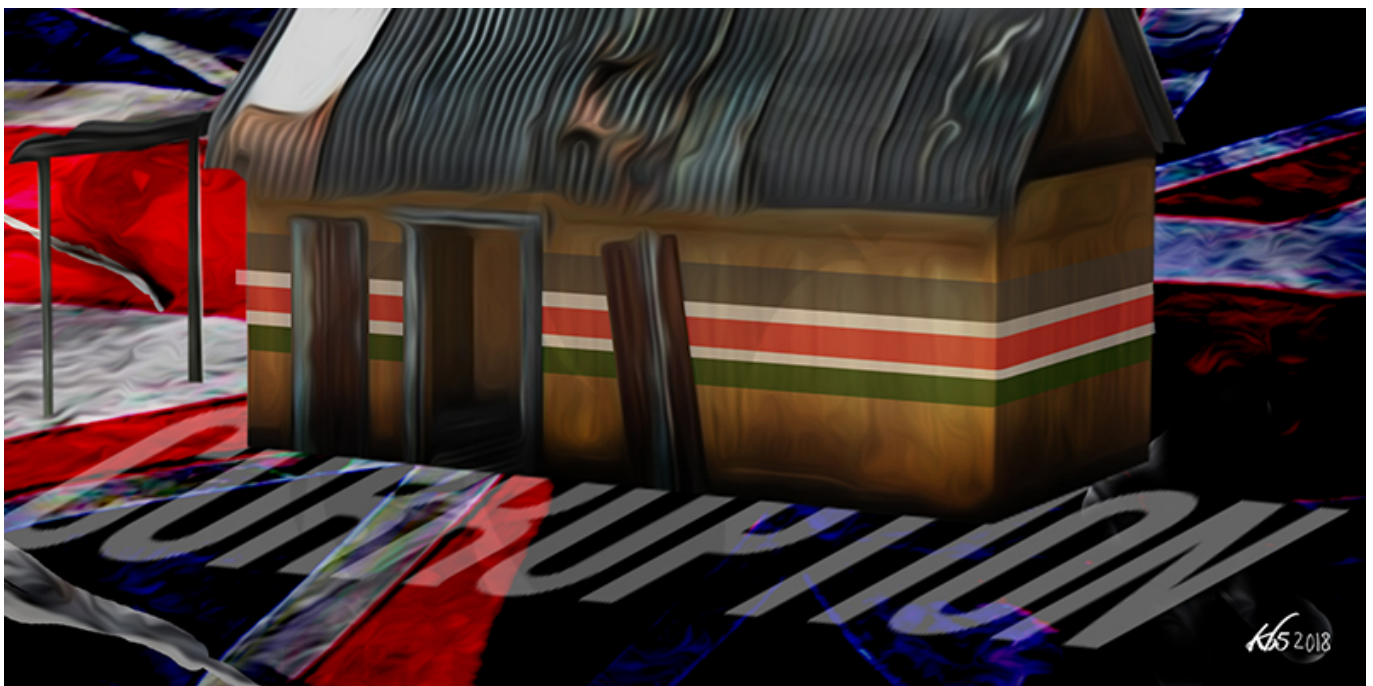




# THE SINS OF THE FATHER: Why lifestyle audits cannot resolve land-related historical injustices

By Rasna Warah



In an apparent move to stem the corruption scourge that has infested virtually every government department, President Uhuru Kenyatta recently directed all public servants and politicians, including members of his own cabinet, to undergo lifestyle audits. The intention, presumably, is to determine whether state officials have used their positions to acquire ill-gotten wealth.

The question on many Kenyans' minds, however, is whether the president will subject himself to such an audit. But then maybe he doesn't need to: he and his family were fabulously wealthy when he became president in 2013 and will remain so when he leaves office at the end of his second and last term in 2022.

In 2011, Uhuru Kenyatta (estimated to be worth \$500 million) was listed by Forbes as one of the richest men in Africa. Although he was dropped from subsequent lists "because of new information regarding the complex distribution of business assets among the Kenyatta family members", there is no doubt that his family is among the wealthiest in the country. The Kenyatta family has majority shareholding in a vast array of commercial businesses in Kenya, including Heritage Hotels, MediaMax, Commercial Bank of Africa and Brookside Dairy Ltd, which controls 45 per cent of the

processed milk market in Kenya. The family also owns vast tracts of land across the country, most of which was acquired during Jomo Kenyatta's presidency following independence in 1963.

The question one might ask is how this wealth was acquired. And if the wealth that the Kenyatta family currently owns is the result of its past access to political power, then should Uhuru Kenyatta hand it back to its rightful owners in an act of restitution, reconciliation and redemption?

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### **CIA revelations**

These were the questions that also consumed the CIA and the United States government in August 1978 when Jomo Kenyatta, Uhuru's father and the founding father and first president of independent Kenya, died. Then the US government was worried that a change in government might lead to demands for wealth redistribution among those who had been adversely affected by the Kenyatta family's various land grabs. The US government believed that if this were to happen, a revolution or civil strife might ensue, which would impact American geopolitical and economic interests in the country.

A CIA report prepared shortly after Kenyatta's death said that while Jomo Kenyatta owned only about half a dozen properties covering roughly 4,000 hectares (mainly farms in Kiambu and the Rift Valley), his wife, First Lady Mama Ngina Kenyatta, owned at least 115,000 hectares of land and also had a big stake in ruby mining and in beach resorts around Mombasa. The report, which was declassified in 2017 and whose contents were published in Kenya's *Standard* newspaper on 29 January 2017, implicated the Kenyatta family in various illegal activities, including secretive exports of ivory, which was banned.

One CIA memo stated: "Mama Ngina and Margaret Kenyatta [Jomo's daughter from his first wife Wahu] are probably the country's two largest charcoal and ivory traders - particularly lucrative businesses. Although the export of these items is banned because depletion of Kenya's forests and wildlife threaten the underpinning of the Kenyan economy, both women have been able to obtain special licenses."

The CIA believed that the Kenyatta family was "resented" because of a public perception that it had acquired wealth illegally or through fraud. There were even rumours that Mama Ngina planned to flee the country after her husband died to escape being penalised for the various economic crimes she had been implicated in. In October 1973, five years before Kenyatta died, Martin Shikuku, the then MP for Butere, had even warned that if the Kikuyu did not share the fruits of independence with others, they would be "eaten up by the other 41 tribes like a satisfied hyena was eaten up by hungry hyenas".

The fear at that time was that Kenyatta's successor, President Daniel arap Moi, would reverse the Kenyatta-era land-related and other injustices by targeting Kikuyu elites who had benefitted from Kenyatta's patronage. This fear, however, was unfounded - not only did Moi follow in Kenyatta's footsteps by grabbing land for himself, he also entrenched a patronage network that mostly benefitted members of his own ethnic group, the Kalenjin.

In a diplomatic cable sent in 1979, the then US ambassador to Kenya, Anthony Marshall, stated:

“Contrary to the expectations of many, the Kenyatta family and the close associates of the former president have not been attacked by the new government on the issue of the corrupt means through which they obtained much of their wealth. On the other hand, we hear that Moi has let it be known that, while he will not stop anyone from enjoying his ill-gotten gains, the game is over for the Kenyatta clique and no more corruption will be tolerated from them.” (Note: Moi did not condemn corruption per se, just corruption among the Kikuyu elite and the power wielded by powerful Kikuyu politicians, who he quickly sidelined to assert his authority.)

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### **Million Acre Scheme: The first betrayal**

The first large-scale land grab in independent Kenya began during the first few years of Jomo Kenyatta’s presidency when a resettlement scheme was implemented to “buy back” one million acres of land from white settlers in order to resettle displaced (mostly Kikuyu) Kenyans. Kenyatta had argued then that since the British colonialists and white settlers had taken land away from indigenous African communities, they were obliged to fund a large-scale settlement programme – using long-term loans with easy repayment conditions – to provide land to the landless.

However, a group led by Oginga Odinga, Bildad Kaggia and Paul Ngei opposed the buying of land for resettlement; they argued that Africans could not buy back land that was originally theirs, a contention that did not go down well with Kenyatta because “there were no free things and that land was not free, but must be purchased”. Kenyatta’s position mirrored that of the outgoing British colonial administration that made it clear that “African settlers could not get free land but were expected to either purchase it directly with their money or borrow the loan that was to be repaid to the British government”. It is believed that one of the main reasons Kenyatta was selected to lead the country’s transition to independence was because he had made a secret pact with the British colonial government not to hurt British and white settler interests in the country.

According to the 2013 report of the Truth, Justice and Reconciliation Commission (TJRC), “His [Kenyatta’s] position shocked many of the KANU supporters who felt that he and his allies betrayed them because the political leaders had made a decision to the effect that Africans would recover their stolen land after independence”.

This first betrayal would be followed by many others. Bruce Mackenzie, the then Minister of Agriculture – the only white man in Kenyatta’s cabinet who it is believed was also a spy for British and Israeli intelligence – spearheaded the design of two types of resettlement schemes: the so-called “yeoman” scheme in which large farms would be sold to experienced farmers for £500 and a second type of scheme that targeted small-scale farmers who could purchase farms for £100. Approximately 35,000 families were eventually settled through what was known as the One Million Acre Scheme.

To enable Africans to purchase these farms, the British government, with a contribution from the World Bank, advanced a loan of £7.5 million to the Kenyan government. Unfortunately, as the TJRC report notes, the Mackenzie proposals were focused largely on the so-called White Highlands in Central Kenya and the Rift Valley and did not give serious consideration to the need to resettle the

Mijikenda at the coast who, due to historical reasons that predated British colonialism, had been rendered largely landless. Moreover, as the scheme operated on a “willing-seller-willing-buyer” basis, hundreds of thousands of people, particularly in the coast and Rift Valley regions, remained landless.

The scheme also offered loans to Africans who had not been displaced. In this group fell a select group of people who had been loyal to the colonial administration – the so-called homeguards – who gobbled up prime land in Central Kenya and the Rift Valley. Among this group were provincial commissioners, ministers, permanent secretaries and others within Kenyatta’s inner circle who would go on to become Kenya’s new ruling elite.

According to the TJRC report, “rich businessmen and businesswomen, rich and powerful politicians who were loyal to the colonial administration, managed to acquire thousands of acres at the expense of the poor and the landless.” Hence, “instead of redressing land-related injustices perpetrated by the colonialists on Africans, the resettlement process created a privileged class of African elites, leaving those who had suffered land alienation either on tiny unproductive pieces of land or landless.”

Even some well-known freedom fighters, such as Bildad Kaggia, were relegated to the wayside, thus giving birth to a new Kikuyu underclass that was both landless and poor. In fact, Kaggia, who had been jailed in Kapenguria by the colonial authorities in 1952 alongside Kenyatta, was often berated by the latter for not using his name and influence to enrich himself. Kaggia was not moved by the president’s admonitions; till his death in 2005, Kaggia remained a relatively poor man, as did many of the families of Mau Mau fighters, who were quickly forgotten as soon as Jomo was released from jail. (In fact, Kenyatta never lifted the ban imposed on the Mau Mau by the British; it remained a proscribed organisation till 2003.)

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Subsequent movements to reclaim land that was stolen or deceptively acquired, such as the Mungiki (which later morphed into a criminal gang, and which has also been linked to the post-2007 election violence) and the Mombasa Republican Council (MRC), which has been crushed into obscurity by the authorities, failed to bring about the land reforms needed to address such historical injustices.

The Mungiki were the outcome of the exclusionary settlement schemes of the Kenyatta era that blocked large numbers of Kikuyu peasants from owning their own land. Some of their members are believed to be the victims of the ethnic clashes that took place in parts of the Rift Valley prior to the 1992 and 1997 elections when Kikuyus began mobilising to repulse attacks by the Kalenjin.

Although the Mungiki (which means “the multitude” in Gikuyu) had a strong constituency among the rural landless and squatters in areas such as Londiani, Molo and Laikipia, it ended up being an urban-based movement whose members could be found in Githurai, Dandora, Mathare, Korogocho and other Nairobi slums. Here they initially operated as vigilante groups, providing security in the absence of state protection. Eventually its members began behaving like criminal gangs, controlling matatu routes and operating extortion rackets. In 2007, the then Minister of Internal Security in the

Mwai Kibaki administration, John Michuki (who had been a colonial district officer, which earned him the nickname *kimendeero* or the crusher, and who had acquired enormous wealth during the Kenyatta years), ordered the elimination of Mungiki from the slums – an order that was widely condemned by human rights groups. It is estimated that as many as 500 Mungiki members were killed by the police during this time.

In 2008, Mungiki rebranded itself as the Kenya National Youth Alliance, a political organisation with a membership of some 1.5 million. In November 2009, the organisation's spokesperson, Njuguna Gitau Njuguna, was gunned down by unknown assassins. Since then the group has largely gone underground.

### **TJRC and the sins of the father**

Uhuru Kenyatta had an opportunity to pay for the sins of his father, so to speak, when he assumed the presidency in 2013, but as the shenanigans around the Truth, Justice and Reconciliation Commission illustrate, he has no time or inclination to address historical land injustices, particularly those perpetrated by his own family. At first Uhuru refused to receive the TJRC's report, and when he finally reluctantly received it on 21<sup>st</sup> May 2013, he failed to endorse its recommendations or even to discuss its contents. (The TJRC's website has since been disabled.)

A statement of dissent (available at the Seattle University School of Law Digital Commons website) by three of the TJRC's commissioners – Professor Ronald C. Slye, Ambassador Berhanu Dinka and Judge Gertrude Chawatma – reveals the cloak-and-dagger environment that prevailed at the Commission, and how some commissioners were coopted into downplaying, changing or deleting certain sections of the TJRC's final report that mentioned the Kenyatta family adversely. According to the dissenting commissioners, a copy of the land chapter of the report appeared to have been leaked to "individuals with ties to State House". At around this time, some of the commissioners began receiving phone calls from a senior official in the Office of the President who suggested various changes to the land chapter.

Said the dissent statement: "With much regret, and after many tireless days of trying to reach a reasonable compromise, we are obligated by our conscience and the oath that we took when we joined this Commission, to dissent completely from the amendments made after 3 May 2013 to this chapter in this Volume devoted to Land – Chapter 2 of this Volume 28."

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All the five paragraphs that had apparently been changed or deleted by some of the commissioners without the unanimous approval of all the commissioners had to do with land grabs by the Kenyatta family. Although the dissenting commissioners acknowledged that they could "not in any way assert that the content of these paragraphs reflects the truth", they insisted that they did "reflect the testimony and other information provided to the Commission".

The following excerpt of the original unchanged paragraph 257, which the three commissioners made available to the public, reflects the nature of land grabbing along Kenya's coastal region and shows how Jomo Kenyatta betrayed the trust of those who believed that independence would deliver land and social justice to them.

*“...in 1972, President Kenyatta unlawfully alienated to himself 250 acres of the land, especially portions on the beach. He also allocated part of the land to his friends, relatives and other associates. He directed residents that whatever was left of the trust lands would be established as settlement schemes for their benefit. However, without following the due procedure of law, he again took part of whatever remained for himself and his relatives. He also demanded that the local communities that should have benefitted from the trust lands accept payment of KSh600 per acre. When the locals declined to accept the money, he told them that whether or not they accepted it, the remainder of the trust lands would go to the government. That is how irregularly President Kenyatta took all of Tiwi and Diani trust lands at the expense of the local people who immediately became ‘squatters’ on the land and were subsequently evicted, rendering them landless and poor. By 2012, land in the former trust lands fetched KSh15 million per acre.”*

It is not surprising, therefore, that the Mombasa Republican Council, a ragtag group of peasants demanding secession of the coast region and restitution for landless people, started in Kwale County, one of the coast region’s most impoverished areas. The group’s rallying cry “*Pwani si Kenya*” (Coast is not Kenya) reflects the adversarial relationship between landless coastal communities and the Kenyan state. MRC’s grievances stem from a variety of conditions, including marginalisation and landlessness.

Government data shows that four of the six coastal counties (namely, Tana River, Malindi, Kwale and Kilifi) rank among the poorest in Kenya. These counties also generally have high illiteracy rates and low rates of school enrolment. Land tenure is ambiguous or is not officially recognised. More than 60 per cent of indigenous coastal people do not possess title deeds to their land. Others have entered into a kind of quasi squatter-tenant agreement with land owners.

The MRC was criminalised by the Mwai Kibaki government (which often referred to it as an Islamic terrorist organisation even though many of its members are Christian). The government refused MRC’s application to be registered as a civil society organisation and banned it in 2008. Police routinely disrupted the group’s meetings and many of its members were jailed. The group has since remained subdued but the coastal people’s demands for secession did re-emerge as a campaign issue during the last general election in 2017.

The criminalisation of groups demanding land justice has created resentment among disenfranchised communities. This does not augur well for the stability of the country. As the TJRC concluded, there is a very close link between land injustices and ethnic violence in Kenya. This was evident during the 2007/2008 post-election violence when (mostly poor) Kikuyus were killed or forcefully removed from land in the Rift Valley (which the Kalenjin claim belongs to them). The TJRC also found that land-related injustices at the coast constitute one of the key reasons for underdevelopment in the area.

The Commission emphasised that the 2010 constitution provides a sound basis to address land-related injustices – “but only if there is political will to use these laws and institutions.” However, Uhuru Kenyatta is unlikely to implement the TJRC’s recommendations or to acknowledge the role his own family played in land-related historical injustices.

Furthermore, the newly created National Land Commission that is mandated to look into these issues and to bring about some form of adjudication or restitution for the landless has not yet yielded significant results. On the contrary, the Commission has recently been embroiled in various corruption scandals related to land, which has further eroded Kenyans’ hopes of finally settling the land question.

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It is, therefore, evident that wealth declarations and lifestyle audits will not in of themselves resolve historical land injustices that continue to disenfranchise and impoverish a large proportion of the country’s population. Unless there is demonstrated political will to address these injustices, attempts to fight corruption through lifestyle audits will appear like hollow gestures that try to treat a deep wound with salt.

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