



HAL
open science

How Officialising Private Land Ownership Contributed to Land-grabbing in Kenya

Claire Médard, Stéphanie Duvail

► **To cite this version:**

Claire Médard, Stéphanie Duvail. How Officialising Private Land Ownership Contributed to Land-grabbing in Kenya. *Les cahiers d'Afrique de l'Est*, 2023, Literature, Art and Cosmopolitanism in East Africa / Land Policies and Practices in Kenya, 58, 10.4000/eastafrika.4270 . halshs-04663871

HAL Id: halshs-04663871

<https://shs.hal.science/halshs-04663871v1>

Submitted on 29 Jul 2024

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.



Les Cahiers d'Afrique de l'Est / The East African Review

58 | 2023

Literature, Art and Cosmopolitanism in East Africa / Land Policies and Practices in Kenya

How Officialising Private Land Ownership Contributed to Land-grabbing in Kenya

Claire Médard and Stéphanie Duvail



Electronic version

URL: <https://journals.openedition.org/eastafrica/4270>

DOI: [10.4000/eastafrica.4270](https://doi.org/10.4000/eastafrica.4270)

ISSN: 2790-1076

Publisher

IFRA - Institut Français de Recherche en Afrique

Electronic reference

Claire Médard and Stéphanie Duvail, "How Officialising Private Land Ownership Contributed to Land-grabbing in Kenya", *Les Cahiers d'Afrique de l'Est / The East African Review* [Online], 58 | 2023, Online since 04 July 2023, connection on 11 July 2023. URL: <http://journals.openedition.org/eastafrica/4270> ; DOI: <https://doi.org/10.4000/eastafrica.4270>

This text was automatically generated on 11 July 2023.



Creative Commons - Attribution-ShareAlike 4.0 International - CC BY-SA 4.0

<https://creativecommons.org/licenses/by-sa/4.0/>

How Officialising Private Land Ownership Contributed to Land-grabbing in Kenya

Claire Médard and Stéphanie Duvail

EDITOR'S NOTE

This article was originally published in French: see Médard, Claire, and Stéphanie Duvail. 2020. "Accaparement foncier et officialisation de la propriété privée au Kenya." *Hérodote*, no. 179 : p. 165-181. <https://doi.org/10.3917/her.179.0165>.

- 1 The present study falls within a specific African context where systematic land privatisation, promoted by the State, is deeply rooted in history. In Kenya, the State has repeatedly used officialising of land ownership to build its legitimacy, which translates into an obsession with officialdom, legality, or at least the semblance of legality. The aim of this paper is to explore varied forms taken by official validation of land ownership.
- 2 Rival norms are promoted by state actors themselves. The stratification of rights (Colin 2009) must therefore be read as diachronic as well as a superimposition of powers. Only by observation, based on a local and prolonged perspective, can overlapping rights and powers be discerned, and considered in a dynamic manner, without using the lens of rigid hierarchies or categories (Lund 2014). Far removed from the idea of a simple and linear process of privatisation, the officialising of land ownership involves complex power dynamics explored here on the basis of two key concepts. The term neopatrimonialism (Bach and Gazibo 2012) helps us to conceptualise linkages between the institutionalisation and the personalisation of power. Instead of considering the "nature" of very varied African political regimes in an essentialist way, this concept invites us to focus precisely on tensions and contradictions of power, placing them at the heart of the analysis. A second concept that of "straddling," helps us to understand

overlapping economic and politico-administrative interests and how they might connect to each other. For instance, leaning towards a rent economy rather than a productive one (Sindzingre 2012), State actors use their institutional position for personal and financial gain. In this context 'institutional resources' become key to understand control exerted over land ownership via schemes of privatisation and formalisation.

- 3 The goal of this paper is to highlight, by combining different scales of analysis, the specific links and interconnections between powers, whatever their institutional and territorial base, focusing on practical norms (Chauveau et al. 2001).¹ The dynamic process of official validation, while not necessarily legal, results in contrasting formalisations of land ownership which range from legal privatisation, recognised or initiated by the central State, to private appropriation recognised at an intermediate and local scale. Linkages between different levels of power involved in the process of officialising of property, also help to comprehend the institutionalisation of new scales of power.
- 4 Firstly, we shall describe a system of private ownership of land in Kenya that falls between state control and the market. Then, on the basis of a series of case studies, we shall tackle more specifically the issue of power overlaps driving the varied formalisations of land ownership.

Land-grabbing: three case studies in Kenya



Debating State control over land in Kenya

- 5 In Kenya, a former European settler colony, land historically constitutes an important and strongly controlled form of economic wealth. The political history of the country in

the twentieth century might be considered as a chronology of “land grabs” (Alden 2012): the acquisition by Europeans of the high plateaus (“White Highlands”) at the beginning of the century, the takeover by powerful figures of the regime of J. Kenyatta (1963-1978) on their transfer after Independence, and, from the 1990s, during the regime of D. A. Moi (1978-2002), the mobilisation of militias, spurred on by the regime, who denounced the “land grabs” associated with previous regimes and launched new despoliations. Over the years, State driven land privatisation has led to grabbing in various ways, benefiting first and foremost rent-seeking elites. The regimes of M. Kibaki (2002-2013) and U. Kenyatta (from 2013 to 2022) also shared the legacy.

- 6 “Land grabbing,” in its vernacular meaning, is seen as an “obsession” (“Land grabbing mania”) (Klopp 2001 and ROK 2004, 13). These terms refer to common, even systematic practices of allocation and reallocation of land with official support. With the aim of tackling historical practices of land-grabbing which were highly centralised, the new constitution of 2010 introduced devolution (County governments), and sought to create an independent authority in charge of land, the National Land Commission (NLC). The boundaries of control over land were thus redrawn.

The vernacular meaning of “land grabbing” in Kenya

- 7 The vernacular meaning of “land grabbing” in Kenya places the State at the heart of episodes of despoliation. Denunciation of centralised control over the land is found in ethnic claims to land. Since Independence, ethnic mobilisations have been a key feature of electoral strategies, but the violent turn of the 1990s has contributed to fix them even more firmly within the political landscape, on a territorial basis. Over the course of time, linking administrative intervention and violence, both directly and indirectly, several mechanisms of despoliation are involved, targeting specific lands. In the following section, we shall explain how land grabbing operates mostly under cover of legality, purporting to officialise existing land ownership, and then we shall tackle the issue of violent militias and their links with the state.
- 8 First and foremost, grabbing was made to appear legal. It flourished on successive campaigns of systematic land adjudication, as well as the “legal” privatisation of lands considered as common or public. Control over land by the State and its agents was exerted through an adjudication process: first the creation of a land cadastre for “European” lands, followed by programmes of registration of “African” lands, from the 1950s, which continued after Independence. The despoliations were obvious during the process of registration of grazing lands that had previously been held as commons. Once the lands were registered, the political and administrative elites continued to interfere in land ownership, using institutional backing, intimidation or fraud. In clear, since colonisation, the control of land transfers, defined at various scales of power, maintained and perpetuated discrimination and segregation. It also promoted the coexistence of different types of formalisation of land ownership or access, accompanying the growth of a property market. The acquisition of a title deed is a long process which not everyone is prepared to engage in. Alternative formalisations of land ownership concern both areas previously registered as well as areas not yet demarcated.
- 9 In 2002, the Njonjo governmental report gave a broad definition of land grabs to include the theft of both publicly- and privately-owned lands, with the complicity of

the apparatus of the State. The report explained tensions about land in the light of earlier episodes of despoliation. It described a process that led to the privatisation and the irregular transfer of land, since colonisation, denounced in ethnic terms during the 1990s. It pointed specifically at the responsibility of the territorial administration in this process of acquisition and irregular privatisation of land (ROK 2002, 104).

- 10 Focusing on the case of public land, the Ndung'u governmental report, commissioned by the Kibaki government, inquired more specifically into public land illegally acquired during the preceding regime (ROK 2004, Manji 2012). The terms "illegal and irregular allocations of public land" replaced those of land grabs in the legal reframing of the report. Schemes targeting the privatisation of public land such as protected forests were systematised at the end of the regime of D.A. Moi, in a context where the "Africanisation" of former "European" lands and the privatisation of common grazing areas had slowed down, since they had for the most part already been allocated individually. Different categories of government actors were involved, including local authorities managing Trust land and the central administration responsible for Government land. The report stressed how much entrusting the land to a public authority had failed to protect the public interest. It denounced what it called the myth of the inviolability of land title, stressing the need to insist on the regularity of a legal process rather than on the result obtained, for the sake of enhancing State legitimacy.
- 11 A second mode of "land grabbing," this time by force, became a talking point from the 1990s when organised violence, in which State agents and politicians were complicit, took root on the basis of exclusive territorial claims. Such claims destabilised the whole of Kenya at the time of the rigged elections of 2007 which triggered ethnically targeted violence. In an attempt to get to the root of this political violence, the Truth, Justice and Reconciliation Commission (TJRC), set up by act of parliament in 2008 in an effort to promote peace, considered the question of "historical land injustices." The link between land grabs and ethnic domination or marginalisation is widely accepted in Kenya. The report refers in particular to the "domination of the Kikuyu," the group associated with the first president of Kenya which at Independence exercised considerable control over the administration and the transfers of land (TJRC 2013, Volume 2B, 222).
- 12 The insistence on local affiliation to own land serves as a basis for forms of political and electoral mobilisation. Targeted accusations of "land grabbing" levelled against specific ethnic groups, and not only the Kikuyu, served to justify violent "reallocation" of land from the 1990s, which ultimately seemed like new episodes of land grabbing. Accusations and counter-accusations were at once rooted in abstract ethnic categorisations and very tangible territorial boundaries, reviving the administrative colonial legacy of ethnic reserves (Golaz and Médard 2016). Ethnicity / race are conveniently used by political actors to justify land reallocations without bothering to consider neither the political invention of ethnicity, nor the ethnicisation of politics. In Kenya, the force of a "political tribalism" (Lonsdale and Berman 1992) which promotes an essentialist understanding of identities, relates to specific and historically constituted dynamics of power associating land, territory and ethnicity.
- 13 The Constitution of 2010 came as a response to these violent political and electoral crises associating local territorial and ethnic claims. Limiting the powers of the central government was seen as a way to combat land grabs. This idea presided over the devolution of power and the introduction of the NLC, an institution intended to

guarantee legality and justice outside the realms of politics, with the specific mandate of managing public land and combating “historical land ownership injustices,” following the recommendations of the TJRC.

The devolution of control over land

- 14 Over the course of time, institutional reforms have introduced variations in the control and the governance of land in Kenya. The first phase, under the regimes of the first presidents of Kenya, J. Kenyatta and D. A. Moi, was characterised by greater administrative centralisation and the enhancement of the personalisation of presidential power. In a second phase, from the Constitution of 2010, there was this time a thrust towards devolution (Boone 2019), through the introduction of an elective power at the level of new territorial units, the counties, headed by Governors. County boundaries and jurisdiction correspond to that of the former administrative districts, before the 1990s wave of subdivisions, judged excessive.
- 15 The old system (pre-2010) placed the management and, at the same time, the decisions regarding legal land privatisation under the direct responsibility of a centralised administration, even if formally part of the land was under the control of the local authorities. In the absence of checks and balances, the decisions over important investments in land generally fell directly to the president, if needs be sharing his prerogatives with other powerful figures of the regime. Tied to patronage, limited measures of land redistribution, were undertaken at various times in the history of Kenya to meet the claims of a certain categories of people whose land ownership rights were not recognised, often designated as squatters, settled on public or private land.
- 16 From 2010, a new system was introduced with the aim of limiting the president's power of personal intervention and control over land. It led to a consolidation of a new level of power, the county. Bolstered at the institutional level, these local governments negotiated in a very tangible way their power base in terms of new prerogatives, in between legal norms and practical norms. Although characterised by their wide variety, county governments sought to create new systems of “rent” by reaffirming their authority over certain lands and, in particular, public lands located within their territory, challenging the mandate of the NLC.
- 17 From the start, the operational capacity of the NLC was hampered (Klopp 2017) in the conflict that opposed it, in the first place, to the Ministry of Lands, which sought to maintain its control via the centralised administration of the land (Di Matteo 2019), and secondly to the county governments. Supposed to be independent and beyond reproach to guarantee the management of public land in the common interest, the power base of the NLC was under attack from all sides. Subsequently, the Commission also found itself at the centre of a controversy concerning a system of organised fraud and illegal profiteering by its agents for the renewal of long leaseholds on publicly-owned land.²
- 18 Rivalry between the different authorities regarding the administration of land thus destabilised the renewed distribution of powers though it seemed enshrined in the constitution. Its practical deployment sheds light on power struggles and also highlights renegotiations. After a period when the respective competencies of the various institutions were uncertain and the official documents delivered by one administration or another were sometimes called into question, the prerogatives of each were finally adjusted and working relationships were formed, reflecting new

dynamics of power at the two levels of the executive, weakening the regulatory body (the NLC).

- 19 Generally speaking, land grabs are defined not so much by isolated illegal practices as by the organisation of power and the process of formalisation of land ownership which underpin these practices making them systematic. Land administration, involving so many actors, remained key by offering ways to intervene in decisions regarding land transfers and privatisation, and to legalise land grabs. With the strengthening of local governments, rent-seeking strategies were ultimately deployed at several governmental levels. In the following section we shall turn to more detailed case studies.

Scalar officialising of land ownership

- 20 Examples of land grabbing in various historical periods, both domestic and international, show contrasting formalisations and highlight different echelons of power and resulting interactions. The aim of this part is to illustrate the way in which these intervene in the official validation of land ownership and study how institutional reforms have played a role in tilting the balance in favour of the local level of government.
- 21 The first example places the emphasis on a “reallocation” of land where a local echelon of power took the initiative, even before devolution. The next example deals with the issue of the large-scale acquisition of land with the spread of biofuels from 2008, and the limited impact of this new wave of land-grabs bearing in mind a century of land-grabbing in Kenya. The final case-study deals with a well-established multinational in the agricultural sector in Kenya and the issue of local sovereignty over land.

The legitimisation of violent land occupancy

- 22 In the 1990s, scholarly attention was drawn to the role of militias in Kenya during episodes of electoral violence. Gangs or militias correspond to somewhat flexible or more rigid associations, as the case may be, consolidated on the basis of economic priorities and/or aspirations formulated in political, ethnic or religious terms. Their development was not actually independent from State power but relied both on the collusion with authorities and local popular support. Violence and fear contributed to create a confusion, at the height of electoral frenzy, between power which “protects” and popular “support.”
- 23 The metropolis of Nairobi became the theatre of militia operations which were related to electoral violence, but also to the consolidation of gangs on an economic basis. Militia members, businessmen and a political elite found a common interest in controlling land ownership and the real estate market of an expanding conurbation. To get rich, violence and intimidation might be used but it is not enough. Officialising land thefts also played an important role in wealth creation, stemming from the bureaucratic mould of the Kenya State.
- 24 In the following example, local authorities were responsible for the allocation of plots via official validation for land which was taken by force, putting new land on the market. The practice was subsequently declared as illegal. The entire system of

irregular but highly codified practical norms was investigated in a government report which examined the invasion of privately-owned land in the region of Athi River, today administratively attached to the county of Machakos, thirty kilometres east of the capital city of Nairobi (ROK 2011). Land grabbing began in 1998 and was known under the name *ngwata*, a Kamba word meaning land which one acquires for oneself (ROK 2011, 14). This word designates a local and gendered concept of self-fulfilment for a man, linked to achieving autonomy on the basis of land. Legally owned land, backed by documentation delivered by the central State, was repossessed in this context. Invasion of private land occurred repeatedly over time and threatened the property of enterprises that were well-established in the region. Though there was a serious problem regarding access to land for the poor in Athi River and though the leaders involved in the invasions laid claim to the defence of the rights of “squatters,” the report emphasised that these invasions served to mask the interests of real estate speculators (ROK 2011, 15). Furthermore, not only was pre-existing legal ownership treated with contempt, but intimidation became the norm through such land occupation. Paradoxically, a whole system of protection of these invasions was brought to light in this report. The first stage was their official validation by the local authority. In the example studied, the Municipal Council of Mavoko, under whose jurisdiction these lands happened to be placed, officialised land grabbing. The legal instrument used was a “temporary letter of allotment,” irregularly delivered by an authority which was not supposed to issue this type of letter, much less when it concerned private land. The next stage was the transfer of such letters to third parties. Though considered an irregular transfer, since the contract was between an authority and a beneficiary of the land and not a proof of ownership, the law was amended in 1994 to allow it (TJRC, 323). In short, this fraudulent system had become quasi-legal, before finally being denounced in this report.

- 25 This system could result in the production of legal deeds even though the process was irregular. When selling land that was not legally owned, it was all the more important to give the impression of regularity. If fake documents and deeds of ownership were sometimes fabricated, official documents of various kinds were also used as proof of ownership: letters of temporary allocation or even receipts proving that local taxes had been paid for the plot considered without prior verification about who was the owner. These official documents were diverted from their real purpose. These bureaucratic procedures and the involvement of administrative officials and agents also contributed to create the illusion of regularity. Investing in the bureaucratic proof of ownership could be as profitable as investing in the physical proof of ownership via physical occupation or the construction of a residential or commercial building on land that had been taken over. The importance of the practical norms produced by bureaucracies was highlighted in other contexts (Blundo and Olivier de Sardan 2006).
- 26 At the symbolic level, the key role of local official validation and its bureaucratic form served here to reaffirm a public sphere or local sovereignty which echoed local forms of patriotism (Peterson 2012). This example highlights the direct intervention of the local authorities in the reallocation of land which contributed to the development of a local real estate market. The reform of 2012 focused on devolution to clean up the governance of land, yet there was no lack of examples of land theft organised by local authorities during the preceding period. The system of official validation referred to here coexisted with a legal juridical framework of which the central government was

the guarantor. In contrast, the large-scale land grabs that we shall now describe were mainly based on the juridical framework of legal ownership.

The parenthesis of the new land grabs of the 2000s

- 27 In Kenya, set against an age-old history of land despoliation, few cases of large-scale land grabs are related to the more recent wave of international land grabs which have attracted a good deal of attention globally since 2008. We shall focus here, on the basis of an example, on the land ownership and financial issues relative to an agro-fuel project implemented from 2009 to 2013 in the vicinity of the Tana delta, on the Kenyan coast, where several companies were seeking to set up business (Duvail et al. 2010). In 2009, the CEO of a Canadian company, Bedford Biofuels, acquired 45-year sub-leases covering a surface area of 164 000 hectares. To achieve this land transaction, he managed to gain support from government, both at the national and local levels, as well as conclude lease agreements with six different private ranch committees. The success of this land negotiation was not matched with success regarding the production *Jatropha curcas* and its transformation into biofuel. In 2013, when only one “pilot” plantation of 10 000 hectares was in the process of being set up at the Kitangale ranch, it was announced that the project was to be abandoned.
- 28 The framework enabling this major land investment was already in place before 2009. The land was privatised by the Kenyan State during the 1970s to the benefit of a group of local dignitaries. At the time, these ranches, which had the status of private companies, were established within the framework of the development of semi-arid pastoral regions in Kenya, promoted by the World Bank. This privatisation of the land was related to the colonial legacy of the British Crown Lands, which subsequently became Government Lands, a status that placed them directly under the control of the central State. In this framework, long term leaseholds were granted to the owners of ranches who had the requisite political support. When there was no existing title to the land, the introduction of a legal deed of ownership, with the support of the administration, corresponded to a common mechanism for the despoliation of the ordinary residents and customary users of the land. In the case studied, since the ranches set up by local elites quickly failed economically and financially, the superimposition of rights was maintained *de facto* over these privatised terraces along the river Tana which served as grazing pastures for the livestock-keeping communities in the region. The arrival of Bedford Biofuels corresponded in some way to a second privatisation of this land. While the company was not responsible for the initial privatisation of the land, on the other hand its project potentially disrupted local grazing patterns and extended social networks consolidated around these pastures.
- 29 These new land transactions, in the form of sub-leases, did not call into question the ownership of the ranches, they even contributed to its regularisation by offering a way to pay off all the unpaid rates on these insolvent ranches (Duvail et al. 2012) and to renew the leases on the ranches for a new period of 45 years. The initial leases signed in 1970 and in 1976 were theoretically to reach their expiry date in 2015 and 2021. The operation got the green light, at national level, from the Commissioner of Lands and, at the local level, the agreement of the District Development Committee. The period for setting up the project, during which the land ownership documents were negotiated at the different echelons of the government and then with the shareholders of the private

ranches, offered a golden opportunity for the elites controlling the various institutional resources. For foreign entrepreneurs, acquiring legal land tenure documents was also a key factor for convincing investors and served as leverage for funding.

- 30 Numerous intermediaries profited from this phase of negotiation for a land transfer, unlike the local users of these terraces along the Tana River and of the delta floodplain situated downstream, whose interests were not taken into account at the time of this takeover. Although they were supposed to regulate investments with a high environmental and social impact, the required environmental impact studies (ABF 2010) did not play their role. The conflicts over rights and usages were ignored in these studies. The investment was approved by the National Environmental Management Authority (NEMA), which report underestimated the sustainability of the project and its impact on an extended region with regard to the access to water (Duvail et al. 2012). Water requirements, indispensable for the economic profitability of the *Jatropha* in semi-arid regions, were not even mentioned, in spite of the water abstraction associated with this project which affected numerous users well beyond the perimeter of the project.
- 31 In August 2012, violence broke out in this region where conflicts over uses are described as recurrent. The project itself was a source of dissent. Only some of the Pokomo supported it on the basis promises of employment creation made by Bedford Biofuels and relayed by a Pokomo elite. The Orma who saw their access to pastures blocked by fences were openly opposed to it. But the political game was even more complex, and the violence, initially planned, was clearly in phase with the electoral calendar. The pattern for the organisation of political and electoral violence become recurrent in Kenya in the 1990s and following years: it had the effect of systematising ethnic oppositions. Its aim was, first of all, to intimidate ethnically targeted electors, locally triggering an exodus, while eventually also deriving material gain and in particular enabling more or less permanent land reallocations. The case of the deadly attacks of 2012 in the Tana delta, which initially targeted Orma villages (Duvail 2018), was related to “political tribalism,” fuelled over the years by various economic and political tensions. The violence was promoted by electoral candidates, acting with total impunity, ready to use any means to ensure their victory.³ In the case of the Tana, in 2012, it was the post of County Governor that was in contention, hence the highly localised character of the electoral violence which did not spread to the rest of the country. This post, only just created with devolution, was coveted because it opened up new perspectives for controlling certain local resources.
- 32 In 2013, Bedford brought operations to a halt, on the pretext of political insecurity giving rise to conditions that were not good for business.⁴ But the company was already in financial difficulty since 2011 because of investors pulling out. They had brought charges before the Commission of Security of Alberta, Canada, and the CEO of Bedford was found guilty in 2017 of tax fraud and embezzlement.⁵ This judgement only concerned the Canadian part and did not entail any settlement with regard to prejudice incurred in Kenya. It showed that in 2011 Bedford Biofuels had envisaged selling the sub-leases for 70 to 80 million dollars to investors from Asia, almost ten times the amount of the initial investment (11 million dollars). This transaction turned out to be fictitious (hence the sentence for embezzlement), but the case underlined the financial dimension of the land investment which went far beyond the declared objective of agro-industrial production.

- 33 In this case, the foreign investors, far from providing “development,” widened the gap between the holders of title deeds and customary users, and in addition to fuelling local tensions, opened the way to land speculation through complex financial schemes. The abandoning of the project was, when all is said and done, unconnected with the violence of the militias which did not really target Bedford Biofuels. It was above all the bankruptcy that shed light on fraudulent practices by a business network. If the project did not materialise for long, it enabled the raising of considerable funds and opened up new perspectives for the private reallocation of land in its wake. The interventions of public authorities and the institutional tools at their disposal enabled officials to put back on the market land that had already been privatised, in such a way as to derive new profit, through the reallocation of land at regular intervals. With devolution, the political support needed for the official validation of land ownership was reconfigured, enabling the local echelon to play a determining role, as we shall now discuss further.

Redrawing the boundaries between private and public land

- 34 Studied over the period 2012-2020, the example of the renewal of long-term leaseholds on land exploited by the company Cirio Del Monte for the large-scale production of pineapples in Thika, near Nairobi, highlights the way the legal status of land ownership can be undermined, allowing us to explore the realm of officialdom and to point at institutional rivalries.
- 35 The example studied here relates to the century-old privatisation of land in the former *White Highlands* and an attempt at the redrawing of the boundary between public and private land after devolution. This attempt does not only relate to the waves of territorial claims making reference to “African” sovereignty over the land or, at another scale, that of the “Kikuyu,” it is organised very specifically on the basis of reference to a juridical framework. The present renegotiation is based on the differentiation between private land and public land, exploiting the legal framework of long-term leaseholds on public land which conceptualises the superimposition of rights over the same plot (rights derived from the State and private exclusive land rights). The lands held via long-term leaseholds are classified as private. The frontal attack against this kind of private property which historically had enabled Europeans to take possession of large estates in Kenya was carried out in two phases. First of all, the new constitution limited the duration of leases inherited from the colonisation (reduced from 999 years to 99 years). In the second phase, the insistence of the local authorities on the fundamentally public status of these lands enabled ownership of these lands to be reassessed and rights to be reallocated to other beneficiaries.
- 36 The Cirio Del Monte pineapple plantation was set up after Independence between 1965 and 1973. It nonetheless stemmed from the legacy of the colonial land tenure structure characterised by large-scale European farms. Several companies had succeeded each other and passed on the land for 100 years: sisal and coffee plantations, then a fruit canning company taken over by Del Monte. The key role of a state figure in the person of the former Minister of agriculture of the years following Independence, Bruce McKenzie, close to the first President of Kenya, Jomo Kenyatta, contributed to the implantation of Del Monte in Kenya. Nevertheless, the tensions within the government which presided over this takeover should not be underestimated and, in particular, the pressure to reallocate the land in a context where strong demands from clients were

voiced and powerful elites were seeking to privatise these lands for their own profit. At the time, all the efforts deployed for the “africanisation” of the land were foiled due to the powerful connections of the Minister of agriculture and the support of the President.

- 37 In recent years, the issue of the renewal of Del Monte leaseholds reaching their date of expiry came to the attention of various actors including local governments, trying to influence the game. Leasehold renewal is supposed to be virtually automatic, except when no development has taken place and/or when the government wants to repossess the land for a new public infrastructure project. Legal proceedings were initiated by the company in 2012. From the start, the company complained of cavalier treatment on the part of the local authorities.
- 38 To understand this wheeling and dealing, it is worth specifying that the company’s land is located within the jurisdiction of two distinct local authorities: the county of Kiambu and that of Murang’a; and that the leasehold expiry date is a few years apart in each of these locations. The renewal of the leasehold implies collaboration between several governmental actors, each bent on consolidating their prerogatives. For example, the company pays rates and taxes both to the local government and to the central government; they are recalculated on this occasion. For Kiambu, the process of renewal of the 99 years leasehold was completed. The parties managed to sign a Memorandum of Agreement concerning about 3300 hectares, with in exchange 250 hectares which were returned to public control and entrusted to the county authority. A change of power in 2016 helped the situation, the former governor Kabogo being replaced by a new one, Waititu, more favourable to reaching an agreement.
- 39 Regarding the main part of the company’s land in Murang’a County, negotiations took much longer with lawsuits and a parliamentary report finally approved in December 2021 (ROK 2021). From the start, the county announced that they wished to recover part of the estate. The idea of carrying out a survey of the properties of Del Monte cropped up at key moments in history: at the time of the legal transfer of the land to the company in 1973 and the time of the renewal of the leases. The NLC asked for maps of the company’s lands in 2019. The aim was to know whether there were unused plots that might be reallocated and give rise to a new evaluation of the property to redefine the tax base. These two requirements corresponded to its mandate as well as the protection of squatters’ rights. Formulated as the historical claim of landless Kikuyu peasants, a pressure group sought to achieve recognition of its rights over part of Del Monte land by all means.⁶ The time was right for the denunciation of a land grab by a major corporation, rooted in a highly inequitable colonial land tenure structure, despite the post-Independence implantation of the company in Kenya. The NLC enabled the voices of squatters to be heard, spear-headed by marginalised politicians, opposing the local government and its effort to consolidate its power by seeking new rents associated with renewed control over land. In the absence of real counterbalances, at the level of the local governments, for which people are raising alarm,⁷ the question arose of knowing whether the NLC would be capable of playing this role. Finally, it was a parliamentary committee (ROK 2021) which ruled that approximately 1200 hectares, located across the Kiambu and Murang’a boundary, should revert to public land with 70% of this land being allocated to a squatter association. The question of knowing more precisely how the land will be used is not settled and the discretionary privatisation of public land taken over by these authorities cannot be ruled out.

40 Over the years, the need for political support to gain or maintain land rights was highlighted in the various examples documented. Case-studies illustrated the redeployment of the State at the level of local government, creating an overlap in the control over land and the definition of land rights. Negotiations were centred on the redefinition of public land and/ or the scale of its management, thus also redefined the public sphere in Kenya.

Conclusion

41 The initial transformation of common or public domains into private lands is radical; gradually, this transformation fades into the background with the emergence of new claims and new waves of privatisation. The current controversy over long-term leaseholds in Kenya reflects an effort to reconfigure control over land, by declaring these areas as public land. If the separation between public and private spheres is basically an “official” action, their confusion, in practice, when holding public office, generates power. Land grabbing related to a system which placed the officialising of land at the heart of practical norms of power in Kenya. Since 2010-12, the restructuring of government placed the emphasis on the construction of a local sphere of power and its institutional consolidation, giving rise to a new context for international investments. This restructuring of the State at difference scales shifted attention from central control over land to forms of local sovereignty. With the questioning of a monopoly constructed around presidential powers, the creation of local economic and political power base by powerful actors needs to be factored in. For investors, the situation has become more complex in the face of a “democratization” of this rent economy deployed at both local and national scale. The process of institutionalisation of a local sphere of power, linked to strong politico-economic interests, has prevented, in some instances, the central State to perform its role of “protector” for the international private sector.

BIBLIOGRAPHY

African Business Foundation (ABF). 2010. “Environmental and Social Impact Assessment Study Report: The Proposed Establishment of Jatropha Plantations in Garsen Division, Tana Delta District, Kenya”. Prepared by African Business Foundation (consultant) and Bedford Biofuels (project proponent). Nairobi: National Environment Management Authority.

Alberta Securities Commission (ASC). 2017. “ASC Concludes Settlement Agreement with David Gregor McClure.” Alberta Securities Commission, 18 August 2017. <https://www.albertasecurities.com/News-and-Publications/News-Releases/2018/10/ASC-concludes-Settlement-Agreement-with-David-Gregor-McClure> [archive].

Alden, W.L. 2012. “Looking back to See forward: The Legal Niceties of Land Theft in Land Rushes.” *The Journal of Peasant Studies* 39 (3-4): 751–75. <https://doi.org/10.1080/03066150.2012.674033>.

Bach, Daniel, and Mamoudou Gazibo, eds. 2012. *Neopatrimonialism in Africa and beyond*. New York: Routledge. <https://doi.org/10.4324/9780203145623>.

“Bedford Biofuels Jatropha, Tana Delta, Kenya.” 2014. *Environmental Justice Atlas*, last update 08 April 2014. <https://ejatlas.org/conflict/bedford-biofuels-jatropha-tana-delta-kenya/> [archive]. PDF Version: <https://landmatrix.org/media/uploads/ejatlasorgconflictbedford-biofuels-jatropha-tana-delta-kenya.pdf> [archive].

Blundo, Giorgio, and Jean-Pierre Olivier de Sardan, eds. 2006. *Everyday Corruption and the State*. London: Zed Books.

Boone, Catherine, et al. 2019. “Land Law Reform in Kenya.” *African Affairs* 118 (471): 215–37. <https://doi.org/10.1093/afraf/ady053>.

Chauveau, Jean-Pierre, Marc Le Pape., and Jean-Pierre Olivier de Sardan. 2001 “La pluralité des normes et leurs dynamiques en Afrique. Implication pour les politiques publiques.” In *Inégalités et politiques publiques en Afrique*, edited by Gérard Winter. Paris: Karthala. <https://www.documentation.ird.fr/hor/fdi:010024536>.

Colin, Jean-Philippe, Pierre-Yves Le Meur, and Éric Léonard, eds. 2009. *Les politiques d'enregistrement des droits fonciers. Du cadre légal aux pratiques locales*. Paris: Karthala.

Duvail, Stéphanie, Claire Médard, and Jean-Luc Paul. 2010. “Les communautés locales face aux grands projets d'aménagement des zones humides côtières en Afrique de l'Est.” *Politique africaine*, no. 117 : 149–72. <https://doi.org/10.3917/polaf.117.0149>.

Duvail, Stéphanie, Claire Médard, Olivier Hamerlynck, and Dorothy W. Nyingi. 2012. “Land and Water ‘Grabbing’ in an East African Coastal Wetland: the Tana Delta Case Study.” *Water Alternatives*, 5 (2): 322–43. <https://www.water-alternatives.org/index.php/volume5/v5issue2/172-a5-2-8/file> [archive].

Duvail, Stéphanie. 2018. “Conflits autour de l'eau : le territoire du delta du Tana au Kenya.” In *Géographie des Environnements*, edited by Paul Arnould and Laurent Simon, 110–22. Paris: Belin Éducation.

Di Matteo, Francesca. 2019. “Decolonizing Property in Kenya? Tracing Policy Processes of Kenyan Contemporary Land Reform (1990s-2016): A Study of the Politization of Decision-Making in Historical Perspective” PhD Dissertation. Marseille: EHESS. <https://hal.science/tel-04107979/>.

Golaz, Valérie, and Claire Médard. 2016. “Agricultural Frontier, Land Tenure Changes and Conflicts along the Gucha-Trans Mara Boundary in Kenya.” *Journal of Eastern African Studies* 10 (2): 229–46. <https://doi.org/10.1080/17531055.2016.1187814>.

Kamau, John. 2020. “Form team to allocate Del Monte land, Uhuru told.” *The Star*, 07 June 2020. <https://www.the-star.co.ke/counties/central/2020-06-07-form-team-to-allocate-del-monte-land-uhuru-told/> [archive].

Klopp, Jaqueline M. 2001. “Electoral Despotism in Kenya: Land, Patronage and Resistance in the Multi-Party Context.” PhD Dissertation. Department of Political Science. Montreal: McGill University. http://www.columbia.edu/~jk2002/publications/klopp_phdthesis.pdf [archive].

Klopp, Jaqueline M., and Odenda Lumumba. 2017. “Reform and Counter-reform in Kenya’s Land Governance.” *Review of African Political Economy* 44 (154): 577–94. <https://doi.org/10.1080/03056244.2017.1367919>.

Lonsdale, John, and Bruce Berman. 1992. *Unhappy Valley: Conflict in Kenya and Africa*. London: James Currey; Athens, OH: Ohio University Press; Nairobi: Heinemann Kenya.

Lund, Christian. 2014. "Of What is This a Case?" *Human Organization* 73 (3): 224–34. <https://doi.org/10.17730/humo.73.3.e35q482014x03314>.

Manji, Ambreena. 2012. "The Grabbed State: Lawyers, Politics and Public Land in Kenya." *The Journal of Modern African Studies*, 50 (3): 467–92. <https://www.jstor.org/stable/41653718>.

Miguna Miguna. 2014. "Use Alternative Dispute Resolution mechanisms to implement devolution." *The Star*, 22 March 2014. <https://www.the-star.co.ke/siasa/2014-03-21-use-alternative-dispute-resolution-mechanisms-to-implement-devolution/> [archive].

Nyambega, Gisesa. 2019. "Probe Reveals Shocking Details of Rogue Staff in NLC Corruption Rot." *Daily Nation*, 28 April 2019. <https://nation.africa/kenya/news/probe-reveals-shocking-details-of-rogue-staff-in-nlc-corruption-rot-187920> [archive].

Peterson, Derek R. 2012. *Ethnic Patriotism and the East African Revival: A History of Dissent, c.1935–1972*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781139108614>.

Republic of Kenya (ROK). 2002. "Report of the Commission of Inquiry into the Land Law System of Kenya." Edited by Charles M. Njonjo. Nairobi: Government Printer.

Republic of Kenya (ROK). 2004. "Report of the Commission of Inquiry into Illegal/Irregular Allocation of Public Land." Edited by P. Ndung'u. Nairobi: Government Printer. http://kenyalaw.org/kl/fileadmin/CommissionReports/A_Report_of_the_Land_Commission_of_Inquiry_into_the_Illegal_or_Irregular_Allocation_of_Land_2004.pdf [archive].

Republic of Kenya (ROK). 2011. "Report of the Task Force on Irregular Appropriation of Public Land and the Squatter Problem in Athi River District." Edited by J. Abduba. Nairobi: Government Printer.

Republic of Kenya (ROK). 2021. "The National Assembly Report on the Implementation Status of the Report on the Departmental Committee on Lands on a Petition on Irregular Renewal of Leases of Land by Del Monte Kenya Limited." Tabled in November 2019 and approved December 2021. Nairobi: Parliament of Kenya. <http://www.parliament.go.ke/sites/default/files/2022-02/Report%20on%20Implementation%20Status%20of%20a%20Petition%20on%20irregular%20renewal%20of%20leases%20of%20Land%20by> [archive].

Sindzingre, Alice. 2012. "Neopatrimonialism and its Reinterpretation by Development Economics." In *Neopatrimonialism in Africa and beyond*, edited by Daniel Bach and Mamoudou Gazibo, 90–107. New York: Routledge. <https://doi.org/10.4324/9780203145623-8>.

Truth Justice And Reconciliation Commission (TJRC). 2013. "Report of the TJRC." Edited by B. Kiplagat. Nairobi: Truth Justice And Reconciliation Commission. https://hmcwordpress.humanities.mcmaster.ca/Truthcommissions/wp-content/uploads/2018/11/Kenya-TJRC_Volume_1-4.pdf [archive].

NOTES

1. The term of practical norm is used to designate a norm observed in practice, accepted as such without necessarily having a legal basis.

2. Nyambega, Gisesa. 2019. "Probe Reveals Shocking Details of Rogue Staff in NLC Corruption Rot." *Daily Nation*, 28 April 2019. <https://nation.africa/kenya/news/probe-reveals-shocking-details-of-rogue-staff-in-nlc-corruption-rot-187920> [archive].

3. The violence gave rise to a commission of inquiry presided over by Lady Justice G. Nzyoka, whose report was never made public. Furthermore, the accused politicians were acquitted.
 4. “Bedford Biofuels Jatropha, Tana Delta, Kenya.” *Environmental Justice Atlas*, last update 08 April 2014. <https://ejatlas.org/conflict/bedford-biofuels-jatropha-tana-delta-kenya/> [archive]. PDF Version: <https://landmatrix.org/media/uploads/ejatlasorgconflictbedford-biofuels-jatropha-tana-delta-kenya.pdf> [archive].
 5. Alberta Securities Commission (ASC). 2017. “ASC Concludes Settlement Agreement with David Gregor McClure.” Alberta Securities Commission, 18 August 2017. <https://www.albertasecurities.com/News-and-Publications/News-Releases/2018/10/ASC-concludes-Settlement-Agreement-with-David-Gregor-McClure> [archive].
 6. Kamau, John. 2020. “Form team to allocate Del Monte land, Uhuru told.” *The Star*, 07 June 2020. <https://www.the-star.co.ke/counties/central/2020-06-07-form-team-to-allocate-del-monte-land-uhuru-told/> [archive].
 7. Miguna Miguna. 2014. “Use Alternative Dispute Resolution mechanisms to implement devolution.” *The Star*, 22 March 2014. <https://www.the-star.co.ke/siasa/2014-03-21-use-alternative-dispute-resolution-mechanisms-to-implement-devolution/> [archive].
-

ABSTRACTS

The vernacular meaning of land-grabbing in Kenya stresses the role played by the State in land thefts, reminding us that, historically, state power was built up through control over land. Accusations of land grabbing also convey territorial representations of ethnic and national belonging, anchoring the legitimacy of land ownership. We focus on the actors and scales involved in officialising private land ownership to highlight institutionally-rooted strategies to control land and contrasting formalisations. We relate these to “national” and “ethnic” sovereignty. Case studies help us to understand the local transformation of territorial control over land and power ramifications whether with regard to large-scale international land acquisitions or domestic land grabbing.

La conception vernaculaire des accaparements fonciers, au Kenya, souligne les responsabilités de l'Etat, dans la mesure où le pouvoir s'est construit historiquement autour du contrôle foncier. Elle introduit aussi la notion de la légitimité d'une appropriation, qui serait fonction de l'appartenance ethnique ou nationale. L'accent mis sur les acteurs et les échelles de l'officialisation de la propriété de la terre permet de poser différemment la question d'une souveraineté « ethnique » ou « nationale » à partir du contrôle foncier et des formalisations contrastées de la propriété. Des études de cas mettent en lumière les transformations locales du contrôle foncier pour mieux saisir les articulations de pouvoir aussi bien dans le cas d'acquisitions foncières internationales que dans celui d'accaparements fonciers domestiques.

INDEX

Geographical index: Kenya

AUTHORS

CLAIRE MÉDARD

IRD Researcher, URMIS (Université Paris Cité – Université de Côte d’Azur – IRD UMR 205 – CNRS UMR 8245).

STÉPHANIE DUVAIL

IRD Researcher, PALOC (IRD UMR 208 – Museum National d’Histoire Naturelle - Sorbonne Université)