya', *Africa Today*, 47, 1.

Southall, R. (1999), 'Re-forming the State? Kleptocracy & the Political Transition in Kenya', *Review of African Political Economy*, 79.