Kenya: Looters and Grabbers

LOOTERS AND GRABBERS

54 YEARS OF CORRUPTION AND PLUNDER BY THE ELITE, 1963-2017

Joe Khamisi

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Contents

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To Kenyans Who Love Their Country

INTRODUCTION

ONE DECEMBER MORNING in 2010, a Kenya Cabinet Minister walked unannounced into a meeting of the board of directors of a government parastatal. The eleven-member board was meeting to receive a presentation of designs and drawings from officials of the Ministry of Works for a multi-billion-shilling training project – the largest and most ambitious of the government development schemes in several years.

However, the Ministry officials did not show up because of what was described as “logistical shortcomings.” Unbeknownst to the board members, the officials’ absence had deliberately been engineered by the parastatal to give the Minister a chance to present his own recommendations for the project.

In the discussions that followed, the Cabinet Minister instructed the board to ignore the Ministry of Works designs, and instead consider a “design and build” plan from the private sector in which he had an interest. The meeting ended with the adoption of the Minister’s position. That was the last time the board met. Officials of the parent Ministry suspended all meetings and the board was rendered dormant until its term expired.

The scheming Ministry officials then issued tenders to “friendly” companies without seeking approval from the Cabinet as per standing regulations. By the time the project got underway three years later, construction costs had spiraled four times, a third of it having been “eaten” by corrupt officials through inflated contracts and consultancy fees. Construction work was still ongoing as at the end of 2017.

That is one among countless examples of inveterate intrigues taking place regularly in public offices in Kenya. Procurement and tendering processes are routinely violated; costs of projects are deliberately inflated; and kick-backs are so common that citizens must part with “*chai*” (bribe) for simple bureaucratic tasks including accessing basic services such as health and education.[1]

Corruption is “indubitably the biggest impediment to Kenya’s economic development and general prosperity, and the main cause of abject poverty engulfing over 50% of Kenyans.”[2] And it is all about greed. From the teacher who pockets examination fees, to the notorious traffic police officer who stashes away millions from kick-backs, to the civil servant who demands money to process a document, to the MP who is compromised to move a motion in Parliament, greed is the driving force.[3]

Over the years - since independence - things have moved from bad to worse. Today, policemen accept much more than a few shillings. They go for big cash or money transfers sent directly into their bank accounts or M-Pesa, a mobile money transfer service. Some have likened the Kenya Police Service to “an institutionalized extortion racket.”[4] Ask any Kenyan who has encountered a policeman; the situation is frightening. The only difference is that the vice has spread beyond the police service into the entire Kenyan society.

Corruption and bribery are encountered everywhere: in the village from low-level officials; on the streets in the cities and towns; in government offices; in Parliament, in the Judiciary and even in religious institutions. A villager who goes to a chief in a domestic dispute matter must pay to be heard. The officer who processes your job application demands “*kitu kidogo*’; procurement officers inflate prices of projects; legislators extort to pass or reject a bill; and Judges make rulings based on kickbacks. And this is not happening only in public offices.

Corruption “has extended beyond the public sector to private and civil society sectors…(and) created an environment and a culture that encourages unethical practices…where the malfeasance of some have encouraged a large number of Kenyans to engage in corruption without need to justify their behaviors. It is not a matter of a few ‘bad apples”. [5]

Experts talk of two types of corruption in Kenya: “petty corruption” and “grand corruption,” both of which are rampant. John Githongo, the former Kenyan anti-corruption czar who worked briefly under President Mwai Kibaki, says the petty corruption involves relatively minor amounts of money or gifts, while the latter affects businessmen (and women) and high-ranking government officials who fleece big money from multi-million-shilling contracts and tenders.

In Kenya, corruption has broadened into what some call "corruption complex" that includes "nepotism, abuse of power, embezzlement and various forms of misappropriation, influence-peddling, prevarication, insider trading and abuse of public purse (funds)…"[6]

Githongo also talks about "looting" which he describes as large-scale economic delinquency, scams, "whose figures are so huge that when they are successfully concluded, they have macro-economic implications fairly quickly – they cause banks to collapse, inflation to rise, and the exchange rate to decline:"[7] all that is happening in Kenya.

Although corruption of all kinds is abhorrent, a big difference exists between a small bribe of KES.100 one pays to a junior officer to "find" a file, and a scam of KES.6.3 billion at the National Youth Service (NYS), or a KES.63-million bribe to members of a parliamentary committee to influence a KES.62.3-billion dam tender. The impact to the economy is not similar.

As will be noted in this book, corruption and bribery were a way of life under all the four regimes in Kenya. Neither Jomo Kenyatta nor Daniel arap Moi nor Mwai Kibaki nor Uhuru Kenyatta, managed to extinguish the overwhelming fire of graft. Sometimes those leaders encouraged and unwittingly participated in them in a way that promoted an acquisitive and unquenched society.

Each one of the Kenyan presidents – together with their families and cronies – amassed enormous personal wealth through means which were not entirely lucid or honest. They used their positions to snatch large pieces of prime public land, raided public coffers, built luxury mansions, bought expensive personal items, and banked their loot overseas away from prying eyes.

To cover up their misdeeds and to pull the wool over the eyes of Kenyans, they went everywhere talking loudly about fighting corruption. Jomo Kenyatta described it as an "enemy" and planned to deal with it. Daniel arap Moi created institutions to fight it – all of which failed. Mwai Kibaki talked of "slaying the dragon." Uhuru termed it "the foremost danger facing the country." The more they talked the faster the cancer spread and the more difficult it became to curb it.

In the meantime, the economy suffered in the most negative way.

Kenya's economic performance was relatively healthy from 1964 to 1980, recording an average GDP of 5%. There had been a slight decline between 1973 and 1976 due to increased oil prices and declining coffee prices. In the 1980s, the economy plunged momentously due to bad governance and rampant corruption in Moi's government. It spiraled down to 1% in 1991 and below that in subsequent years reaching 0.2% by 2000. From 2002, Kibaki lifted it to a little over 5% during his rule, stabilizing at a little below 6% in 2016 under Uhuru Kenyatta.

By mid-1990s, the thieves of the 1970s and 1980s had turned themselves into a Leviathan at the heart of all of Kenya's governance institutions, especially creating a criminal elite who, with their offsprings, were above the law,[8] said the 2016 report of the Katiba Institute, a local organization which promotes understanding of constitutional matters.

Over the years, corruption cartels using mafia-like techniques of making money have infiltrated government departments responsible for financial management, bought off key officials, used them to sway tenders and contracts and colluded to form "shell" companies and inflate costs. They short-circuited tender processes and fast-tracked payments before anyone could figure out what was going on. Moreover, many of the tenders issued through state departments were single-sourced in complete violation of procurement regulations thus shutting out genuine bids. The result was poorly executed projects, late deliveries, and non-completion dilemmas.

> Corruption…has ruined our schools and hospitals. It has destroyed our agriculture and industries and has 'eaten up' our roads and jobs. It has robbed, looted and plundered our resources. It has killed our children. It has destroyed our society…It's the fundamental cause of our high levels of poverty, unemployment and social backwardness.[9]

The government did install what it thought were "fool-proof" procurement protocols such as the Integrated Financial Management System (IFMS) and the E-Tendering, but corrupt officials infiltrated them rendering them less effective to deter procurement crimes.

In 2016, the global watchdog Transparency International (IT) rated Kenya among the most corrupt nations in the world. It was number 145th out of 176 countries on the TI corruption index. That was a situation that had trended for years. Between 1996 and 2016, Kenya's corruption index rating averaged 22.36 points. It rose to an all-time high of 27 points in 2012 and tumbled to a record low of 19 points in 2002. In 2016, the average was 22.36 points and as the year 2017 ended, predictions were for the index to record a 24.52-point average.[10]

The 2016 PriceWaterhouseCoopers (PwC) audit survey found Kenya the most corrupt country in the world only better than South Africa and France.

Graft has also become a threat to national security. Lives have been lost due to corruption. At the border with Somalia, corrupt police and military officers are reportedly bribed to facilitate entry of terrorists resulting in attacks and deaths to innocent civilians inside Kenya. That was the case when 36 quarry workers and 28 bus passengers were killed near the border in 2014 by the Somalia terror group Al-Shabaab; and 148 people, most of them students at Garissa University College in 2015. Unless Kenya can control corruption along the dangerous porous border with Somalia, more Kenyans will die.

Extensive land-grabbing has left a sore in the social fabric of the nation. From the colonial era, expropriations to forced displacement of tribal units, to internal displacement of people during politically-instigated clashes in post-independence era, Kenyans were exploited first by the British settlers and then by the ruling elite.

When he came out of detention in 1961, Kenyatta was landless and penniless. His house had been destroyed and his small farm confiscated by the colonial government after his arrest in 1952. The clothes he wore including his signature leather jacket were donated by a family friend and Release-Kenyatta campaigner, Ambu Patel. The house he went into was built by the colonial authorities. Three years after becoming President, Kenyatta had joined the elite group of colonial farmers as one of the largest land owners in the country. By the time of his death, the Founding Father had accumulated more than 500,000 acres of land across the country.

Moi, on the other hand, was a village trader and owner of a small plot of land in Sacho in the Rift Valley. As Vice President and Minister in Kenyatta's government during the high tide of land grabbing in the 1960s and 1970s, Moi became part of the African elites to take advantage of the plunder. He stretched his wealth after he became president, and by the time of his retirement, he was in the big league of land ownership.

Kibaki was a man of modest means when he returned to Kenya from a teaching position at Makerere University in Uganda to become Executive Officer of KANU in 1961. After he became Minister for Finance and Economic Planning in Kenyatta's government in 1969, he joined the rush for land like everyone else in government. He continued to amass wealth as Moi's Vice President and as President to a point of owning an estimated 30,000 acres in the White Highlands and elsewhere and interests in numerous private companies by the time he retired in 2013.

The first known piece of land Uhuru owned was bought for him by his father in the 1960s when he (Uhuru) was very young. Nothing is known about how much he personally purchased in later years. What is known is that the family land and wealth is scattered in various parts of the country. Therefore, Uhuru was not poor when he stepped into the political arena as the nominated MP in Moi's government in 2001. By the time he became President in 2013, almost all his wealth was held under the Kenyatta family name. Even then, Uhuru was rated by the prestigious financial organization Forbes in 2017 as one of the richest Africans. The Kenyattas own the giant Brookside dairy, a commercial bank, a hotel chain, and media houses.

The disclosures such as the ones made by the Commission of Inquiry into Illegally and Irregular Allocation of Public Land known as the Ndung'u Commission; the Truth, Justice and Reconciliation Commission (TJRC); and the Kroll and Associates; attest to the severity of corruption, money laundering, and land-grabbing in the country. Named in those reports are family members and friends of the four Presidents, as well as senior officials, politicians, and prominent businessmen and women.

No wonder over the past few decades the number of shilling and dollar millionaires has risen astronomically. The Attitudes Survey published in the Knight Frank Wealth Report of 2016, showed Kenya had 8,500-US$ millionaires in 2015 compared to 8,300 the previous year, an increase of 2.41%. In 2015, a South African market research firm of New World Wealth placed Kenya among the first top countries with millionaires in the sub-Saharan region. In total, 19% of Kenyan millionaires are in real estate and construction sectors reflecting the extent of land-grabbing over the years, 18% in financial services, and 10% in the manufacturing services, pointing to brisk investment trends by the rich.

For a developing country with a GDP per capita of US$.1,245 (KES.129,231); where 38 million Kenyans or 83% of its people live below the poverty line; unemployment is over 40%; and where people are still dying of preventable diseases, and affordable health care is unreachable for the majority, the presence of the super-rich is almost blasphemous.

As I researched for this book, I found a litany of corruption cases piled one on top of each other like a box of cards. Whenever I tackled one case, I discovered another and another. If it was not voter bribery it was graft in famine control; if it was not theft from public coffers, it was unscrupulous people fiddling with school examinations; if it wasn't about fake drugs and bogus farm chemicals, it was politicians falsifying vouchers, and so on, and so on.

Initially, the intention of this book was to document all corrupt activities in all the four regimes over the past half a century, but the mind-boggling number of corrupt cases and financial losses over the years has made this task woefully challenging.

However, every effort has been made to expose as many corruption and land-grabbing cases as possible. Where possible, culprits have been named, but where that was impossible because of legal reasons, attempts have been made to provide sufficiently comprehensive details.

I hope this book will provide an illustration of the size of corruption in Kenya, and draw attention to the massive land-grabbing and looting of public resources that have taken place during the more than half a century under review.

Note: In this book, Jomo Kenyatta is referred to as Kenyatta while Uhuru Kenyatta is referred to as Uhuru. Similarly, Oginga Odinga is referred to as Odinga and Raila Odinga as Raila, to avoid confusion.

All currency conversions are based on 2017 average exchange rates.

Enjoy!

Joe Khamisi

Plano, Texas, USA

January 2018

PART I
THE BOOK OF JOMO KENYATTA

Chapter 1

Sowing the Seed: Corruption in colonial Kenya

A NARRATIVE ON corruption in Kenya cannot be complete without an account of some aspects of the British colonial history in East Africa. It was the colonialists who introduced corruption and embedded it into the African society from where it germinated to be the monster it is today. However, there are some who blame it on the breakdown of African virtues where traditional African hospitality of gift or token exchange got abused and transformed into demands before action was taken or a decision made.[11]

Scholars and fiscal experts have defined corruption in many diverse ways, but they all agree corruption is a way of enriching oneself at the expense of the public:

> …a form of anti-social behavior by an individual or social group which confers unjust or fraudulent benefits on its perpetrators, is inconsistent with the established legal norms and prevailing moral ethos of the land, and is likely to subvert or diminish the capacity of the legitimate authorities to provide fully for the material and spiritual well-being of all members of society in a just and equitable manner.[12]

Transparency International (TI) defines corruption simply as “the abuse of power for private gain.” The World Bank, which is behind many of Kenya’s development projects, deems corruption as “the misuse or abuse of public office for private gain.”

Over many years since independence, Kenya has been rated one of the most corrupt countries in Africa by several international survey groups, including the Global Corruption Barometer (GCB) and the East African Bribery Index (EABI), notwithstanding the fact that Kenya was among the first countries to sign and ratify the UN Convention Against Corruption

(UNCAC), a legally binding agreement by UN member nations, in the Mexican city of Merida, on 9 December 2003.

One scholar says “since independence in 1963, politics and the quest for wealth in Kenya have revolved around the presidency – an office strengthened considerably by the Independence constitution drawn under the British tutelage.[13] Hence, the presidency has been on the forefront of most of the rot facing Kenya including avariciousness.

Corruption and bribery first appeared as early as the 1900s when Kenya was under colonial rule. Even then, it was pervasive and stretched beyond the narrow limits of inducements. However, compared to corruption in post-independence Kenya, graft in the colonial era was “minimal,”[14] its avarice kept to a minimum by the vigilance of the white settler community that it served.[15]

However, that vigilance was somehow shattered in 1901 when the Kenya-Uganda Railways (KUR) faced its first corruption scandal. The KUR was built by the British colonial government from 1896-1905 to link the Kenyan coastal town of Mombasa with the interior of Kenya and Uganda. Until 1897, a pioneer Asian businessman, Alibhai Jeevanjee, had been supplying food and other goods to the railways including castor oil. That same year, Jeevanjee lost the oil tender to the Italian Colonial Trading Company even as he continued to trade with the organization in other goods. In 1901, the Italian company sued the Colonial Secretary of State demanding 40,000 Indian Rupees (KES.63,600) which it said had been illegally deducted from its invoice. The Italian company further accused the KUR chief storekeeper of colluding with Jeevanjee to undercut it by purchasing 4,000 gallons of castor oil at 10 Indian Rupees, an amount said to be four times the price of the tender the Italian company had won.[16]

Taking advantage of the reduced offer, the Railways went ahead and bought an additional 11,200 gallons, 7,000 of them urgently, at a price well above the average of 2,400 gallons required per month. The acting chief storekeeper, A. W. Reid, explained the increase was caused by the extra number of engines running that month but could not account for the urgent nature of the order.[17] The whole fiasco was blamed on the vague terms and conditions of the contract. At the end, the court ruled that both the Italian company and Jeevanjee were entitled to payments for the oil they had supplied under their different rates. However, the local media interpreted the whole fiasco as "yet another proof that the Protectorate's officials were a most corrupt lot."[18] The railway contract exposed not only the weak systems in the organization but also the pervasive greed of European officials and local businessmen of the time.

Even individual European settlers encountered bribery and corruption in their daily lives. Hugh Cholmondeley popularly known as Lord Delamere, an early British settler, talked about those two evils in 1907; a few years after his arrival in the country. He wrote: "Time and time, I have had a native say they were stopped by an Indian policeman. When I asked them how they got away, they always said, 'Oh, I gave him something."[19]

From the lower ranks of colonial administration, corruption and bribery slowly seeped into the middle ranks of the civil service and up to the top. At the center of the menace were chiefs and members of African courts. Europeans appointed them to perform a myriad of work, but they did not allocate funds for their remuneration, thus forcing them to use their own money, and to look for ways of supplementing their income.[20]

In 1935, a British member of the Kenya Legislative Council (LegCo), Archdeacon Eric Burns, complained that chiefs were forcing widows exempted from taxes into paying them a bribe so that the widows could retain their exemptions; and that animals sold in distress for non-payment of tax were undervalued and purchased by the chiefs and their henchmen.[21]

The evil of corruption and bribery got worse when colonialists enacted the Chief's Act in 1937 giving the officials a wider latitude of powers, including maintaining law and order,[22] collecting taxes to help sustain the luxurious lifestyles of whites, overseeing agricultural activities in their areas, and mediating disputes.

To meet their financial needs, chiefs habitually confiscated livestock from tax defaulters to swell their herds, and accumulated land that really belonged to other people."[23] It was routine for chiefs to raid a village and demand surrender of personal property under threats of arrest. They collected hut and poll taxes and retained part of the money. The more levy they collected the more money went into the exchequer and into their pockets. In 1912, the salary of chiefs was only GBP.25 (KES.3,413) per year.

During colonial times, chiefs commanded respect and trepidation from locals in equal measures. They were "beneath provincial commissioners (PCs) and district commissioners (DCs), but above the rest of the African subjects from whom they were to maintain ‘tribal order…’[24] Chiefs exerted themselves to please the authorities, often taking actions that turned out to be abuse of peoples’ rights. They sometimes beat and tortured innocent villagers to demonstrate their commitment to duty and loyalty to their masters. As the government’s “eyes” on the ground, chiefs frequently held *barazas* to explain colonial plans and policies, and were spokespeople and translators for white administration officials.

Using powers conferred on them, they accumulated wealth sometimes through illegal means. Elijah Waicanguru, who started as a headman in Ihithe sub-location in Nyeri district and later became a Judge of a tribunal in Tetu was one of the first Africans to own a car, a Chevrolet pick-up truck in 1946.[25] On the other hand, Nyandusi “a former wrestler known for his strength and quickness” became one of the wealthiest Africans in the whole of Nyanza Province.[26] Kinyanjui wa Githirimu of Dagoretti who rose from a porter to a paramount chief as a reward for helping “the British take Gikuyu land”[27] owned a large parcel of land, a large herd of cattle, and had “no less than 100 wives.”[28]

From a list of many, a few were promoted to positions of honor as paramount chiefs through a corrupt system of selection. Loyalty rather than competence was the yardstick for elevation. “The more one was able to carry out British interests, the more likely they would be promoted as paramount chiefs…”[29] In return their children would be educated free of charge in mission schools.

People like chief Waruhiu wa Kung’u of Githunguri and Waiyaki wa Hinga of Kikuyu who were killed for being too loyal to the British; chief Josiah Njonjo of Kabete, Muhoho wa Gatheca of Kiambu, Koinange wa Mbiyu of Kiambaa, Koitalel arap Samoei of Nandi, Owuor Kere of Nyakach, Ole Murumbi of Maasailand, Musa Nyandusi of Nyaribari, and chief Ouuduu of Nyanza, were among those seen to be most trustworthy among their people and were promoted to paramount chiefs.

As they moved upwards, so did the level of corruption also move up with them. Chief Waruhiu was reputed as “an excellent labor recruiter,” but he was “corrupt and solicited for bribes” from litigants in local tribunals.[30] He became very wealthy. However, his extreme loyalty to the colonialists and his unbridled avarice were his undoing. On 7 October 1952 as he drove home from the Kiambu courthouse where he had been summoned to answer a land charge, Waruhiu was shot dead by killers who escaped in a car, never to be found.

Through corruption and bribery, chiefs were transformed into willing agents of colonialism[31] and were "implicitly encouraged to use their positions to amass wealth and demonstrate to all and sundry that it paid to cooperate with Europeans."[32] Many believe the manipulation of tribal chiefs was the essence of today's African elite class…[33] the so-called 'petty bourgeois'.[34] From their lineage of the pioneer chiefs came people like Charles Njonjo, the ebullient barrister and attorney general; Simeon Nyachae, the buoyant Head of the Kenya Civil Service; Mama Ngina Kenyatta, wife of the Founding Father; Mbiyu Koinange, Kenyatta's right hand man, and others.

While chiefs were covetous, members of the African tribunal courts, established to deal with land and domestic disputes under customary law, were also incorrigibly crooked. To enrich themselves, court officials frequently took contributions from litigants and deliberately delayed resolution of cases to await the highest bidder. They also demanded payments from private farmers and took bribes to exempt certain people from being recruited to voluntary labor, which to a large extent involved the construction of public works.

Graft in the colonial period was also fueled by the colonialists' policies of "divide and rule." Clans were pitied against one another to foster divisions and enforce loyalty to the colonial authorities. People had a clear choice: cooperate with the colonialists and enjoy small benefits or defy the authority and suffer. That was more apparent during the Mau Mau insurgency years in the 1950s when the Kikuyu were divided between home guards who supported colonialists, and the general citizenry who agitated for independence.

Copying from their colonial colleagues, home guards too used threats of arrest to extort bribes from citizens. When Operation Anvil was launched in Nairobi in May 1954 to round up suspected Mau Mau sympathizers, for example, home guards routinely extracted bribes from people they accused of supporting the insurgency. The basic asking fee was KES.20, but they demanded more if they found one had better-paid employment.[35]

Many cases of extortion by home guards were reported to higher colonial authorities, but no action was taken to punish them. In one case, home guards sent from Nairobi to an outpost to assist with the screening of

Mau Mau suspects pocketed GBP.600 (KES.82,000) within two days of their arrival in return for releasing suspects associated with wealthy shopkeepers. The Pumwani home guards in Nairobi were the most notorious. Every night they raided homes and asked for a fee of KES.5 from every household. Those who refused to pay were hauled to the African court and fined.[36]

Mbotela and Ofafa estates: Build and steal

The biggest known case of public corruption in Colonial Kenya involved the construction of the Mbotela and Ofafa housing estates on the east side of Nairobi in the 1950s.

The project was intended to ease accommodation problems created by mass movements of people from the rural areas in search of jobs in the city, as well as the return of African soldiers from World War II. A state of emergency was in place, and the Kikuyu were taking oaths in and outside Nairobi to bind them to Mau Mau. Though the emergency was in effect and the state of security was volatile, the Nairobi City Council was determined to proceed with the construction of additional housing units.

Thirteen thousand bed spaces per year were scheduled to be built over a period of five years at a cost of GBP.2 million (KES.273 million), which was to come as a grant from the Colonial Development Corporation (CDC).[37] In those years, construction work was dominated by big European and Asian-owned firms though many small “one-job-at-a-time operations” also existed. Those nondescript companies were prepared to take any job even though they didn’t have proper equipment and relied on cheap unskilled labor.[38]

Soon after tendering for the housing project was done and contracts awarded, news went around alleging corrupt practices in the selection process. The Criminal Investigation Department (CID) was called in to investigate. The matter became a topic of discussion at City Hall and in European pubs and restaurants. When news reached London, the British government appointed Sir Alan Rose a well-known lawyer to head a three-man commission with a brief to “examine accusations of corruption and malpractices in every aspect of the affairs of the Nairobi City Council.”[39] Following the investigations, it was found:

> European officers had accepted “gifts” from building contractors before and during the Ofafa and Mbotela contracts, and had entered false specifications and logging inspection reports when no

> inspection had taken place. Malpractice, the report found, was widespread in every aspect of the tendering and management of the council's building contracts, and had evidently been so for many years.[40]

A long list of contraventions of building specifications was provided, including "shallow excavation of footings, under-strength concreting in floors and lintels, substandard joinery, the use of cheaper, weaker materials throughout, and generally poor standards of workmanship" – all of which had apparently been approved by council officers in exchange for kickbacks.[41] One of several officials implicated in the debacle was the city engineer Harold Whipp. Before the council made the decision to sack him, Whipp committed suicide[42] and his body was found on a railway line.

The Commission also unearthed several other cases of misconduct in the council including some in the fire brigade and the city market. The Mayor, Israel Somen, and his deputy, Dobbs Johnson, were cited for corrupt practices. The two survived the scandal and Somen was, after independence, appointed by Tel Aviv as the Israel ambassador to Kenya.

The Rose Commission concluded that bribery and corruption were "by no means uncommon" among city office holders at 'all levels and in all departments'; that the scale of cash inducements involved to secure services or preference from the council was often significant; and that such behavior was accepted as the norm and widely tolerated.[43]

So, it wasn't just African home guards and chiefs who engaged in bribery and extortion in colonial Kenya…Europeans were as guilty of corruption and malpractice in colonial Nairobi as anyone else, and Africans at the bottom of the colonial racial hierarchy were most often its victims…[44]

To stymie the growing trend of corruption in government, the LegCo enacted the Prevention of Corruption Act (Cap 65) in 1956, setting out jail terms for any public servant who solicited, accepted or obtained money unlawfully in exchange for service. It also provided for forfeiture of awards of gifts offered in a corrupt manner. Amendments to the Act in 1997 led to the creation of the Kenya Anti-Corruption Authority (KACA) in 1997, and in 2003, the Kenya Anti-Corruption Commission (KACC).

Chapter 2

White Highlands: The settler land grab

MODERN DAY KENYA came under the British control during the scramble for Africa in the early 1880s along with other territories in the region, now namely, Uganda, Zanzibar and Tanganyika (now Tanzania).[45] The scramble for land in the sub-Saharan Africa was by itself a form of land-grabbing and corruption because of the way it was done. The indigenous owners of the land were not consulted by colonizers "who came across the sea, armed to the teeth and determined to conquer 'the forgotten continent'."[46] It was a forceful acquisition which for centuries only benefitted the grabbers.

In 1888, the Imperial British East Africa Company (IBEACo) claimed Kenya as one of its territories. That arrangement continued until 1895 when the territory reverted to the British as the East African Protectorate encompassing areas deemed "waste and unoccupied" that did not have a settled form of government.[47]

In the early 1900s, Europeans began to stream into the country at the invitation of the colonial government and were allocated the most fertile land upcountry in areas where for generations Africans had farmed, grazed animals, and practiced their customs freely. The consequence was that the indigenous people were driven to low density areas unsuitable for agriculture with low rainfall, poor soil, and absence of pasture. Those who didn't find a place to settle became squatters in white farms or worked as laborers for Asian merchants.

The expropriation of African land by Europeans was done fraudulently and represented one of the first acts of land grabbing and looting by the colonial regime in Kenya. They just grabbed African farms without much effort to hide their activities.[48]

Until that time, the African lands were secured by the Protectorate Regulations of 1897 which forbade any alienation of land regularly used by

Africans unless the colonial administration was satisfied the land was no longer regularly used and that Africans would not be adversely affected. That changed with the Crown Lands Ordinance of 1902 which gave the government jurisdiction over all lands subject to the right of occupation by Africans. From that time, African ownership of land was not recognized; only occupation and use of it were permitted.[49]

When the whites came, the Maasai lived in an area totaling 155,000 sq km of land – from Mt. Elgon to the Loriyu plateau in the north, to Kibaya in Tanzania in the south. The Crown Land Ordinance of 1902 which was used to give Europeans 160 acres each free of charge as an inducement to lease and farm, was also used in 1904 to evacuate the Maasai from Naivasha, Laikipia, Ngong and Karen, to two reserves of only 40,000 acres in the southern Loita plains. In 1911, the colonialists signed formal agreements with the Maasai on resettlement, and those agreements have remained controversial ever since, with the Maasai demanding the return of their territory from time to time. Being illiterate the Maasai elders signed the agreements without understanding the implications. One of the agreements said:

> …we the undersigned, being the Laibons of clans of Maasai, have of our own free will, decided that it is for our best interests to remove our people, flocks, and herds into definite reservations away from the Railway line and away from European settlements… (and)…In conclusion, we wish to state that we are quite satisfied with the foregoing arrangement, and we bind ourselves and our successors as well as our people, to observe them for as long as the Maasai as a race shall exist.[50]

That was a life-long commitment. Through the agreements, the Maasai were moved farther south. More astonishingly, however, was the fact that the Maasai, though warriors, showed no resistance even after realizing they had been duped. They remained passive and malleable during their expulsion – which extended over a decade.[51] Later, they filed a lawsuit claiming they had been cheated but it was thrown out by a court which ruled that the agreement was between allies, and that the Maasai had no case.

In 1913, part of the Maasai land was again snatched by the Kikuyu depriving the Maasai of their grazing lands.[52] Despite protests and armed violence, the colonial *status quo* remained. Because the interpretation of the

1902 Ordinance on land occupation was left to the local administration, many Kikuyu too lost land to unjust decisions.

Hugh Cholmondeley was one of the first European beneficiaries of the land regulations in Kenya. He visited the British Somaliland and Kenya on hunting trips in the early 1990s and was mesmerized by the African beauty and the potential for big scale farming. That beauty was captured in a memoir by Sir Michael Blundell, another colonial settler, who talked about Africa's

> …cerulean sky, pale, often cloudless…tinged slightly with copper where the great dome of the universe touches the earth's rim perhaps fifty miles away. Amidst these pastel contrasting colors, the grey-green bushes and the dark umbrella thorns or the pale-yellow bark of the fever tree spatter the landscape. At every turn of the road new vistas challenge the eyes; a chain of lakes shining in the sun lie one after another before the traveler like silver plates, and the valleys seem to pour out beyond the road, each with its rounded ramparts of low hills and far-away beckoning mountain ranges.[53]

Still young with a fondness for adventure, Delamere returned to England, sold off his estate and came to Kenya in 1903 to settle permanently into a life of farming and hunting on a 100,000-acre farm at Njoro which he called Equator Ranch. It was that enchanting beauty of Africa described by Sir Michael Blundell that brought him to Kenya. The agreement with the government was for Delamere to pay GBP.200 (KES.27,306) per year for the land. It is not known whether he ever remitted any money to the colonial Treasury.

It was Delamere too who lured many other whites to Kenya where he became a spokesman for the white community for many years thereafter. Partly because of his efforts, settlers poured in from England, Scandinavia, Australia, New Zealand, Russia, France, Austria – from all over the globe.[54] The colonialists' idea was to populate the agriculturally rich areas around Mount Kenya and the Rift Valley with Caucasians and to transform them into a white man's country,[55] "…a plutocracy modeled on the American south."[56]

By 1904, settlers from South Africa were arriving with every boat at the port of Mombasa, some of them directed to Uasin Gishu Plateau which was reserved for the proposed Jewish settlement scheme. The decision to settle Jews in what was the eastern province of Uganda was made by Lord

Chamberlain but received stiff resistance from British immigrants who complained that Jews “had rendered themselves obnoxious to the people of every country they went to…and would turn out to be a hindrance instead of a help to British East Africa.”[57] The Jewish settlement did not materialize.

Following the colonial government’s pitch, three thousand whites from Britain arrived in Mombasa by ship in 1905 “along with their countless bags, crates of fine china, hand-cranked gramophones, bathtubs, and other necessities…[58] They were immediately transported by train to Nairobi – “a straggling settlement of corrugated iron somewhat resembling a West American mining town.”[59] From there they boarded ox-carts that trudged through roadless territory along “miles and miles of bloody Africa, or simply known as MMBA…”[60]

Their number was boosted further by the arrival of demobilized soldiers from World War I. Under the Ex-Soldier Settlement Scheme of the British government, former servicemen were granted a lease of 160 acres at an annual rent of only 10 cents of a Rupee (16 Kenya cents, per acre.[61] To accommodate them, an additional 2.8 million acres of land were added for European settlement…”[62]

In 1915, another Crown Land Ordinance was passed giving whites 999-year leases. It also transferred all lands formerly occupied by Africans to the control of the governor, and barred European landowners from employing non-white managers or supervisors to be in-charge of their holdings. The Ordinance also created African reserves to be located away from white settlements. As the whites entrenched themselves, more land laws were passed to govern different parts of the country…making the Land Law in Kenya one of the most complicated land systems in the world.[63]

After World War II, the British government heightened the process of settling former servicemen by grabbing more land.

Overall, 1% of the white population occupied 16,500 square miles of land.[64] The settlers grew coffee and sisal and carried out experiments in livestock farming that led to the discovery of animal species able to survive in Kenya. They also introduced the use of fertilizers, herbicides and improved seeds.[65]

At that time, crown or public land comprised 76.97% of Kenya. It included everything from forests to lakes and rivers. However, 70% of it was in the dry Northern Frontier Province, inhabited mainly by Somali ethnic groups. Of the total land area, only 1.9% was put to agricultural use at the time and almost all of it by white settlers. Thus, while each of the majority Africans occupied one or two acres on average, whites were sitting on 160 acres each per person. Farm auctions were held at Kibos, Solai, Athi River, Kijabe, Naivasha, Nyeri, Nanyuki, Thomson's Falls, Kisumu, Nyeri, Kitale, Kibwezi and Laikipia towns.

By 1920 – the year Kenya became a colony - the number of Europeans in Kenya had reached 10,000; 500 of them former soldiers and their families[66] – against 2.5 million Africans, 24,000 Asians and about the same number of Arabs.[67] Fourteen years later, the number of Europeans had increased to 16,800.

African agitation: A political solution

With their life now looking "increasingly bleak"[68] due to overcrowding, the Kikuyu Central Association (KCA) – a supposedly social group with a political agenda – met and decided to dispatch a young activist called Jomo Kenyatta to London to plead their case for more land allocation. What the Africans wanted was for the return of at least some of the "stolen land…to make room for a rising black population…draw the sting of looming landlessness…and (to attain) freedom under African, not white minority rule…"[69] In other words, they wanted their grabbed land back.

In 1932 the British government set up a Land Commission under the chairmanship of Sir Morris Carter, a former Chief Justice of Tanganyika Territory who had some experience in dealing with land issues in Rhodesia. He was assisted by two other members – Rupert W. Hemsted, a retired Kenya administrator and Captain F. O'B. Wilson, a landowner in Machakos district – both of whom were resident in Kenya.[70] Sir Morris received several petitions in London before he left for Kenya in 1932.

In Kenya, the Commission generated a lot of excitement among the Kikuyu. For the first time, African people aggrieved by the colonial land grab had an opportunity to present their grievances personally to one of the most important British missions to Kenya at the time.

> Thousands of people attended the commission's public hearings. In Nyeri district, 129 Gikuyu sub-clans representing 105,550 people made claims before the commission.[71] The Nyeri district commissioner reported that virtually every person could be seen

walking about with a typewritten claim and map in hand.[72] In Kiambu district, chief Koinange and his colleagues became part-time pamphleteers producing petitions to sway Carter's opinion.[73] And in Fort Hall, local opinion was so strong that Charles Muhoro, the translator for the commission, was confounded by the profanity the presenters employed.[74]

Petitions were also received from present and former European administrators most of whom agitated for continued white settler rights. Although the Kikuyu had made far more demands than whites, the Commission adjudged that only 60,000 acres of their land had been taken for white settlement. It thus agreed to compensate Africans with only 21,000 acres to cover all claims, exchanges and disturbances. A further 300-400 square miles of poor agricultural land, largely waterless, in the Yatta in Ukambani were also made available to them.[75] What the colonialists agreed to do was to give the Kikuyu land in "areas of lower fertility and less easy access…places that were not wanted by Europeans…"[76]

Apart from the Kikuyu, the Kipsigis also presented their grievances to the Carter Commission for loss of land. Their case was not addressed.

The Commission recommended that Europeans be left to enjoy their privileged position in the White Highlands and that no person other than a European "shall be entitled to acquire by grant or transfer agricultural land in such area, or to occupy land therein."[77] As a result, the White Highlands became a dominant element in the political, economic and cultural development of Kenya."[78]

The Carter Commission decision was a major setback to Africans who had expected to win part of their rich, rain-soaked land; its report came nowhere close to meeting the expectations of the Kikuyu, many of whom were squatters on European farms.

That Europeans were the only ones allowed to occupy the rich White Highlands; yet that was not even the position of Winston Churchill, a British politician who later became Prime Minister. During a visit to Kenya in 1907 he said it was impossible that Kenya should ever be a white man's country "inhabited wholly by white people and subsisting upon an economic basis of white unskilled labor."[79]

The Carter Commission report reinforced the settler position about Kenya being a white man's country. During a debate in the Legislative

Council (LegCo) in 1937, for example, a legislator who was nominated to champion African causes was quite explicit about where he stands on the issue.

"I have lived in it (Kenya) for 38 years," Archdeacon Burns told the House, "and instead of going back to England or Australia where I came from, I have decided to make this my home as long as I remain on this earth. That is testimony enough from my point of view, that this is a white man's country."[80]

As a follow-up to the Carter Commission recommendations, the colonial regime carried one of its most brutal removals by deporting en masse the Lalai (also known as Laibons) from their land after resisting colonial rule in Kipsigis. About 700 Lalai villagers were uprooted with plans to settle them at Gwassi around Lake Victoria. The removal started on 22 October 1934 and ended on 30 June 1937. Somehow, they were not settled at Gwassi as promised and were left to scatter. In the process, they lost their land, wealth and culture.

The indigenous Kipsigis who had already been subjected to injustices by colonialists had no chance. In 1919 under what was called the British East Africa Disabled Officers' Colony (BEADOC), a program to resettle former soldiers, the Kipsigis lost approximately 25,000 acres of land to tea companies.[81] They were displaced from the areas of Londiani, Kipkelion, Muhoroni and Sotik. Years later after independence, in 1969, Kalenjin leaders led by MP Jean Marie Seroney, met and passed what they called the "Nandi Declaration" to demand the return of their ancestral land.

In 1920, the colonialists had gazetted 50,000 sq. miles of land on the eastern and western borders of the White Highlands, Kikuyu and Nyanza, to accommodate landless Africans but most of it was unusable for large scale farming.

In 1939, the Kikuyu were again evicted from some parts of their traditional land. In search of where to live, many of them travelled north and settled in the Rift Valley[82] where they joined many others who had voluntarily accepted jobs as laborers in white farms between 1904 and 1920. Over the years, the Kikuyu land in the White Highlands shrunk to only 109.5 sq. miles. [83]

Opulent lifestyle

Life for the *wazungus* was one of extreme luxury. The emergence of a go-lucky, go-happy, community of white settlers nicknamed "Happy Valley" placed the white aristocrats in Kenya in a privileged position. They hunted big game as a sport, drank cocktails from their wide verandahs as the sun set down, had multiple servants to tend to their personal and farming needs, were hugely favored and protected by the colonial government, and were the *bwanas* and *memsahibs* to Africans.

That type of life is captured by Henry Owen Weller in his 1931 book, *Kenya Without Prejudice*.

> There can be no happier, healthier life than that of the settler. Even when the future does not smile for a time…it is easier to carry a heavy heart with a gun under the arm and a buck to be shot on a hillside than to hang on a strap in the foul air of the "tube" (commuter train) after lunching on a bun and a cup of tea. It is better to drive a car through colonial mud than to dodge buses in Trafalgar Square.[84]

In Nairobi, where some settlers lived a full-time urban, professional life, whites congregated in the Muthaiga Club…drank champagne and pink gin for breakfast, played cards, danced through the night, and generally woke up with someone else's spouse in the morning.[85]

That life of opulence was later immortalized in Karen von Blixen's book, Out of Africa, and in a movie by the same name. Known by her pen name Isak Dinesen, Karen herself lived an adventurous life on a 6,000-acre farm at the foot of the Ngong Hills, outside Nairobi. In her book, she describes her Africa as being "like the strong and refined essence of a continent. The colors were dry and burnt, like the colors of pottery… The trees had light delicate foliage…and the grass was spiked like thyme and bog-myrtle… In the Highlands, you woke up in the morning and thought: Here I am where I ought to be."[86]

So, in Kenya, the Europeans lived for decades enjoying the cool mountain breeze, the air "alive over the land, like a flame burning; it scintillated, waved and shone like running water, mirrored and doubled all objects and created great Fata Morgana (a great mirage)."

Whites became increasingly rich from African grabbed land on which they farmed a variety of export crops**.** Their life was a decadent, corrupt, existence which they thought would never end – until Africans awoke from slumber and demanded freedom.

So, with the approaching independence, the settlers saw the beginning of African rule as the end of that good life they had lived since 1890 when Britain colonized Kenya.

As some of the settlers were preparing to leave, the market value of their farms plummeted. The farmers, described by one British Parliamentarian as "economic prisoners of circumstances,"[87] could not find buyers for their properties to recoup their investments. On top of that, commercial banks refused to accept their title deeds as security for borrowings, virtually crippling agricultural activities in the White Highlands. Their appeals to the British government for financial assistance were ignored.

Africans join in the land grab

In 1962, the British government announced plans to fund the purchase of large tracts of land for the settlement of landless Kenyans. The land was to be obtained from Europeans who were leaving the country to protest African rule. The World Bank, the German government, and Britain contributed GBP.25 million (KES.3.4 billion) in grants and loans for the purchase of 80,000 hectares per year for five years.

Known as the One-Million-Acre Scheme, it was not meant for "proven African farmers with some resources of their own"[88] but for the landless and the unemployed. At that time, it was estimated that 10% of the total labor force of 50,000 was unemployed.

A Settlement Fund Trustees (SFT) was established – and managed after independence by Kenyatta – to facilitate the purchase and distribution of the farms. The plan was for small land owners to take loans from the fund and for the recycled money to be used to compensate European settlers. The British government's view was that all settlers desiring to leave be facilitated to dispose of their properties.

There were four groups of European farmers in Kenya at the time. One, those who wanted to remain permanently in Kenya to continue with farming; two, those who wanted to sell land and leave but were unable to sell because they could not find buyers; three, the ex-servicemen who invested in farms under a British loan scheme; and four the so-called "compassionate cases" comprising of the elderly and widows who were unable to continue farming.[89]

The emphasis was to settle Africans who had found ways of achieving some personal success than impoverished squatters who could not service their loans and who could not put land into useful cultivation. Thus the "low-density settlement" program was created to cater for carefully selected African "progressive" farmers.[90] That is not how it happened though. Many farmers who had no interest in helping the investment pay off were chosen creating difficulties in loan repayments. They were selected based on nepotism and favoritism. By the end of 1970, the combined arrears of African settlers had reached KES.3.1 million.[91]

Three settlements were created under the scheme. The first was for 25 acres each for low income-starting farmers in high-density areas that included the White Highlands; the second was for 40 acres each on low-density holdings; and the third was for 260 plots of 100 acres each to be reserved for those "who could put up substantial amounts of capital of their own or who could provide collateral…" The aim was to give local politicians, officials and businessmen an opportunity to acquire land.[92] As it turned out, the officials not only went for their allocations but also infringed on the others as well.

Moreover, Kenyatta favored his own Kikuyu people by dispatching them to the Rift Valley against his own promise that lands belonging to one community would not be allocated to others. This is what he said in Kiswahili upon his arrival from the Lancaster Conference in London in 1962:

> "*Katika katiba mpya, Serikali yenu imeahidi kwamba kila sehemu ya nchi kama ni ya Wamaasai, itakaa kama ilivyo, ikitawaliwa na wa-Maasai wenyewe; kama ya wa-Nandi, wa-Nandi watatawala nchi yao, hiyo in kusema ardhi yao. Hakuna mtu kutoka nje kwenda kunyakua mali yao. Mashamba yao ni shauri yao kujua watafanya nini nayo.*"
>
> (In our new constitution, your government has promised that every part of the country will be controlled by the indigenous people of the area. If it is in Maasailand, the Maasai will adMinister themselves; if it is the Nandi, the same will happen which means they will control their land. No one from outside their area will be allowed to take their land. They will be allowed to do with their land what they want to do with it).[93]

He repeated the same promise on 20 September 1963 when he told a delegation of 80 Maasai leaders that no one, not even the government would take Maasai land, and again in June 1964 during a tour of Loitokitok, Kajiado and Narok: “Nobody is going to touch Maasailand,” he promised the people. “It will remain for the Maasai. It is in black and white in the constitution that Maasailand will not be taken by anyone else.”

Kenyatta’s utterances did not march his actions even in later years. In 1974 against protestations from residents, he ordered the displacement of Maasai from the Amboseli area at Ol Tukai to give way for a pipeline that was to carry water from Ol Tukai to outside the park. The decision caused a huge uproar leading to Maasai warriors invading the park and spearing to death leopards and rhinos.[94]

The eviction of Kalenjin and Maasai tribesmen from their indigenous land to give way to the Kikuyu was one of the biggest blunders the first President of the Republic of Kenya made, and led to periodic tribal clashes between the Kalenjin and the Kikuyu.

European farms: Valuation dilemma

The British government was concerned about the low values for European farms in Kenya, and in 1965 dispatched what was called the Stamp Commission to find out how European farms could command better prices. London felt the whole system of valuations was skewed against the farmers and wanted changes in the valuation processes. In some cases, instead of the farms being appraised on the officially agreed formula, they were valued at eight times the average profit…”[95] Farmers in high-density areas were the most affected by inflated valuations. One British Parliamentarian described the process thus:

> The valuer visits the farm and values everything on it – the land, the stock, the machinery, the lot. He then gives his figures to the Valuations Committee of the Agricultural Development Corporation, but those figures are not made known to the farmer concerned. The government chief valuer then makes an offer based on the valuation which…may vary…by as much as 20% either way; but naturally it varies only one way – downwards. This is a comprehensive figure with no breakdown of any figures for stock or the land. The farmer has 21 days in which to accept or refuse…It is surprising that these methods leave much to be desired.[96]

To make it worse, the sales were subject to Kenya currency controls which meant sellers could only export GBP.5,000 (KES.682,667) per year and GBP.2,000 (KES.273,067) in subsequent years. Knowing this was the only way of getting their money out of the country, farmers felt compelled to accept offers at reduced values.

The Stamp Commission found indeed the European farmers were not getting a fair deal both in terms of the procedures in place and in terms of the offers made. It recommended that the valuer disclose to a British representative the method of valuation used; a breakdown of figures must be given to allow for negotiations; that the valuer give a single figure as his total valuation which should be the offer amount; and that fresh offers be made to those who had refused previous offers because they were unreasonably low.

It was apparent at that time that some form of manipulation and even corruption was in the offing through devaluation of property prices by post-independence officials.

An agreement was eventually reached for Britain to offer Kenya a GBP.18-million (KES.2.4 billion) interest-free loan for the purchase of additional European land as well as to fund other development aid projects. Out of that money, GBP.6 million (KES.820 million) was to be used solely for the purchase of European-owned land.[97]

The program was called the 400,000-acre scheme, and it was to transfer up to 100,000 acres of European land to Kenya every year for four years. The valuation was to be based on market value at the time and the land was to be assessed by professional valuers of the Kenya Lands Department and sold on willing-buyer-willing-seller.[98] It had three components: One, purchase by the Kenya government of land intended for low density settlement; two, financial assistance to private purchasers through the Kenya Land Bank (KLB); and three, the purchase of (or part investment in) “transitional” farms by the Agricultural Development Corporation (ADC).[99]

Through the new system of valuation, 32 offers had been processed and issued by early 1967, 15 of them involving 36,000 acres. Eight offers were either rejected or withdrawn and another eight were under consideration, according to the British Minister for Overseas Development.[100]

Like the One-Million-Acre Scheme before it, the 400,000-acre land scheme too was manipulated by the rich. While hundreds of Africans were settled in the former white areas, some of the funds given by Britain for resettlement of people were used by Kenyatta's family members and his Ministers to accumulate land for themselves.[101]

While responding to a parliamentary question by the Machakos North MP Paul Ngei in June 1964, the government showed clearly that the new settlers were overwhelmingly Kikuyu as can be seen in these numbers:[102]

1. Kikuyu – 8,365
2. Luhya – 2,169
3. Kamba – 439
4. Kisii – 312

No figures were given for the Luo many of whom were homeless following torrential floods in Nyanza. Asked to explain the wide discrepancy in distribution, Minister Jeremiah Nyagah, said the "land hunger" pressure was much more intense in the Central region than in other areas. But many felt the Kikuyu were given preference to prevent another insurgency like the Mau, and for Kenyatta to consolidate his control over the Kikuyu people. In a nutshell, the White Highlands "ended up in the hands of prominent persons in Kenyatta's administration led by President Kenyatta himself."[103] By 1971, more than half of the acreage under cultivation by individual large-scale farmers was occupied by the Kikuyu."[104]

The elites used several methods to grab land. They did it either through direct allocation by the President contrary to the law; illegal surrender of Ministry and state Corporation land, followed by illegal allocation; invasion of government and trust lands and subsequent acquisition of titles to it, contrary to the law; and allocation of land compulsorily acquired due to public interest to individuals or companies, among others.[105]

Using those methods, Kenyatta, his family, and senior government officials, acquired huge tracts of land as they pleased. While indigenous communities suffered poverty, the confiscated land became a source of wealth and prosperity for the political and business elite.[106] They colluded with officials at the Ministry of Lands and Settlement to destroy documents and created fake title deeds for pieces of land which they then sold to third parties.

In some cases, government officials literally stole property. Around 1972, a provincial agricultural officer went to the experimental station sponsored by the Dutch government in Naivasha and lied to the station manager that he had been sent to collect the cattle at the farm. The manager denied him permission but the following day, the PC (Isaiah Mathenge) sent a lorry to the estate and forcibly removed the animals and took them to his farm at Nyeri.[107] Mathenge "wielded unfettered, and often brutal, power" under Kenyatta.

In the meantime, looting of land continued in other areas and the poor were evicted from villages to give way to the elites. On 10 March 1977, for example, Kenyatta sent goons locally known as Ngorokos to burn down houses of the Ogiek and Kipsigis in Tinet area. Numerous people were arrested, and others killed. When seizing land for the Kikuyu, the government also took over farms from local tribes in Trans Nzoia and Uasin Gishu in the Rift Valley.[108] In Narok district, forests were destroyed to pave way for the settlement of the Kikuyu.

All the settlement officers involved in the distribution of land in the region of the White Highlands from 1964 to 1975, including the Minister himself, belonged to the GEMA community of Kikuyu, Embu and Meru. The following were the executive officers of the Ministry of Lands who were responsible for settlement in the region between 1965 and 1975.[109]

1. a Mr. Maina – 1 June 1965 to 31 December 1966
2. a Mr. Mburu – 1 January 1967 to 24 December 1971
3. a Mr. Njenga – 25 December 1971 to 31 March 1975
4. a Mr. Mucemi– 1 April 1975 – December 1975.

Land allocation: The "Z" plots scramble

Within the White Highlands existed a scheme called the "Z Plots." No one knows what "Z" stood for but it was a code used to describe an area where senior government officials and those favored by Kenyatta himself, and later Moi, were allocated 100 acres each plus a farm house. The scheme "was not for the *hoi polloi*; all what was required of the political elite was to identify a farmhouse and the land and apply to the Minister of Lands and Settlement for allocation."[110]

In charge of the allocation of those plots was Bruce McKenzie, a burly South African-born Minister for Agriculture and Animal Husbandry and owner of a-1,800-acre farm in Naivasha – another settler town not too far from Nakuru. He found himself inundated with demands for land allocation from the Kenyan elite. McKenzie had taken over from W. B. Havelock, the first Cabinet Minister in charge of Agriculture who served during the time of self-government.

Described as "efficient and indefatigable – even ruthless,"[111] McKenzie was a no-nonsense character but as a Kenyatta appointee he was at the mercy of the President and had to do what he was told which was approving without question allocation requests from Kenyatta's allies. While some of the applicants went directly to the Minister with chits of recommendation from the President, others used their own positions in government to influence allocations.

McKenzie, rumored to be a spy of several Western and Israeli Intelligence agencies, was killed in 1978 when his aircraft exploded over Ngong Hills. His docket was taken over by Jackson Angaine, a Meru of the GEMA community and a former Mau Mau detainee who was close to Kenyatta. When it came to handling pressure from the top, Angaine was worse than McKenzie. He was malleable and corrupt.

The notion initially was that the occupants of the "Z" plots would "act as community leaders and would set an example to their neighbors of good agricultural practice."[112] But that was not the case. Beneficiaries were high-flying officials who owned plots upcountry but lived in Nairobi. They were "telephone" farmers who periodically visited their farms but did nothing to improve them.

One of the beneficiaries was Kenyatta's former Private Secretary, JM Kariuki. After his release from detention, JM worked for Kenyatta between 1963 and 1969. It was during that time, in 1964, that the President gave him 800 acres of land in Ol Kalou worth K£.2,800 (KES.382,294) as a reward for his efforts in the fight for independence. Because it was a presidential directive, Kariuki did not pay anything for the land and the SFT had to write off the cost as a bad debt. The former freedom fighter admitted in an interview with the *Daily Nation* in 1966 that he got the land free. "I was lucky enough to buy it early on when there was no demand for a 50% down payment." By that time, the paper said, he had acquired another farm of 200 acres in Gilgil.[113]

Others who bought large tracks of land in the "Z" section included politician Dr. Julius Kiano. He applied and got a farm and a farmhouse in

Limuru that used to belong to Thomas Lenon-Fitzmaurice, a white settler. He indicated in a letter to the PS Lands and Settlement, Peter Shiyukah, on 23 April 1965, that he wanted to purchase the "main house, the guest house and dairy premises together with approximately 100 acres around it," not for him but for his sister. The following year, Moi who was then a Cabinet Minister, requested allocation of the property of W. H. Gunson within the Perkera scheme in Eldama Ravine. He was awarded the property.

The British government which provided funds for the project was alarmed at the way the distribution was handled. It eventually suspended support, but by that time, almost all the plots had been given away. By July 1966, 296 "Z" plots had been allocated to prominent individuals, among them Kenyatta, Ministers Angaine, Kibaki and Robert Ouko, among others.[114]

Chapter 3

Kenyatta the Man: The regression of an African nationalist

THIRTY KILOMETERS FROM Nairobi at a small rustic village called Ngenda in Kiambu district, a peasant couple, Muigai wa Kung'u and Wambui lived a normal traditional Kikuyu existence as small-scale farmers, rearing chickens and goats and growing maize, beans, potatoes and sugarcane. Sometimes in 1890s they bore a child and named him Kamau. The exact date of Kamau's birth is unknown because Africans did not keep birth records in those days, but events of the time have put it at 20 October 1891.[115]

When he was very young, Kamau's father died, prompting the family to send him to his uncle Ngengi, where he stayed for some years before moving to his grandfather Kungu wa Magana at a place called Muthiga upon the death of his mother in childbirth.

Kamau was not different from most of the children of his age in Kikuyuland where youngsters spent long hours tending goats and sheep. For Kamau however the drudgery was short-lived. During his pubescence years, he ran away from home and took refuge at the Church of Scotland mission Thogoto near Kikuyu, about 12 miles from Nairobi. There he learned English, mathematics and carpentry, and took his first Bible lessons from the European clergy leading to his baptism in August 1914, and thereafter adopting the name John Peter Kamau. Over time, and while working as a houseboy and a cook for a nearby European settler, he changed his name to Johnstone Kamau.

There are no records to indicate he earned any formal school certificates. But in the 1800s, at a time when education for Africans was virtually unknown, whatever little knowledge he got from the mission was enough to secure him small jobs in Narok. Thereafter, he travelled to the city and got a job as a clerk in the department of public works of the Nairobi City Council.

The young man, now bearing the name Jomo Kenyatta, was on an upward trajectory.

Within a few years after arriving in Nairobi, Kenyatta's name was on the lips of many resident Kikuyu. He became an active member of the East African Association (EAA) led by Harry Thuku. When EAA was disbanded by the government in 1925, they formed the Kikuyu Central Association (KCA) and he became its general secretary. As a KCA official, he travelled in the countryside on a motor-bike and held meetings in various parts of Central Kenya; the theme being only one: land. He also started a publication known as the *Mwigwithania* – "to give voice to the Kikuyu" – and wrote editorials that were not particularly toxic but were followed closely by the British intelligentsia. The publication was described as having a "mild and unassuming tone…(that) was tolerated by the British authorities."[116]

It was then that the KCA decided to send Kenyatta to London to present Kikuyu grievances to the colonial office. But first, they had to raise funds for his ticket and upkeep. Association agents went around collecting money from peasants and well-wishers in Nairobi and in the countryside. By the end of 1927 enough had been collected to buy a ticket, and on 17 February 1928, Kenyatta sailed off from Mombasa aboard a French liner, *Bernadino de St Pierre.*

In London, Kenyatta made fruitless attempts to meet with the Colonial Secretary, Stanley Baldwin, to present a petition for the return of the Kikuyu land. To pass time, he wrote frequent letters to the *Times of London*, complaining about the grabbed land and warning of the consequences if it was not returned. On 26 March 1930, for example, he alerted the government to "a dangerous explosion" if it refused to return land taken by settlers; didn't improve educational opportunities for Africans; didn't accept African representation in the Legislative Council; and didn't repeal the hut and poll taxes, among other demands. He said that was one thing any sane person would wish to avoid.

In England, Kenyatta was identified with great Pan-Africanists of the time like W. E. B. Du Bois, George Padmore, among others, and had the charisma, force of personality and dedication to push the cause of equality and justice for all.[117] His association with Kwame Nkrumah of Ghana and Kamuzu Banda of Malawi, helped reshape – at least to a certain degree – his political thinking from one that was solely based on ethnicity to one leaning on nationalism. He engaged in street protests and attended almost every political rally that took place in London to agitate for Africa's emancipation.

Kenyatta was among those who prepared the landmark Fifth Pan-African Congress in Manchester in 1945 which demanded an end to colonial rule and abolition of racial discrimination. He made one trip home in 1930 but returned to England in 1931 where he stayed until 1946. By the time of his final return to Kenya, Kenyatta's popularity had soared. He joined the Kenya African Union (KAU) and toured areas beyond the Kikuyu enclave, addressing public meetings in Mombasa, Nyanza, and the Rift Valley until his arrest on 21 October 1952 on charges of managing Mau.

Jomo Kenyatta was stern but jolly, the kind of person any man would want to have as a father-in-law. He was dignified, smartly-dressed and had the demeanor of a 'king.' After becoming President, his trademark was a fresh red rose and a badge of a cockerel, the symbol of the ruling party KANU, neatly pinned on the lapel of his designer suit jacket. He laughed loud and heavy and when seated leaned on his cane, his big ring glittering in the sunshine.

However, the fundamental mistake Kenyatta made at the very outset of his rule was to project himself as an imperious figure. As a great admirer of Emperor Haile Selassie of Ethiopia (whom he first met in London in the 1936), Kenyatta yearned for ceremonial titles that coincidentally created a great divide between the ruler and his subjects.[118] He insisted on being called "His Excellency, the President, Mzee Jomo Kenyatta," or "Jomo Kenyatta, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya." He routinely carried a fly whisk, and at some official events wore a leopard skin and mantle. In a few occasions, he wore a military uniform with insignia of Commander-in-Chief. He was perhaps the only leader in modern times to do that without appearing like a despot.[119] He ordered that his picture be displayed in offices and in public places, and ensured his image was put on all currency denominations.

His long motorcade, comprising blaring cars and motor riders and a bevy of security officials sticking their necks out of the windows was a nuisance during morning and evening rush hour as he blazed through town to and from his Gatundu home. Presidents who came after him adopted that annoying style of travel which Kenyans still condemn in mainstream and social media outlets. Kenyatta's close-knit group, comprising his immediate family and political hangouts, was simply referred to as the "Family" or more pejoratively "the Royal Family," and the wider group of associates as "the Kiambu Mafia." Many of his associates were opportunists who capitalized on Kenyatta's presidency. Not everyone liked them.

They were "moving around this country like rogue elephants let loose on a maize plantation," said Lee Njiru, information officer in Kenyatta's presidential press unit and later Moi's press secretary. "He was more in the company of wolves and hyenas than he was in the company of his loving family."[120]

In Africa and the world, the first Kenyan President was viewed as a Pan-Africanist rubble-rouser and freedom fighter. At home Kenyans called him "Mzee" (Wise Old Man), a title of reverence reserved only for respected old men. He had a commanding presence and poise, and a charisma that was enormous and adorable.

> Kenyatta had an extraordinary personality. His character was complex and enigmatic as a national leader. One was struck by the force of his personality that he could project especially through his eyes while addressing a gathering. He was a spectacular public speaker who employed powerful imagery and proverbs. With his elephant-skin headed stick and his gold ring, with his fly-whisk that he occasionally flipped through the air to acknowledge greets and cheers, Kenyatta curved for himself an image far beyond that of ordinary human beings. He was a leader with interesting patterns of social discourse and configuration of character."[121]

Glenn W. Ferguson who served as the American Ambassador to Kenya between 1966 and 1969 said Kenyatta had a presence that was magnetic and an appearance that was electrifying, and mannerisms that were unique in enhancing his charisma[122] even though during the first four years of his rule he eroded the power of Parliament to check the presidency, transforming the former into "a puppet of the executive."[123]

He was like a presidential "monarch…" but he was not an autocrat, much less a tyrant."[124] He was a father figure and beloved leader of the Kikuyu. He was also a family man who went through four marriages all of which gave him seven children most dear to him: Peter Muigai, Margaret Wambui, Peter Magana, Christine Wambui, Uhuru Kenyatta, Anna Nyokabi, and Muhoho Kenyatta. On the first anniversary of independence, he flew in his second wife, British national Edna and their child Peter Magana to Kenya from England, to share with him the results of a long political journey.

Not that Kenyatta did not have his grey moments; he could easily morph from the character of a happy-go-lucky old man to one of a ruthless disciplinarian. A story is told of an incident during a banquet in honor of the US Vice President, Hubert Humphrey, in Nairobi on 8 January 1968. After a waiter had accidentally spilled soup on his suit, the “old President, about eighty at the time, rose and knocked the man flat with a right cross.”[125] Some said it was a karate chop. “The waiter fell on the floor and had to be carried out from the room.[126] The local media were warned not report that incident. They didn’t.

From his background, Kenyatta was not entirely a non-violent person in thinking and action. In his book, *Facing Mount Kenya*, he says “No man with any dignity would take another to court for an insult…The proper procedure was dueling or fencing.”[127] In 1952 while addressing a KAU meeting in Nyeri, Kenyatta issued a blistering warning to anyone working against independence. “If I have my own way, let me tell you, I would butcher the criminal.”[128] Three months before his arrest, however, Kenyatta appeared to reverse himself on violence when he told a meeting in Nyeri on 26 July 1952.

> …KAU is not a fighting union that uses fists and weapons. If any of you here think that force is good, I do not agree with you: remember the old saying that he who is hit with a *rungu* returns, but he who is hit with justice never comes back…Whatever grievances we have, let us air them here in the open.

At other times, Kenyatta was less tolerant to waywardness. On 11 September 1964, he made an appearance on Kenya’s new public television station, Kenya Broadcasting Corporation (KBC), and blasted young people who were loitering in towns instead of working in their villages. He called them “parasites” and a “disgrace to our society.”

> They leave their land unattended, or in the care of old mothers, wives and young brothers…and spend many months living on relatives and friends, and being generally a nuisance…Whereas we believe in African socialism, we do not believe in loitering and laziness. We believe in cooperatives, but not in a situation where some people try to live on the sweat of others.

It was then that he coined the phrase: *rudi nyumbani* (go back to the village), a call to get youths out of town and into the countryside.

Kenyatta used his walking stick periodically to whip some of his defiant Ministers “like children.”[129] He did that to Dr. Julius Kiano after news leaked out that the Minister was receiving bribes, and therefore exposing the government to public ridicule. As Minister of Trade and Industry, Kiano was a notorious bribe taker and was nicknamed Mr. Ten Percent for insisting on a commission for every business transaction that came his way.

Another incident took place on 5 July 1965 when reports reached Kenyatta that a surrogate of Oginga Odinga, a lecturer at the Lumumba Institute, Wanguhu Ng’ang’a and a group of people, had gone to the KANU headquarters to oust Tom Mboya, the party’s secretary general. Kenyatta did not flinch. He immediately ordered the arrest of all the 27 suspected plotters and asked Attorney General Njonjo to personally prosecute them. They were swiftly convicted and sentenced to one year in jail for breach of peace.

In his frequent tantrums, Kenyatta did not spare his one-time Vice President and ally, Odinga. As the two broke ranks in 1966, the latter and 30 other MPs resigned from KANU and formed their own, the Kenya Peoples’ Union (KPU). Kenyatta was furious and warned that anyone who tried to play with the government will be “trampled on like mud.” And on Kenyatta Day in 1967, he directed his loyal supporters to “crush the snakes,” referring to KPU members.

The snake story had relevance to an incident that took place in Sussex in the 1940s as Kenyatta strolled with friends in the countryside. An acquaintance remembered: “When a snake or adder suddenly appeared in our path…I suppose Jomo recognized it as dangerous and killed it with one swipe of his rather special walking stick, which he always carried.”[130]

Kenyatta was also “a show-man to his finger-tips, jovial, a good companion, shrewd, fluent, quick, devious, subtle, flesh-pot loving”.[131] During one Christmas party in Storrington, England, Kenyatta stood up and mimed a Maasai stalking and killing a lion with a vividness that greatly amused those present.[132]

In 1973, Kenyatta found himself in the middle of a verbal feud between a Provincial Commissioner (PC) and an Member of Parliament (MP) who had accused the former of smuggling. The PC slapped the MP, and his bodyguards momentarily bundled him into a police car. By the time the police and the MP arrived at the police station, someone from Kenyatta’s office had called to order his release which was done. The MP was nevertheless prosecuted and convicted for making “unsubstantiated” accusations against the PC and sent to jail.[133]

And, it was not just public officials who fell victim of Kenyatta’s flare-ups. When in 1975 a popular musician, D. K. Kamau, produced a song about the brutal murder of JM Kariuki, and seemingly blamed it on the State, the President reportedly summoned him to Gatundu and “thoroughly caned” him.[134]

Reporting in 1975, *The New York Times* had this to say about Kenyatta’s uncontrollable temper tantrums.

> The President’s manner and temper have become increasingly violent in recent years. Cabinet Ministers dislike raising serious questions with him after lunch because he sometimes subjects them to temper tantrums.”

Then, the newspaper went on to describe one incident in which an official of the Kenya Cooperative Creameries (KCC) attempted to explain to Kenyatta that an imbalance between price controls on dairy products and producers’ prices for raw milk was causing a serious deficit in the marketing cooperative. “Mr. Kenyatta struck him on the head with a cane.”[135]

Another time, one white government employee complained to the President of being racially insulted by an African MP. Kenyatta immediately phoned the legislator. “You will now go to the office of the European and apologize,” he ordered wrathfully. “If you do not apologize you are *out*!”[136]

The legislator did as he was ordered.

Nonetheless, there were those who thought the Kenyan leader was non-aggressive. “Kenyatta was never a brute,” said his Attorney General (AG) Charles Njonjo. “He was a civilized man. He would use his words if you annoyed him, or, if you didn’t do your work, he would call you and tell you but would never whip anyone.”[137]

Shocking, however, were his one-liners. In his worst moments, the Kenyan leader would spill out expletives as much in public as he did while scolding his Ministers in private. He threw out obscenities and insults that made more than a passing reference to a woman’s anatomy.[138]

> Kenyatta knew no fear. He verbally flogged errant Ministers with a torrent of four letter words in Ki*swahili* in front of thousands of

> Kenyans and visitors alike at rallies such as those that marked Independence in December 1963. In front of Kenyatta, Ministers and members of Parliament all cowered, all except his eternal nemesis, Odinga…
>
> Kenyatta could do almost whatever he pleased; he reigned in an era when the democratization principle was not so compelling. He stamped out any opposition in the media and in Parliament especially probes into land grabbing and wealth exploitation by his Ministers and Kikuyu associates. As a dictator, he was much loved and respected. Those who knew better were forced into silence. So, the message was: don't mess with Jomo Kenyatta if you value your life.[139]

With eyes bulging, he would dismiss those disagreeing with him as *vinyang'arika* (minnows, of no substance) who were stirring *nyokonyoko* (hostile trivialities). He also liked to talk of *kusaga kama unga* (grinding like maize flour) in explaining what he would do to his critics.

At one time, he was incensed on learning of a planned demolition of the Mathare slums. He ordered the demolition stopped, and that ruling saved thousands of people from eviction. However, Kenyatta also reportedly despised those at the lower ranks of the social strata. He called them *ragai* loosely translated to mean 'lazy' or 'useless'[140] – a disparaging Kikuyu word that put a distance between the struggling masses and the so-called *wabenzi*, those driving Mercedes Benz and other luxury cars.

Although he spent time in Russia in the 1930s, Kenyatta abhorred communism, and not because his opponent Odinga embraced it, but because he saw it as a security threat to Kenya. In 1964, he dismissed a British media report of an eminent communist take-over of Kenya as "humbug" and lies."[141] And when the Chinese leader Chou En-Lai talked of "a favorable situation" for revolution in Africa, Asia and Latin America during a tour of Tanzania in June 1965, Kenyatta quickly hit back with a statement that Kenya would destroy all forms of revolutions.

His preference for western values, however, allowed the US and European countries to penetrate the country and use it for espionage purposes. Two of Kenyatta's Ministers, Tom Mboya, and Bruce McKenzie, were believed to be on the payroll of foreign espionage agencies. And at least one report written by a former Executive Assistant Director of the Central

Intelligence Agency (CIA) Victor Marchetti – also author of the novel *The Rope Dancer* – alleged Kenyatta too was under the influence of the CIA. It claimed the Kenyan leader and others including President Mobutu Sese Seko of the Congo and King Hussein of Jordan were receiving regular payments from the agency. “The CIA paid the late Jomo Kenyatta, ruler of Kenya, fifty or a hundred thousand dollars a year…we ended up paying Kenyatta twice as much, telling him: This is for you and this for your party,”[142] the report, which could not be verified, claimed. However, Marchetti did not say when the payments started and when they ended.

During the first decade of his rule, Kenyatta became paranoid about possible threats from the military especially after the army mutinies in Kenya, Uganda and Tanganyika, in January 1964. In Kenya, elements of the King’s African Riffles (KAR) broke into the armory at Lanet Barracks, stole arms and demanded to see Kenyatta over poor salaries. The British Army had to intervene to quell the disturbance which left one African soldier dead. Kenyatta did not meet the soldiers but remained vigilant about possible future military putsch against his government.

After Idi Amin overthrew Milton Obote in Uganda on 25 January 1971, and the East African Community (EAC) was heading towards disintegration, Kenyatta was concerned that the Ugandan leader was up to some mischief. Amin had threatened to slice part of Kenya’s territory claiming it to be his, and issued statements that imperiled peace and stability in Kenya. Kenyatta’s military establishment was still undeveloped. Its war arsenal comprised a few battalions of combat troops and aging British planes. To protect his territory, the Kenyan leader approached the United States (US) for a small fleet of military aircraft, but he wanted the matter kept secret to avoid any counter-measures from Amin. He requested for six Northrop E’s and F’s jet fighter planes which were quite popular then.

To frighten Amin, Kenyatta also made a bizarre request to the Americans. He asked for a fly-over of American jet planes on Jamhuri Day. He requested that the planes be painted in Kenyan colors and the pilots’ faces be covered in black ostensibly to make them look like Kenyans. That part of the request was turned down. However, Washington did agree to a fly-past using its planes positioned on an aircraft carrier on the Indian Ocean. Because the planes were flying high, few on the ground noticed they had foreign markings.

In 1976, a small, but delicate incident, almost ruined relations between Kenya and the United States. The American Defense Secretary, Donald Henry Rumsfeld, arrived in Nairobi on 16 June for talks with Kenyatta to discuss a Kenyan request for additional fighter aircraft. The day before the meeting, a low-level American official called a press conference to announce the deal without first clearing it with his seniors. The news reached the Ambassador, who quickly called Minister Koinange to offer an explanation. Koinange then conveyed the information to Kenyatta.

The Kenyan leader was so visibly livid as the American delegation arrived for the meeting at State House that he was heard saying: “Tell me who this man is, and I will have him properly punished.” The situation was, however, sorted out quickly through private conversations before the meeting started, and Kenya got its aircraft.

Another strange incident took place that same year. The American Ambassador informed Kenyatta that the embassy had received a note appointing a Mr. Kiereini the new Kenyan envoy to Washington. “Who, why,” Kenyatta retorted in utter surprise. “You appointed him,” he was told. “No, I didn’t. Sometimes people do things I don’t know about.” He immediately ordered the appointment cancelled, and instead chose John Mbugua, a former Town Clerk of Nairobi, as Kenya’s Ambassador-designate to the US.

“The Burning Spear” as Kenyatta was known, could not have managed to navigate through the many challenges he faced in life without the support of two people: Mama Ngina, his fourth wife, who was his rock; and his brother-in-law Mbiyu Koinange, who was his most trusted confidante. Mama Ngina stood by him throughout his detention years and lived with him briefly at Maralal before his release from detention in 1961. His previous wives were Grace Wahu, Edna Clarke, and Grace Wanjiku.

Kenyatta’s relations with Koinange were deep-seated. In earlier years, Kenyatta used the home of senior chief Koinange wa Mbiyu for secret meetings with other freedom fighters, among them Mbiyu, Fred Kubai and Kung’u Karumba. The senior chief’s sixth wife, Mama Elizabeth Gathoni, who was aged 112 remembered those days in an interview in 2017.

> They…would work in a room during the day and convert it into a bedroom at night, where they would sleep on concrete floor. The room was everything…the office, dining, as well as bedroom.

> Those who could not travel home, including Kenyatta, would spread *mathathara* (dry banana straws) on the floor and sleep there. In the morning, the room would be an office again.[143]

The Koinanges established the Kenya Teachers College in Githunguri, Kiambu, and in 1947 handed it over to Kenyatta to manage. The relationship between Kenyatta and Koinange was strengthened further on his return to Kenya when the future Kenyan leader married Grace Wanjiku, a daughter of senior chief Koinange and Mbiyu's sister.[144]

Soft spoken with a patch of bold on his head, Koinange was more than a trusted friend to Kenyatta. The two knew each other in 1936 when the former was a student at the University of Cambridge and the latter was in London championing land issues for his Kikuyu people. The diminutive scholar became Kenyatta's "bosom friend, in-law, confidante and instrumental political go-between." He was given the name "Kissinger" after Henry Kissinger, the celebrated American Secretary of State during President Richard Nixon's administration in the 1970s,[145] because of his tremendous influence and power in the government.

After independence, the two enjoyed many hours together engaging in their favorite pastime which was "to construct complex riddles" – the peculiar delight of the Kikuyu people. The two would reminisce about their times in London and their Pan-African journey to the leadership of Kenya.[146] Koinange was always on Kenyatta's side though he was away on that fateful night in Mombasa when the President breathed his last.

Mbiyu Koinange was among 14 Ministers proposed by Kenyatta and gazetted through Notice No. 2355 on 1 June 1963 by Governor Malcolm MacDonald who was, technically, still in charge of the country's affairs. Between self-government and independence, Koinange was the Minister of State in charge of Pan-African Affairs while Kenyatta headed the government as Prime Minister. He was also Minister of Foreign Affairs. Later, Koinange held the position of Minister of State in the President's Office up until 1979 when Moi was in power.

Chapter 4

Aging but mentally fit

WHEN ON 12 December 1963, the Union Jack was lowered for the last time on Kenya soil, the 8.6 million Kenyans did not immediately realize that State powers and their whole future had suddenly shifted from an ancient colonial power that had empires all over Europe, Africa, and Asia, and centuries of experience in governance, to an African leadership that was clueless about managing a country.

Kenyatta had no experience in governance and none in fiscal management. He had spent his adult life agitating, protesting, and lamenting, about treatment his Kikuyu people were subjected to by the colonial regime. He had no idea about how a government worked, nor did he get an opportunity to learn. As a student of anthropology at the London School of Economics, his only major interest was the study of the Kikuyu traditional culture which in 1938 led to the publication of his cultural master-piece, *Facing Mount Kenya.* So, when leadership was thrust upon him at independence, he had to rely on the Governor General, Malcolm MacDonald, and the white dominated civil service, to help him run the country.

The first Kenyatta Cabinet – also clueless about governance – was a motley of graduates from an array of disciplines. There was Tom Mboya, a trade unionist; Oginga Odinga and James Gichuru, pioneer politicians; Njoroge Mungai, a medical doctor; Bruce McKenzie, a farmer; Joseph Murumbi, an art enthusiast; Achieng Oneko, a journalist; Mbiyu Koinange, Dawson Mwanyumba, Eliud Ngala Mwendwa, Lawrence Sagini, Joseph D. Otiende, Samuel Ayodo and Dr. Julius G. Kiano, educationists; and Jackson H. Angaine, an accountant.

Aging and weary, Kenyatta was fresh from the dungeons, having been released only two years earlier on 21 August 1961 after almost nine years in detention on charges of managing the Mau Mau liberation movement. He spent all that time in the harsh northern part of the country, and the toll on his health was evident.

Because of poor diet and unfiltered well water, Kenyatta often fell sick from various ailments. In letters to his daughter Margaret, his European wife Edna, and friends in England, Kenyatta complained of "intense itching…that nearly drove me crazy;"[147] of swelling limbs and sores; of malaria; and of loneliness, and depression. Sometimes, he envisioned death as the fate in-waiting. "Death," he wrote, "is one of those things which are beyond our control, and which, whether we like or not, must follow the natural cause… Naturally every one of us must, soon or later, pass through this unavoidable gate."[148]

The struggles of his early years; the long period of isolation from African politics…and in prison – his supposed drinking habits…had exhausted him and had brought him near to senility.[149] While in detention, reports alleged, Kenyatta drank three bottles of Scotch (whisky) every day provided to him by the colonial government allegedly to kill him through cirrhosis of the liver 'as soon as possible'.[150]

When that information reached African leaders in Nairobi they were concerned. The first African politicians to visit him while in detention at Lodwar were LegCo Member Daniel arap Moi and Henry Cheboiwo, then secretary general of the Baringo District Independent Party, in November 1959. The two returned from several hours of talks with "Kapenguria Six" and reported Kenyatta was in good health.

One 23 March 1961, a group of African members[151] of LegCo gained permission from the colonial government to visit him at Maralal once again to confirm his physical and mental well-being following rumors his health had deteriorated. A member, Francis J. Khamisi, remembered Kenyatta fielding jokes about his life in the remote place and how he walked freely everywhere within the township boundaries in the company of a guard. But Kenyatta's facial features changed whenever discussion turned to the insidious rumors about his health. "There are some people," he told them, "who think Kenyatta is an old man with old ideas and perhaps old brains. That is a false view which should be completely forgotten."[152]

The LegCo Members left his detention quarters convinced Kenyatta's health was not something to worry about. They found him mentally sound, in reasonable health, and fully aware of what was happening in the world. A radio set given to him by the colonial government, and occasional newspapers, kept him informed of current events.

A similar observation of the detained leader was made by a delegation of Quakers which visited him at Maralal on 2 June 1961. The delegation too found him “physically strong, far more so than one would expect of a person aged 71…mentally alert…with great spiritual strength.” The British, American and Kenyan Friends’ officials observed that Kenyatta had a stamp of a great leader with poise and self-confidence, and flashes of oratorical brilliance.[153]

To many Kenyans, however, Kenyatta was still an enigma and a rather mysterious figure, and many had reservations about his ability to lead. He had no real experience in government and had long been out of touch with events…[154] Apart from the people he had associated with in Nairobi as an official of various political groups, Kenyans outside Kikuyuland had only heard his name from debates in the LegCo and a posters’ campaign for his release which went out in March 1961.

Before he left London to take up his appointment as Governor of Kenya on 3 January 1963, Malcolm Macdonald was briefed by the Colonial Office about Kenyatta’s heavy drinking habits. He was told the African leader was drinking himself to death and failing rapidly in mental and physical powers.[155] Those reports were however, untrue. When the two met, the Governor found him in excellent health.

The new Kenyan leader was clear about the priorities he had for the emerging nation though. He had talked about them publicly since 1928 when he joined the KCA. On top of the list was, of course, land. In addition, he had a lot to deliver, one of the most challenging hurdles being “to put the economy into the hands of indigenous people,” [156]and to mold a unified nation out of the multiplicities of ethnicities, races and regions, that formed the post-independent Kenya.[157] With 42 tribes making the nation of Kenya, that challenge was not going to be easy especially for a person who had concentrated his activities exclusively on matters of interest to the Kikuyu.

Within eight days of becoming Prime Minister in June 1963, Kenyatta initiated a series of constitutional reforms. One of them was to make himself President, a significant change in the *majimbo* dispensation that did not accommodate that position. Kenyatta believed in a strong executive and was averse to the *majimbo* system of government which devolved power to the regions. That presidential action was necessary to replace the role of the Queen as Head of State and of Government. He also reconstituted the provincial administration by appointing provincial commissioners (PCs), district commissioners (DCs), division officers (DOs) and chiefs as his representatives in the regions.[158] He widened matters of public security and justice and gave himself powers to appoint and dismiss public service personnel. He also initiated the collapse of the opposition Kenya African Democratic Union (KADU) making the country a one-party de facto state.[159]

The other challenge he faced was how to deal with the large number of unemployed Africans. Unfortunately, there weren't enough jobs in the public and private sectors to satisfy the demand of jobless Kenyans. The African elite community was small and the middle-class almost non-existent. The country's economy was heavily dependent on British trade and investments which were in the hands of Europeans and Asians. The manufacturing industry was the most productive, yielding nearly 10% of the Gross Domestic Product (GDP), making Kenya by far the most industrialized country in the region though it produced few capital goods.[160] The whole economy was in the hands of Europeans and Asians.

Kenyatta was aware of those challenges and the anxiety of the African population over existing inequalities. He moved fast to try to stymie the high expectations by warning people that nothing would "pour down like manna from Heaven. I tell you there will be nothing from Heaven. We must all work hard, with our lands, to save ourselves from poverty, ignorance and disease."[161]

Then there was the festering conundrum of tribalism. Bitter political differences had emerged on the road to independence between the two main tribes, with Kenyatta, a Kikuyu, and Odinga, a Luo, pulling in different directions. Suspicion had dogged their relationship for several years. Odinga remembered in his book, *Not Yet Uhuru*, an incident in 1948 when Kenyatta visited his home town of Kisumu and refused to alight from his car to greet him, forcing the Luo leader to walk to him to shake his hand.[162] Odinga found that personally offensive; he thought Kenyatta's reluctance to associate with him was because he had not yet learnt how to overcome some of his own tribal suspicions as a Kikuyu.[163]

However, by 1958, Odinga appeared to have put that incident behind him. As the country moved towards independence, it was Odinga who stood in Parliament and spoke fervently about Kenyatta being the leader of the Africans. He made those remarks at a time when such utterances were deemed treasonable. Even some Kikuyu leaders did not want to tread in that direction, believing Kenyatta was a terrorist and deserved to remain in prison.

By clinging to that belief, Odinga was branded a Mau Mau sympathizer and received a harsh back-lash from the local press: “Let the people come forward now and hound Odinga out of political life forever,” the colonial-owned *Kenya Weekly News* said in a blistering attack. “Mr. Odinga should be put in his place – I need not stipulate the place I have in mind,” [164] a hint to detention.

Initially, Kenyatta did not want to isolate the Luo from the government. Bombastic as they were, the Luo provided a leverage of support in a country divided by tribal schisms. When in the 1950s the colonialists lifted the ban on political activity everywhere in Kenya except in Central Kenya, tribally-centered associations emerged at the district level throughout the country. Those associations were very much at play when a ban on political parties was lifted countrywide in 1960, with the emergence of two main political parties, KANU and KADU. The Kikuyu stood with the Luo in KANU while the rest of the country supported KADU.

To underscore his intentions of bringing the Luo closer to the Kikuyu, Kenyatta, during the self-government celebrations on 1 June 1963, rode with three people on his ceremonial Land Rover: Oginga and Mboya, both Luo, and Gichuru, a Kikuyu. Three years later, however, the shaky friendship between Kenyatta and Odinga had turned upside down when the former hounded the latter out of mainstream political life.

At a stormy delegates’ conference in Limuru in 1966, Odinga was removed as the party vice president in a scheme hatched by Tom Mboya. The following month, Odinga resigned as Vice President of the Republic kicking off a bitter political fight between Kenyatta and Odinga. In 1969, after exchanging sharp words at the opening of the Russian-built Kisumu Hospital, Odinga and some his top officials were rounded up and restricted and Odinga’s struggling Kenya People’s Union (KPU) banned.

Chapter 5

Land Redistribution: “Rich bastards from the city”

AT THE TIME of the resettlement of Africans in the former White Highlands, the country was under a regional *(majimbo)* constitution and the responsibility of land allocations had been placed in the hands of the presidents of the regional assemblies where the settlement scheme was located. There were eight autonomous regions based closely in line with the provinces of the time: Central, Coast, Eastern, Nairobi, North-Eastern, Nyanza, Rift Valley, and Western. However, that arrangement lasted for less than a year as Kenyatta abolished the region-based independence constitution in 1964 and introduced a unitary system of government which gave the presidency executive powers.

With land distribution process now in the hands of the Lands and Settlement Minister, Bruce McKenzie, corruption spread favoring the rich and leaving many deserving people landless. The “land-grabbing mania”[165] had begun. No one knew how the new settlers to take over European farms in the White Highlands were selected and how the plots were allocated. PCs who were in-charge of land distribution at the local level had the final word on who was to be awarded what, meaning they had powers to allocate any plot to anybody of their choice. However, they were also answerable “to the top,” (referring to the Executive). Unsurprisingly, the PCs started with themselves by giving their families and relatives large pieces of land.

The selection process was done at an incredible speed…[166] An estimated 25,000 people were settled in the month of January 1964 alone. The pace in which the process was implemented implied there was no intention to vet and accord deserving cases their rights, but rather persons had already been pre-determined or identified by the authorities.”[167] The bottom line was: corruption was at play.

Kenyatta, for one, went on an acquisition binge, obtaining everything he could find for himself and his family – from cars to real estate.[168] Moreover, he did not restrain officials in government from engaging in illegal activities and in amassing wealth without minding laws.[169] It was like a contagious disease. It engulfed everyone at the top of the public sector leaving in its wake impunity and a feeling of hopelessness on the part of the rest of Kenyans.

Kenyatta's appetite for material things began in 1961 after returning to Gatundu from detention. Visitors who went to pay homage carried with them mountains of gifts. Pandering Asians brought in presents "all prominently labeled and engraved with the names of the donors."[170] The atmosphere was relaxed with different races mingling with each other and some African women dancing and ululating…[171] Villagers brought cattle, goats, sheep, and chickens, while foreigners came mainly with cash donations, all expecting favors in return.

Kenyatta's wife, Mama Ngina was the one who went around inspecting properties to be grabbed. A few months into her role as First Lady, she acquired 1,006 acres of land at Dandora near Nairobi from Hendrik Rensburg for a mere KES.200.000. A list issued in 1964 by the Commissioner of Lands, J. A. O'loughlin, showed Mama Ngina, and Kenyatta's sons Peter Muigai and Peter Magana Kenyatta, were owners of 200 acres in Nairobi via LR No. 765913, as well as other plots as follows:

1. LR No. 7659/7/3 Nairobi area, 1,483 acres
2. LR No. 7659/2 Nairobi area 100 acres
3. LR No. 1012/21 Nairobi area 16.6 acres

The President's wife also held separately a 100-acre plot in Nairobi area registered as plot LR No. 11521 and 10,000 acres in Rumuruti. And when the government was planning the Nairobi/Thika superhighway project in 2008, it invited people with farms along the highway to send claims for compensation. A Kenya Gazette Notice No. 6035 signed by the Commissioner of Lands, Z. A. Mabea, showed Mama Ngina Kenyatta owned six plots along that highway as follows:[172]

1. Plot No. 13562/34 – 0.0344 hectares
2. Plot No. 13562/33 – 0.1123 hectares
3. Plot No. 13562/32 – 0.1184 hectares

4. Plot No. 13562/30 – 0.1637 hectares
5. Plot No. 13562/29 – 0.1738 hectares
6. Plot No. 13562/27 – 0.9904 hectares

The Chairman of the Commission of Inquiry into Illegal and Irregular Allocation of Public Land, P. N. Ndung'u, was explicit about what they found out early in their investigations. "It all started on a small scale,"[173] he said:

> As my commission investigated illegal land grabbing in the 1960s and 1970s, we were able to unearth a few cases where the President had ordered allocation of public properties to his Ministers, members of his family and even himself. We came across cases where even in those early days, the President had ordered the excision of portions of forests and allocated them to influential people for conversion into farmlands.

The Commission listed 38 hectares of land hived out of the Kikuyu escarpment forest which Mama Ngina got in 1965, another 36 hectares in 1980, and 24 hectares in 1993, all in the same forest. Peter Muigai Kenyatta and Peter Magana Kenyatta – the President's sons – had a separate plot registered in their names, LR No. 11522 of 200 acres, also in Nairobi.

In addition, a plot measuring 2.8 hectares registered as Ndarugu/Gakoa/584 at Thika in the name of Mzee Jomo Kenyatta was allocated to Mama Ngina Kenyatta and Peter Muigai Kenyatta upon the President's death in 1978 through a notice signed by N. N. Mutiso, the land registrar of Thika on 11 April 2008.[174] The government also gave Kenyatta some 178 acres in Nairobi and a further 509 elsewhere.[175] Muigai and Magana bought 165 acres in Ruiru within the vicinity of Kenyatta's village at Gatundu for a mere 9,000 shillings meaning each acre was sold for only KES.60, an unbelievable price even at the time.[176] Muigai also acquired several other pieces of land including LR No. 3414/1 measuring O.0465 hectares at Ngong town registered on 17 February 1989 by the registrar of titles, E. K. Mucungu. Muigai also acquired 700 acres and bought another 1,266 acres, northeast of Nairobi.

In 1967, Mama Ngina's name – along with those of Koinange; Lands and Settlement Minister Jackson Angaine; and Dr. Njoroge Mungai – was linked to an attempt to grab land belonging to four *wazungu* in Nakuru. The four had been farming in the area since the early 1900s but were suddenly informed by Angaine that the government was to compulsorily acquire their land, and that a notice had already appeared in the *Kenya Gazette*. It took the intervention of the LegCo Speaker Humphrey Slade to have the Gazette Notice cancelled. That was one-time Kenyatta did not use his powers to forcefully take over a piece of land his wife favored.

Most of the properties obtained by Kenyatta other than a five-acre farm were registered in other people's names. The 100-acre farm in Dandora on the outskirts of Nairobi, for example, was registered: "a trustee for minor son Uhuru." The minor son later became the fourth President of Kenya.

The Founding President extended his farm at Gatundu, where his great grand-father Magana first established his estate and where Kenyatta was born[177] to new boundaries, an act that eventually caused family rifts.

Government records show by 1966, Kenyatta had bought more than 3,895 acres in Nairobi and Ruiru…The 2004 Ndung'u report lists as Kenyatta's properties, 50,000 acres at Gatundu; 24,000 acres in Taveta and another 50,000 acres in Taita at the Coast; 10,000 in Naivasha; 52,000 in Nakuru; 10,000 in Rumuruti; 40,000 in Endebess in the Rift Valley and several other landholdings registered in the names of his wife, Ngina, and siblings Peter Magana, Uhuru Kenyatta, Christine Wambui, Anna Nyokabi and Muhoho Kenyatta, among other relatives.

The "land-grabbing mania" involving members of the Kenyatta family was country-wide. In a notice in May 1975, the Registrar of Titles, A. O. Oyalo, issued a provincial certificate in respect of sub-division 1230 of Section 1, Mainland North, Mombasa, comprising 1,000 acres after its certificate of title was reported lost. The land was registered in the names of Peter Muigai Jomo Kenyatta, Karia Nyange, and George Nguria Wanyee.[178] A provincial license was also issued to the same people by Oyalo for sub-division No. 1214 of section 1, Mainland North, Mombasa, for a plot measuring 0.925. The original certificate of title reported lost was registered under LR No. 10251/1.[179] The Lamu West MP, Fahim Twaha in March 2000 claimed Peter Muigai Kenyatta was illegally allocated 50,000 acres of land at the Mpeketoni Scheme in Lamu, an allegation which was not substantiated.

The American government in a report compiled in 1978 but made public in January 2017 expressed concern about the speed in which the Kenyattas were enriching themselves. In an intelligence memorandum, officials of the

Central Intelligence Agency (CIA) noted a spate of land purchases involving the president's family, saying while Kenyatta had only about half a dozen properties covering roughly 4,000 hectares mainly in the Rift Valley and in Kiambu, Mama Ngina "owns at least 115,000 hectares including a 13,000-hectare ranch in the Kiambu district, two plantations at Matu and Mang'u, and three sisal farms near the Tanzania border. The CIA also noted she owned considerable holdings in and around Mombasa and coffee plantations and ruby mines."[180]

A report of the Truth, Justice and Reconciliation Commission of Kenya (TJRC) said Kenyatta benefitted immensely from irregular allocations of land that should have benefited those who lost land to Arabs and British colonizers.[181]

The indiscriminate acquisition raised a lot of resentment from Kenyans who had expected much more from the African-led government. Right in the first decade, the country was polarized between the elite - those driving big cars and owning properties everywhere - and *wananchi* who had nothing to look forward to. Leaders had betrayed them and broken the promises of employment and prosperity given at independence. To most people, "independence was akin to rain laden clouds in the sky, a mirage that was quickly replaced by empty and hot-sweeping wind of hard times."[182]

As the Kenyattas binge for land increased, Cabinet Ministers, PCs, DCs, Permanent Secretaries and senior parastatal executives, jumped into the madness as well. Moi bought 2,344 acres at Kampi-Ya-Moto and acquired other properties all over the Rift Valley. Ministers Koinange acquired 645 acres in Limuru and Ngala Mwendwa 932 acres in Kahawa outside Nairobi. Vice President Oginga Odinga bought 932 acres in the name of his company, Luo Thrift and Trading Company in 1964, and the following year acquired another 401 acres, both properties in Nyanza Province.

Others who bought large tracks of land included politicians Dr. Julius Kiano, 176 acres in Kabete, Paul Ngei, 1,263 acres in Machakos, and Burudi Nabwera, 1, 221 acres in Trans Nzoia. JM Kariuki, 880 acres in Ol Kalou, Fred Kubai who was Kenyatta's fellow detainee, 684 acres in Njoro, a Mr. Onamu, 349 acres in Turi and a Mr. Kamuren 1433 acres in Molo.[183] Other beneficiaries included the early opposition politicians Ronald Gideon Ngala and Masinde Muliro, among others. Most of the land was sold at throw-away prices and some was not even paid for.

In addition to individual ownership of land, politicians formed land-buying companies, bought large tracks of land from European settlers and got people to buy shares. Ngatia Farmers' Cooperative, for example, bought 16,000 acres from Maiella Ltd in Naivasha; Kamwauro Farmers' Cooperative bought 240,000 acres from Lionel Caldwell in parts of the Rift Valley; and Kiambaa Farmers' Cooperative acquired 500 acres from Giuseppe Morat in 1967, also in the same region. These companies facilitated the settlement of hundreds of thousands of Kikuyu throughout the 1960s and 1970s especially around Nakuru, Uasin Gishu, Nandi, Trans Nzoia and Narok, in the Rift Valley.[184]

The Uasin Gishu Company which started in 1964 with a few hundred members bought 585 acres of land at Kamukunji outside Eldoret, another 2,000 acres, and 50 acres within the vicinity of the town. Mweyenderi Company formed in 1970 first purchased a 25-acre farm with a farmhouse and expanded its portfolio to hundreds of acres in the Rift Valley. There were also the 4,000-acre Munyeki Farm which stands for Murang'a, Nyeri, Kiambu; the 6,000-acre Wamuini Farm, and others.

During one of his visits to Nakuru in 1968, Kenyatta distributed 17 big farms belonging to former European settlers to members of the Gikuyu Embu Meru Association (GEMA), a powerful organization which acted as "the vehicle of advancing the more chauvinistic and parochial tribalistic elements among the Kikuyu, with the two other groups, the Embu and the Meru being more than hangers-on…"[185] Other lands were given to GEMA in Trans Nzoia and Uasin Gishu.

The new settlers changed names of the farms from European to Kikuyu[186] to localize their interests and entrench their presence. In November 1971, the president dished another five farms in Nakuru totaling 30,000 acres to cooperative societies. Although Kenyatta had announced fair distribution to members of diverse communities, almost all the 2,400 people settled at the farm were Kikuyu.

Nakuru, a town two-hours by road from Nairobi going north-westwards was nicknamed "the capital of the European highlands"[187] because of the large numbers of whites residing in and around it. The town started as a railway station on the Kenya-Uganda railway at the turn of the century, the name having been derived from *Nakurro*, a Maasai word meaning a "dusty place."[188] It was a popular rendezvous for whites and a place where most of the land transactions in the region took place. At the Midlands Hotel Bar in Nakuru town, colonialists gathered in the evenings to sip beer and exchange farm tales, their horses tied on a rail outside. After independence, the town became Kenyatta's second most favorite destination after the coastal town of Mombasa, where he spent many weeks during the year working and meeting delegations. It was from Nakuru State House that Kenyatta directed the Kikuyunization of the White Highlands.

A prominent lawyer Mutula Kilonzo was allocated 800-acre dairy farm; former Auditor General D. R. Njoroge, 500 acres; former PCs Lukas Galgalo and Ishmael Chelang'a, 10,000 acres and 18,000 acres respectively, according to reports.

One European was particularly sarcastic in his description of the land-grabbing mania that was taking place around him in Rift Valley. He talked of "Rich bastards from the city, government officials often, who came out in their Mercedes Benzes and bought three or four huge properties. If you didn't want to sell, they found ways of persuading you."[189] Some of those ways included threats of deportation or physical harm.

It was in that region too that the Settlement Fund Trustees (SFT) – a body entrusted with acquisition and distribution of land - acquired land and sold it to land-buying companies – headed by high-ranking members of the Kenyatta regime who had often received state financing for the purpose. MPs also used their own finance companies to provide loans to people wishing to obtain plots charging them high interest rates. The Akiwumi Commission which inquired into tribal clashes in Kenya said in its report to Moi in 1999 that two land-buying companies, Ngwataniro Mathukanio Company Ltd and Laikipia West Company Ltd, associated with Laikipia West MP Dixon Kihika Kimani, were some of the companies that bought and sold land from funds obtained from SFT.[190]

For politicians, land-buying companies also acted as a significant source of votes during elections. Members were coerced into voting for a candidate or lose their membership in the companies. Subsequently, leaders concentrated their recruitment activities within their own constituencies. A case in point was that of MP Dixon Kihika Kimani in Laikipia West constituency which he represented from 1992 to 1997, and Molo constituency which he represented from 1997 to 2002. That was where his land-buying companies were located and where most of his voters resided.

Land-buying companies existed in Nakuru, Trans Nzoia, and Laikipia, among other areas. Only a few people from other areas of the country among them the Luhya and the Luo were members, but the bulk of the membership came from the Central region. As years went by, many of the companies were hit by scammers in the name of directors who got members to put in labor without getting returns.

A good example of gross mismanagement of land-buying companies involved the 13,409-acre farm belonging to Mbo-I-Kamiti which was formed in 1970 by 4,630 small scale farmers. The group owned coffee and tea estates and factories, but over time, the company incurred billions of shillings in debt leading to near bankruptcy. Several other such companies fell into similar bad times leaving their members in distress.

Thanks to Kenyatta, what started as a frantic scramble for land at independence led to the present situation where 20% of Kenya's elite owns 65% of the 17% fertile land available.[191]

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The report of the Commission of Inquiry into the Illegal and Irregular Allocation of Public Land found the powers vested in the Executive had been grossly abused by the President and successive Commissioners of Lands… and that there was "unbridled plunder"[192] of public land. In the conspiracy were top lands officials, lawyers, surveyors, engineers, architects, estate agents and bankers. By March 2010, the anti-graft body, the Kenya Anti-Corruption Commission (KACC), had 322 cases pending finalization of investigations involving former officials of the Ministry of Lands.

The July 2004 Commission report recommended, among many other things, the establishment of a National Land Commission (NLC) with powers to allocate public land and repossess all illegally acquired titles. Although the NLC was formed after the promulgation of the constitution of Kenya, 2010, it was constrained from prosecuting those involved because the body did not have executive powers over land matters. There were, however, some isolated cases in which the government moved in to remedy past mistakes. Both the Kibaki administration, and later Uhuru Kenyatta, refused to implement the Commission's recommendations "in a structured manner as recommended" because of lack of political will and fear of implications from the perpetrators.

The Truth, Justice and Reconciliation Commission (TJRC) which was legislated in 2008 to report on historical injustices, also indicted dozens of prominent Kenyans it said had unlawfully grabbed public land. It mentioned Kenyatta for giving himself and his relatives large parcels of land.

It noted that between 1964 and 1966, one-sixth of European settler lands intended for the settlement of the landless had been grabbed by President Kenyatta, his wife, Mama Ngina, and a host of his cronies including politicians.

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The TJRC report has not been publicly debated as initially projected because of its explosive nature. Attempts were made by officials in Uhuru Kenyatta's government to delete paragraphs on land grabbing mentioning Jomo Kenyatta's name. Three expatriate Commissioners, Ethiopian Berhanu Dinka, US law professor Ron Syle, and Zambian High Court Judge Getrude Chawatama, complained in a statement that after the report was released in May 2013, irregular changes were made to the approved report ostensibly "to protect the reputation of the first President…"[193]

The changes included paragraph 203 of the TJRC report which talked of the late Kenyatta dishing out a 'large tract of government land' as a wedding gift to a relative in 1976."[194] The land was allegedly acquired without official approval and without compliance with legal procedures. In June 2015, a High Court Judge, Weldon Korir, dismissed a case filed by President Uhuru's cousin, Ngengi Muigai, who was mentioned in the TJRC report as having received land from Kenyatta as a wedding gift. Muigai also denied allegations that he had illegally acquired land from Karura Forest in 1997. In a separate case, Ngengi's sister, Beth Mugo, also wanted the court to rule on allegations that she was linked to illegal acquisition of beach plots. The two members of the Kenyatta family wanted their names expunged from the report, and for the court to order the commission to provide evidence that Kenyatta grabbed land and distributed it to his relatives.

The TJRC report also alleged that Kenyatta gave himself 250 acres of trust land at the Coast which was supposed to be held by the government in trust for the people; and, irregularly allocated himself Tiwi and Diani trust lands at the expense of local people who immediately became squatters and were subsequently evicted, rendering them landless and poor.[195]

Squatters and the landless: The "native colonialists"

It was not just the squatters and the landless who lost out on land. Even those who fought for Kenya's independence, the Mau Mau were not spared. They were left "landless, poor and pushed to the periphery by 'native colonialists"[196] who went around grabbing land.

In 1955, Mau Mau leader Kimathi wa Waciuri, popularly known as Dedan Kimathi, wrote from his headquarters in Nyandarua an angry poetic letter to *Habari za Dunia* (News of the World), a publication based in Nairobi:

> "The poor are the Mau Mau. Poverty can be stopped, but not by bombs and weapons from the imperialists. Only the revolutionary justice of the struggles of the poor can end poverty for Kenyans."[197]

According to Kimathi, Mau Mau was a revolution for the poor, even though the whole idea for the rebellion was to have Kikuyu land – averaging 60,000 acres by the estimation of the Kikuyu themselves[198] – returned to the people. The insurgency was also to emancipate the Kikuyu from poverty and all forms of discrimination. It was a militant response "to years of frustration at the refusal of the colonial government to redress grievances over land or to listen to demands for constitutional reforms."[199]

The former freedom fighters felt abandoned and isolated on resource distribution. They saw former colonial associates – home guards - settling on land and taking up government positions while they remained on the sidelines. The home guards were the "backbone of loyalism" and were used by the colonialists for bullying, screening, depriving, (and) exploiting the women…"[200] They tortured people and spied for their masters. They were responsible for the arrest and deaths of hundreds of freedom fighters. They were derided by the Kikuyu population who nicknamed them, "black Europeans or "tie-ties" a reference to the mode of dressing adopted by African elites and Christians.[201] Novelist Ngugi wa Thiong'o called them "running dogs" for the British Army.[202]

Yet, after the Mau Mau war ended, it was the loyalists who reaped most from the colonial government. They held important positions in the provincial administration and gained political power. That trend continued under Kenyatta's regime to the chagrin of the former Mau Mau fighters who felt short-changed. Jobless ex-Mau Mau veterans were scavenging in towns and threatening security. Incidences of household burglaries and murders skyrocketed in the leafy parts of Nairobi and in farm areas occupied by whites and the moneyed elites. Tom Mboya described the split between the two Kikuyu sides as "one of the biggest problems Kenya had to overcome."[203]

Uniting the Kikuyu community by bringing into his government the home guards and the former liberators was therefore one of Kenyatta's intractable challenges. No one understood that challenge better than Kenyatta himself who believed in amalgamating the Kikuyu before attempting to fuse the rest of Kenyans.

"One must put his house in order first," he said during a rally in 1961 "before one can tell others to do so…tall buildings do not come from nowhere, they are built by laying one stone on top of another."[204] That challenge remained largely unfulfilled during Kenyatta's tenure.

For the Kikuyu, earth is 'the mother' of the tribe…

> The mother bears her burden for about eight or nine moons while the child is in the womb, and then for a short period of suckling. But it is the soil that feeds the child through lifetime; and again, after death it is the soil that nurses the spirits of the dead for eternity. Thus, the earth is the most sacred thing above all that dwell in or on it.[205]

Kenyans believe every individual must have a place of their own where they can build a house, do some subsistence farming, and bury their beloved ones. Thus, land is a gift from God…[206] However, the overwhelming desire to own land in Kenya has created corruption, favoritism, nepotism, land grabbing and hoarding, and blatant discrimination in land allocation practices.[207] This has left a few holding wealth and the majority languishing in hardship.

"I love the soil," Kenyatta said in one of his speeches in Kikuyuland, "and I love those who love the soil…It is our greatest investment. By investing in the soil, one invests in lasting, long-term property. Other things come and go, but well-cultivated soil remains."[208]That may explain his penchant love for land.

In his *Facing Mount Kenya*, Kenyatta writes that "a man or woman who cannot say to his friends, "come and eat, drink and enjoy the fruit of my labor, is not considered a worthy member of the (Kikuyu) tribe."[209] The

Kikuyu believe that land provides a living but also an insurance against an uncertain future, and is evidence of ancestral blessing.[210]

It was precisely for that reason that the Kikuyu joined the Mau Mau almost *en masse* to fight for land. About 11,000 Mau Mau fighters and 32 white settlers perished in the six-year war, according to official British government figures. However, David Anderson, Professor of African Politics at Oxford University says, the figure of Africans killed could be as high as 25,000. The Kenya Human Rights Commission (KHRC) says 90,000 Kenyans were executed, tortured or maimed during the crackdown on Mau Mau and that another 100,000 Kikuyu were detained without trial for periods of between three and seven years.[211]

At independence, the fighters wanted guarantees of settlement as one of the conditions to leave their forest hideouts. Many had surrendered but hundreds had remained in the forests. A few days before 12 December 1963, Prime Minister Kenyatta met a group of former Mau Mau generals at his home in Gatundu to assure them of safety and settlement. He also hinted they could be compensated for their many years in the bush. He gave similar assurances to thousands of former fighters during a meeting at the Nyeri stadium shortly after independence. Some of the fighters had left the forest on that same day to come and meet their leader.

He told the crowd: “These people in the forest have been hunted like animals just because of politics. Now they are back with us. Now we have got our freedom…Is it not what we have struggled for?”[212]Kenyatta delivered neither land nor compensation to the former Mau Mau warriors, yet if there was anyone deserving of land it was the Mau Mau because they shed blood for it.[213]

> (Instead)…elites especially Kenyatta pushed the poorer Kikuyu, many of whom fought in the Mau Mau rebellion into informal settlements in Nairobi or farther afield in the Rift Valley in search of small pieces of land made vacant by the sale of settlers’ farms.[214]

PC Mathenge did admit that “Kenyatta was afraid of the Kikuyu have-nots…mainly people without land (and)…was afraid of driving such groups into the forest where he would lose control over them…”[215] Yet, he found himself hamstrung by pressure from powerful former home guard adherents.

On the eve of independence, 11 December 1963, four Mau Mau generals – dressed in khaki uniforms but displaying no ranks – were part of 4,000 guests who gathered at Government House in Nairobi for a garden party hosted by Governor MacDonald and attended by Prince Philip, husband to the Queen of England. Led by Field Marshall Mwariama, they came face-to-face with their white settler adversaries for the first time. It was a tense moment for both side.

For some reasons, the Mau Mau leadership was not involved in the organization of Independence Day celebrations the following day, and Kenyatta did not acknowledge them during his speech. In his entire presidency, Kenyatta refused to recognize Dedan Kimathi who was captured and sentenced to death on 18 February 1957 as the leader of Mau Mau, and for years, Kimathi's family lived in destitution.

Apart from Field Marshall Musa Mwariama who was awarded the Medal of Elder of the Burning Spear, other key Mau Mau generals were not cited. It was not until 2010 that President Mwai Kibaki installed a seven-foot statue in central Nairobi in honor of Kimathi. In 2016, President Uhuru awarded Kimathi's widow, Mukami, the Medal of the Elder of the Burning Spear for her role in the independence struggle.

Similarly, instead of creating a Heroes Day as some had advised the President to do in recognition of all freedom heroes and heroines, Kenyatta chose 20 October of every year as Kenyatta Day to celebrate himself. The Mau Mau freedom fighters became non-persons, their struggle was consigned to oblivion, and any mention of them was a taboo. [216] On the first Kenyatta Day in 1964, he told Kenyans to forget the past, a veiled reference to the liberation movement.

> Let this be the day on which all of us commit ourselves to erase from our minds all the hatreds and the difficulties of those years which now belong to history. Let us agree that we shall never refer to the past. Let us instead unite, in all our utterances and activities, in concern for the reconstruction of our country and the vitality of Kenya's future.[217]

Such remarks coming from Kenyatta were not surprising. The Kenyan leader was never a proponent of Mau Mau and 'knew nothing' about the organization, said fellow detainee Fred Kaggia.[218] Whenever asked about the movement, he was either ambiguous or outright sarcastic. At a public meeting in August 1952, for example, Kenyatta used a traditional Kikuyu curse to condemn Mau Mau to oblivion. "Mau Mau has spoiled the country," he told a crowd of 25,000 people. "Let Mau Mau perish forever. All people should search for Mau Mau and kill it."[219]

He reiterated almost similar sentiments at a meeting in Githunguri in September 1962 when he said what Kenya wanted was peace. "We shall not allow hooligans to rule Kenya…Mau Mau was a disease which had been eradicated and must never be remembered again."

Frustrated by state neglect, in January 1964, the Mau Mau war council fired an angry letter to Kenyatta. "We were informed that land would be allocated to the landless (in Nyandarua district) but now it is the rich people who are buying land. What will you do with the poor people?"[220] they asked. Kenyatta did not respond. Dejectedly, the former dreadlocked guerillas who had taunted colonial authorities for five years quietly vanished into villages to contemplate measures of suing the British government for compensation.[221]

The former fighters had expected to have their children educated at government expense and given jobs in the civil service. Their expectations were never met as Kenyatta turned to the loyalists who at independence "had money, education, support by the Churches, and most important, the backing of government officials."[222] One of the few freedom fighters who benefitted from Kenyatta's land distribution policy was Mukami Kimathi who was allocated 14 acres in Nyandarua which she had to pay for. While she was grateful for the gesture, she refused to keep quiet about land injustices. A month after receiving her plot during a meeting attended by Kenyatta at Ruring'u stadium in Nyeri in December 1963 to welcome freedom fighters from the forest, she demanded the return of all land grabbed by colonialists. She also led chants of "*Uhuru na Mau Mau*" (freedom and Mau Mau), instead of "*Uhuru na Kenyatta"* (freedom and Kenyatta), to show displeasure at the mistreatment of former Mau Mau fighters.[223]

There are a few other former freedom fighters who benefitted from key government positions including JM Kariuki, who became an Assistant Minister, and Waruhiu Itote, a Mau Mau leader from Nyeri who was appointed to command the National Youth Service (NYS), an unarmed nation-building brigade.

Field Marshal Baimungi Marete, a reputable Mau Mau leader declined altogether to pay for land which was being sold to Africans. If the land is not free, he said, then "I want a six-by-three-feet" plot of land (for his grave). A few weeks later, he was killed after refusing to emerge from the forest in response to Kenyatta's plea to give up arms and join others in nation building.[224]

Ironically, Mukami and 100 members of her family had to run for their lives in May 2016 when they were attacked by an armed group of people as they tried to inspect a piece of land in Athi River which they claimed was given to them by Kibaki. They said they had been allocated 4,000 acres – part of 16,000 acres belonging to the East African Portland Cement – and had documents to prove it. The land in question was at the center of ownership wrangles between the company and squatters.

It was loyalists like Isaiah Mathenge the former powerful PC, Charles Njonjo, former Attorney General, and Kenyatta's son Peter Muigai, who eventually came to enjoy the fruits of *uhuru* in the Kenyatta administration. Initially, Muigai denounced Mau Mau but he switched sides while in detention.[225] After confessing, he was sent to Athi River detention camp where he became part of a cruel group of loyalists who brutalized detainees and demanded their confessions…"[226] In 1974, he was elected the MP for Juja constituency adjoining the Kenyatta estate at Gatundu, and subsequently appointed Assistant Minister for Foreign Affairs. He was also the chairman of KANU Juja branch and a member of the Agriculture Appeals Tribunal.

The alienation of the Mau Mau fighters angered many especially those involved in the liberation war. One man who publicly and repeatedly expressed angst at the way the former freedom fighters were treated was Bildad Kaggia. He accused Kenyatta of forgetting the people who fought for *uhuru* and lost families in the independence struggle. Most of them, he said, were jobless and unemployed "because the government is not prepared to change things done by the colonial government. I am not criticizing the government destructively but constructively,"[227] he told Parliament. A few days later, Kaggia was reprimanded and warned to stop criticizing the government. He told Kenyatta that he would continue to do so but in a positive manner. Kenyatta and Kaggia never saw eye to eye until the end.

The former fighters – who spent years in the damp Aberdare and Mount Kenya forests ducking colonial bombs – turned out to be less important to Kenyatta than the white settlers who chose to stay after independence. However, they were unrelenting. Instead of resorting to violence, the fighters resorted to benign lamentations in the form of songs, a sort of a cry in the wilderness. Here is one of them.

On 7th January, we were surrounded at Bahati,
By the colonial army.
We will never be silent,
Until we get land to cultivate,
And freedom in this country of ours, Kenya.
Home Guards were the first to go and close the gates,
And Johnnies entered while the police surrounded the location.
You, traitors! You dislike your children,
Caring only for your stomachs,
You are enemies of the people.
We will never be silent,
Until we get land to cultivate,
And freedom in this country of ours, Kenya.[228]

Overall, as years went by, national unity became one of Kenyatta's major successes even as the country spiraled into a conundrum of corruption and malfeasance. We will see later how corruption ruined Kenyatta's legacy, and how the man who initiated the rallying motto '*harambee*' (let's all pull together), was the same man who was obsessed with the practicalities of pulling towards himself, his family and cronies. By fully-controlling the economy and promoting his cronies into the political and economic realms, he created a ruling class.[229] It was that ruling class and cartels of vicious manipulators which contributed to the state of misery and deprivation that drowned an estimated 45% of the population into despair more than a half a century later.

Nyakinyua dancers

From the very beginning of Kenyatta's rule, a dancing group called Nyakinyua was a regular feature at presidential functions. The elderly members of the group serenaded the old man with traditional songs rich in Kikuyu folklores. Sometimes in the 1960s, they were allocated a 1,000-acre piece of land in Londiani, Rift Valley, called Shauri Moyo village. In 1988, after Kenyatta's death, the surviving members of the group and hundreds of their descendants were evicted from their plots on orders of the provincial administration. Too old and sick, they went to live in nearby areas as squatters. Up to the time Kenyatta’s son Uhuru finished his first presidential term in 2017, the former artists were still squatting.

Chapter 6
Squandering public resources

ONE OF THE first things the new leader did after becoming Prime Minister and before Kenya became a Republic on 12 December 1963, was to order a Rolls Royce car from the London's Motor Show, a Lincoln convertible from American businessmen, and "a luxury customized Mercedes for his use without any state budgetary provisions or (even) personal intent to pay.[230]

In doing so, Kenyatta became the first Kenyan official to violate procurement procedures which required that the Central Tender Board (CTB) call for multiple quotations from suppliers. It was a colonial process which did not change until the 1970s.

Kenyatta also ignored the advice of Finance Minister James Gichuru who told him Kenya was short of capital and therefore bankrupt and could not afford the expensive vehicle.[231] That single action by Kenyatta of infringing procurement rules set the precedence for Kenyan civil servants to follow and for corruption to thrive throughout his regime and the three administrations that followed.

Ironically, when the Nairobi Mayor Alderman Charles Rubia ordered a KES.217,000 Rolls Royce for his official use, it was Kenyatta who abrogated that decision. The luxury vehicle, already at sea on its way to Kenya, was ordered returned to its sellers in England, just as the *Daily Nation* launched a "virulent campaign, including front page editorials" asking why the Mayor could not use his Humber Super Snipe which had just been bought.[232] Opposition MP Ronald Ngala of Kenya African Democratic Union (KADU) called the expenditure "a gross, careless squandering of public money" by a council which had an outstanding debt of KES.161 million.[233]

Interestingly, Kenyatta did not deride Rubia because he opposed the method of purchase, but rather because, by possessing such a prestigious vehicle, the Mayor of Nairobi would be competing with him. Such a scenario was unimaginable. However, when Rubia left the mayoral office and Kenyatta's daughter Margaret became the city elder, she procured the Vanden Plas Princess – a "less prestigious but of similar design" luxury vehicle – without any opposition from anyone.

As Prime Minister, Kenyatta was a well-paid public servant, his salary equaling that of the Governor General: GBP.7,000 (KES.955,735) annually; GBP.4,500 (KES.614,401) in duty-free allowance and GBP.2,000 (KES.273,067) in entertainment allowance. With that kind of income, it was expected Kenyatta would not engage in illegalities. But the Kenyan leader continued to exhibit a thirst for money and material wealth.

Kenyatta was also cavalier when it came to government spending. In 1968, he felt the need to have a special pavilion for his personal use at the Agricultural Society of Kenya showground at Jamhuri Park on the fringes of the city. Every year, the showground showcased the best of what was available in the country's agricultural sector in terms of livestock, plants, and agro-machinery. Kenyatta wanted a suite he could use – along with members of his Cabinet – during his once-a-year visit to the showground. The cost of building the pavilion was GBP.12,000 (KES.1,638,402) which many considered a flagrant misuse of funds. Nonetheless, the project was undertaken without question.

But that was only a harbinger of what was to come.

In 1974, Kenyatta wrote a letter to a farmers' cooperative telling them not to remind him of a debt of US$.196,000 (KES.20,286,000) which he had incurred for seed, fertilizers, and other supplies for his various farms. The letter made it clear he wasn't going to pay even though he knew the debt would eventually have to be absorbed by farmers, most of them poor, small-holders.[234]

It was known publicly that Kenyatta did not pay his personal bills and that applied to both the small claimant in the farm and the big businessman in the city. A good example is when he received an invoice to pay G. Campagnola, the man who built his house at Gatundu in 1963. Kenyatta refused to honor it, contended the Italian contractor's work was a "contribution to the independence celebrations"[235] One man familiar with the President's behavior said derogatively that Kenyatta was a principled man: "the principle being that he doesn't think he has to pay for things."[236]

During the period of his rule corruption reigned, and Kenyatta became one of the richest leaders in Africa. He was a dyed-in-the-wool capitalist… one of the most wealth-amassing African leaders of his time.[237] His name was linked to land grabbing, poaching, corruption, and fraud.

One American diplomat described Kenyatta's time in government as a "robber baron era," where everyone stole with impunity and any efforts to halt corruption were quashed."[238] One example illustrating impunity under Kenyatta involved the Minister for Defense, James Gichuru. It was widely rumored in the diplomatic circles that Gichuru had illegally received GBP.10,000 (KES.1.3 million) in order "to oil the wheels" in a deal involving the purchase of French Panhard armored cars. While that was a clear sign of individuals in the Kenyatta government pursuing their own interests through military and political deals,[239] Kenyatta did nothing to reprimand him. Instead of leading the way in the fight against graft and impunity, the Kenyan leader chose to institutionalize them.

> Kenyatta's colleagues bought big expensive cars, checked their children into private schools within the country and overseas, went around demanding hand-outs from British and Asian businessmen, and lived a life that was far too luxurious than what their civil servant salaries would permit. Vital national institutions such as the civil service, Judiciary, legislative, police and others, were transformed into an alternative or parallel power structure whose main purpose was to maintain them in power beyond the reach of the law.[240]

In Kenya, said an observer, Kenyatta was considered a "land grabber".[241] However, apologists like R. Mugo Gatheru, have lauded him for "having tried very hard" to alleviate the problems of tribalism and disunity; for curtailing corruption, and for Africanizing the country's politics, economics and culture…," but even Gacheru admits Kenyatta made "some mistakes."[242]

Koigi wa Wamwere, a political detainee under both Kenyatta and Moi, claims the Founding President ceased to be a nationalist only after independence. He asks: How did Kenyatta the multi-ethnic nationalist become a tribalist, a practitioner of negative ethnicity; and how did Kenyatta the democrat become a dictator?[243]

Scholars who have studied his speeches say Kenyatta hid his identity by using "the rhetoric of patriotism and nationalism." On the surface he preached continuously about the need for Kenyans to rise above ethnic and regional boundaries to forge ahead as a united nation; but beneath the rhetoric appears to have been a systematic program of "Kikuyunization" of national institutions and resources."[244]

John Githongo says the mistake Kenyatta made after independence was to dump the "humanistic, pan-Africanist ideals" that he had identified with as a younger person and embraced land grabbing, allowing the elite around him to inherit "the juiciest chunks of the White Highlands" in Central Kenya and parts of the Rift Valley. Some believed the Kenyan leader "provided a powerful symbolic leadership, but behind him was a broad nationalist coalition that deteriorated into a factional scramble to tap presidential power and prestige for enrichment and political advantage."[245]

Though earlier in life, Kenyatta was viewed as a nationalist, much of that changed after Kenya became independent. He "metamorphosed from an erudite fiery nationalist to a parochial acquisitive tribalist."[246] He was like a presidential 'monarch' elevated above all other politicians in Kenya…The center of his regime was undoubtedly an inner 'court' of fraternal Kikuyu politicians who rose to political prominence with him, and most of whom came from his home district of Kiambu…"[247] People like (Ministers) Njonjo, Dr. Mungai, Koinange and Gichuru, were the real power brokers in the Kenyatta administration. The President's Gatundu home was the Parliament, the real center of power[248] where his closest buddies met regularly to chat, eat goat meat, and make critical decisions on matters relating to looting of State resources.

Kenya's last colonial Governor who became the first British High Commissioner to Kenya at independence, Malcolm MacDonald, made a critical analysis of the Kenyan leader and his associates nine years after leaving Nairobi in 1965:

> One of Kenyatta's most serious errors is his tacit assent to the acquisitiveness of some of his Ministers and civil servants. Soon after attaining power, they began to buy (sometimes with money gained by dubious means) – sometimes from loans obtained from local banks – large houses, farms, motor cars and other possessions. This development not only tainted his administration with a reputation for corruption, but also produced a wide economic division between the governors and the governed, haves and have-nots…it would have been more prudent as well as moral if

> Kenyatta had enforced on his colleagues and subordinates a stricter code of conduct, preventing them from becoming such a conspicuously privileged class.[249]

The reason why Kenyatta could not enforce discipline among his officers was because he himself had lost the way to moral uprightness and was part of the corrupt clique. But how do leaders lose their way?

> They lose their way when they focus on external gratification instead of inner satisfaction. Often, they reject the honest critic who speaks truth. Instead, they surround themselves with sycophants who tell them what they want to hear. Over time, they are unable to engage in honest dialogue.[250]

Indeed, Kenyatta's sycophants saw nothing wrong in the tyranny of the Founding President as long as they reaped benefits for themselves. When the Attorney General Charles Njonjo warned that it was "a criminal offence for anyone to encompass, imagine, devise, and intend the death or deposition of the President," he was not doing so to comply with the law but to endear himself to Kenyatta as if the latter was infallible. Conversely, those who offered to tell Kenyatta the truth – people like Bildad Kaggia, Oginga Odinga, and J. M. Kariuki – were pushed aside.

Pulling together: The harambee chicanery

One initiative which stands out as an epitome of corruption in Kenya is the "*harambee*" (pulling in one direction) self-help campaign which was launched by Kenyatta after independence. Kenyatta initiated the idea so that citizens could voluntarily contribute money, materials, and labor to build infrastructure projects as part of their contribution to nation building. It reflected a 'bottom-up' rather than the usual 'top-down' project initiation process allowing for the people to own and be accountable to the projects.[251]

The contributions were also intended to empower women and youth in starting small businesses and to help the poor with school fees for their children. The initiative generated a lot of excitement among grassroots leaders who went around encouraging people to participate, sometimes with the intention of augmenting their own political objectives.

To show the way, Kenyatta launched the Gatundu Self-Help Hospital project at his place of birth. The original hospital structure was partly built by Kenyatta's friend G. Campagnola. The Italian national also used his friendship with the President to obtain tenders for other government projects including public-owned Ngulia and Kilaguni Lodges in Tsavo West, Samburu Lodge, and the Coast General Hospital in Mombasa. However, the Gatundu hospital needed improvements and facilities and *harambee* was deemed the solution.

Initially, the *harambee* idea seemed noble. Kenyans – and foreigners too – donated money to ensure its realization. Investors and businessmen looking for favors from the government lined up at State House in Nairobi, at the President's home in Gatundu, and State Lodges in Mombasa and Nakuru, to present checks personally to the Head of State. Some of the checks were directly drawn to the hospital; others were left blank for the President to choose a project of his choice.

No accounts were kept, and no receipts were issued. Three weeks after the launch in February 1965, KES.35,000 had been collected, and a few months later, the amount topped KES.100,000. Thereafter, no more disclosures – except for small donations – were made and the public lost count of what was collected. Huge donations from trans-national Corporations and foreign investors were hidden from public scrutiny.

The intended Gatundu Self-Help Hospital became a money-spinning fraud of great magnitude. Money disappeared into pockets of officials as the elite fought for membership in *harambee* committees to gain influence and enrich themselves. Junior officers at State House and administration officials became collection agents of money which mysteriously vanished into thin air.

The Kenya National Fund which was specifically created to hold money for all public projects, among them the Gatundu Hospital and the Armed Forces Memorial Hospital in Nairobi, was virtually moribund as most of the collections ended in private hands. PCs and heads of government departments often coerced junior employees into making contributions ostensibly for the Gatundu project, but those contributions were never accounted for. In October 1968, prison warders discovered KES.6,000 had been deducted from their pay checks without their permission for remittance to the President.

When in 1965 MPs asked the government to account for the Gatundu Self-Help Hospital money, Vice President Odinga could not give a concrete answer in Parliament. "We know a lot of money has been sent to the President at his home in Gatundu…but he is spending it instead of taking it to the Kenya National Fund,"[252] the MP for Busia North, Oduya Oprong, claimed. Oginga Odinga who was chairman of the Fund Trustees could not explain how much money had been collected and where it was.

In the meantime, politicians went around boasting about their contributions to various harambee projects as a way of endearing themselves to party leaders and to attract votes. It got to a point where the income of MPs could not sustain the frequency in which the *harambees* were being held. They had to find innovative ways of raising cash for funerals, weddings, school and church functions. Either they had to beg from civil servants and businessmen or engage in corrupt practices.

Harambee contributions became a status symbol and were announced almost every day over the *Voice of Kenya* television and radio complete with the amounts of donations. In other words, there was as much politics in *harambees* as ever, and less voluntarism.[253]

For Kenyatta and those around him, the *harambee* initiative was a cash cow. Even though the government took over the construction of the Gatundu Self-Help Hospital in 1970, the State House continued to receive contributions from the public. When asked in Parliament on 2 April 1971 to explain why the government continued to solicit for donations, the response by the Minister of state in the office of the President, Mbiyu Koinange, was lame. “The Gatundu Self-Help Hospital is progressively growing,” he said, “and it will continue to expand. In its extensions and improvements, the self-help efforts will continue to be welcomed.”

“Mr. Speaker, Sir, would the Minister tell the House how much money has been donated ever since the Gatundu Self-Help Hospital was started?” asked Grace Onyango, the Kisumu Town MP.

“Mr. Speaker, Sir, with all due respect to the Hon Member, I do not keep here – in the President’s Office – the accounts of the Gatundu Self-Help Hospital. However, the accounts are kept in the bank. The whole thing has been done on a voluntary basis,”[254] Koinange replied. That response was far from satisfactory and only increased speculation that all was not well.

Although construction of the Gatundu Self-Help Hospital began in 1965, it took decades for it to be completed allegedly because of lack of funds. By 1994, MPs were still complaining about the absence of surgical equipment and essential drugs at the hospital.[255]

The Hospital was extended beginning 2013 with the help of China to include a new five-story medical wing, a maternity unit, laboratories and an Intensive Care Unit (ICU) section.

It must be noted that on the positive note, 37,300 projects were completed through *harambee* efforts between 1965 and 1984, contributing some 12% of the national gross capital formation. Philip Mbithi, an academic sociologist who was once Head of Civil Service during President Moi's time dismissed claims that the *harambee* concept was exploitative. It is "not a means by which peasants in Kenya are manipulated by the elite…the concept embodied ideas of mutual assistance, joint effort, mutual responsibility (and) community self-reliance."[256]

The *harambee* spirit engulfed the country like wildfire during the whole period of Kenyatta's rule and continued even after Moi took over in 1978.

Paul Ngei and the maize scam

In 1965, famine was raging through Kenya. There was a serious shortage of maize – the country's staple food – and people were dying. The strategic reserves at the Maize and Produce Board had dried up and the government was forced to import grains from the United States. To help mitigate the disaster and help the government cope with the financial burden of feeding the hungry, Kenyatta launched the National Relief Fund and opened it for contributions from well-wishers all over the world. Kenyans of all walks of life came forward and contributed money so did African and European countries.

However, not all the contributions reached the Fund's bank account. Some of the money was sent directly to the President, some to Ministers and officials of provincial administration. No one could tell how much of the money was accounted for and how much disappeared into personal accounts.

At the time, the government had banned direct maize purchases from farmers, meaning distributors could only buy grains from the then Maize and Produce Board and only after obtaining the relevant permit.

As pictures of emaciated children appeared on front pages of the international press, one person, Emma Ngei, wife of the Minister of Marketing and Cooperatives Paul Ngei obtained a permit from the board, was given 2,000 bags of maize, but did not pay for it. Through her company, Uhuru Millers, she also bought 300 bags from a Kisumu firm which was against the law.

The fuss created by those violations prompted Kenyatta to appoint a Commission of Inquiry to investigate the distribution and marketing of maize and allegations of unfairness, inefficiency, corruption and black-marketing of maize in the country. It was then that the Minister's name popped up. In its report, the Commission, chaired by Justice Chanan Singh, concluded that Ngei's closeness to Uhuru Millers had compromised his position as a government Minister. He was also cited for selling maize to a company associated with his brother which was the sole broker of the Kenya Agricultural Produce Marketing Board and an agent of the Maize Marketing Board.

The Commission observed that Ngei had violated the general rule of conflict of interest applicable to government Ministers, resolving that where there was a conflict between a Minister's public duty and his private interest, the demands of public duty should prevail. "Ministers must be made to declare not only their own business interests but also the business interests of their wives, children and close relatives. His Excellency the President should have this information in his possession before appointments to Ministerial offices are made,"[257] the court said.

That never happened and Ministers continued to use their offices for gain.

On 23 February 1966, Ngei was sacked from the Cabinet. His was the first case of high level impunity displayed in public in the country. Because he belonged to the distinguished group of the "Kapenguria Six" – the freedom fighters detained alongside Kenyatta – Ngei had the false idea he was above the law. However, in a move that surprised Kenyans, Kenyatta returned him to the Cabinet a few months later. That same year, Minister Mbiyu Koinange gave him KES.2,500 of his own money to buy 100 bags of maize for personal use. Ngei delivered only 60 bags worth KES.1,800. He did not supply the remaining bags and never refunded the balance of the money.[258] Koinange complained publicly but no action was taken against Ngei.

The tough talking Ngei who emerged from detention wearing a hat with the letters 'PG' for 'prison graduate' was arrogant, overbearing and greedy for money. Moreover, like Kenyatta, he never paid his bills. In 1971, he walked into a motor showroom, took a Mercedes Benz for a test drive, and disappeared with it. The company feared sending him an invoice and allowed the matter to rest. When Ngei died on 15 August 2004, the car was still parked outside his house.[259] In any country with a credible jurisprudence the Minister would have been prosecuted, but favoritism – a form of corruption – saved him from facing the law.

How Kenyatta handled Ngei's case certainly contributed to the malaise of impunity that has dogged the country for five decades. The seed of corruption and impunity was germinating.

Members of the so-called Kapenguria Six[260]entered normal life after detention without any valuable possessions, their properties having been confiscated by colonialists. Kenyatta's 32-acre farm was not spared. What the others owned before their arrest could not be ascertained, but they were not rich. After independence, some of them, like Kungu Karumba and Fred Kubai, amassed considerable wealth. One man who didn't was Bildad Kaggia, the leftist thinker and former trade unionist who refused to join the corrupt elite. Often, he condemned corruption in government and accused his old comrades of "frittering the gains of independence and lining their pockets with money meant for the poor."[261]

During a meeting in 1965, Kaggia, a former member of the Mau Mau central committee who, by that time, had fallen out with Kenyatta due to ideological differences, found himself on the receiving end of a rebuttal from his leader that portrayed him as stupid for staying poor.

> We were together with Paul Ngei in jail," Kenyatta ranted publicly. "If you go to Ngei's village, he has planted a lot of coffee and other crops. What have you done for yourself? If you go to Kubai's home, he has a big house and has a nice *shamba*. Kaggia, what have you done for yourself? We were together with Kungu Karumba in jail, now he is running his own buses. What have you done for yourself?[262]

Kenyans were appalled by that blatant approval of corruption.

In the meantime, misappropriation of public money continued. In 1964, the Auditor General, (AG), C. W. Rodgers, issued a damning report about fiscal mismanagement in government saying K£.485,540.00 (KES.9.7 million) had been withdrawn from the exchequer without statutory authority and therefore illegally. In 1967, his successor, D. E. Barnett, reported that some MPs were receiving more than one salary from the government and statutory boards.[263] For his remarks, Barnett was dismissed, and legislators passed a constitutional amendment giving MPs – and not the Auditor General - powers to approve all withdrawals from the Consolidated Fund.

His dismissal opened the door for a systematic behavior of stealing from the government. The AGs report for 1965/1966 noted that whereas in 1963 only 188 cases of theft involving K£.10,160 (KES.203,200) were reported, during the first 11 months of 1966, 356 cases were reported that involving K £.34,720 (KES.694,400). In subsequent years, millions of Kenya shillings were lost.

Civil servants and business: The Ndegwa Commission

Having heard the complaints of senior officials in his administration about their inability to do private business because of government restrictions, Kenyatta decided to do something. In 1971, he appointed a body called the "Public Service Structure and Remuneration Commission" to recommend reforms in the public service on a system established by the colonial government.

Known as the Ndegwa Commission, after its Chairman Duncan Ndegwa, the Commission recommended sweeping changes in moral and professional conduct of civil servants. It suggested increases in civil service salaries; the appointment of an ombudsman to oversee integrity in government; and slashing the number of parastatals. Furthermore, it permitted civil servants to engage in private businesses.

The report said in theory, there ought "to be no objection to the ownership of property or involvement in business by members of the public service to a point where their wealth is augmented perhaps substantially by such activities…It is understandable that public servants should have taken opportunities like other citizens."[264]

One of the caveats was that official duties must not raise suspicion that official position or official information available to a civil servant was being turned to private gain.

The Ndegwa report broke the colonial rule which was observed up to around 1970 that public workers should not engage in businesses. It was so controversial that the government shelved it for three years before releasing it for debate in Parliament. In the meantime, civil servants began immediately to engage in businesses. Doctors and pharmacists opened clinics and chemists; architects and accountants registered consultancy firms; junior workers opened shops of all kinds; and top civil servants joined private sector companies as partners or directors. "In many ways, this was like assigning wolves to guard the sheep,"[265] one analyst said.

Soon, the civil service was submerged in corruption from top to bottom. Officers demanded bribes and sold tips and confidential government information to the highest bidders. In the Ministries, everything was for sale: work permits, import licenses, jobs and citizenship.[266] Accountability collapsed, and impunity reigned.

Service delivery was impacted as many civil servants were often away tending to their private businesses. In the National Assembly, an Assistant Minister of Foreign Affairs, Burudi Nabwera, lamented that the Ndegwa Commission had created a very serious problem for the government, saying allowing civil servants to participate in private business was the biggest blunder…[267] It allowed people to use their public offices to loot public resources with very little or no accountability.[268]

The Minister for Agriculture, Bruce McKenzie; Police Commissioner Ben Gethi; and CID head James Kanyotu, were listed as directors of a company called African Liaison & Consulting Services Limited (ALICO) which was incorporated in 1977 with a nominal capital of KES.40,000. McKenzie had extensive business interests and was a director in over 20 Kenyan-registered and several foreign companies.[269] On 24 May 1978, however, McKenzie was killed in an aircraft explosion while on his way from Uganda. He was replaced on the board by an Indian tycoon, P. K Jani. Not too long after that, another prominent Kenyan, Jeremiah Kiereini, who in 1979 became Head of Civil Service, was appointed to the board. The key focus of the company was research, but records showed it had invested in at least one bank and several Kenyan companies. A list published by a local newspaper also displayed a long list of influential Kenyans as shareholders of private companies, among them Cabinet Ministers, prominent businessmen, and MPs.

The media fights corruption

From the mid-1960s, it was the media that was exposing corruption in government. Where functionaries tried to conceal it, Kenyan and foreign newspapers were quick to unveil it. That is what happened in August 1975 when the *Sunday Times* of London published a series of exposes about "the avarice of the Kenyatta family." It reported about the family forcing the sale of a private trading company, Inchcape, to a consortium of relatives; the family's involvement in ivory export; the impossibility of collecting debts owed by the 'royal family'; and how Kenyatta personally approved the purchase of large farms by his family, exempting them from review by land control boards.[270]

The report talked of "a growing abuse of office and power by Kenya's leaders, primarily at the expense of Americans and other Western businessmen," and quoted the then American Ambassador to Kenya, Anthony Marshall, as expressing grave concern at the treatment of American nationals by the Kenyatta government.[271]

In one of the reports headlined, "Kenya on the brink," the paper alleged that prominent people in the orbit of the presidency were advanced huge amounts of money by the Agricultural Finance Corporation (AFC) to purchase farms from departing European settlers without any security. When the paper hit newsstands in Kenya, the Special Branch (the intelligence agency) bought all copies they could find. Unfortunately, those who got wind of the upcoming stories bought copies earlier and managed to circulate photocopies of them clandestinely.

A story is told of when the British High Commissioner, Anthony Duff, went to meet Kenyatta in Mombasa for a farewell visit in mid-1975, he found the President and the director of Special Branch, James Kanyotu, sitting at a table with two copies of the *Sunday Times* articles. Kenyatta dismissed the articles as nonsense, rubbish and "stupidities of the press."[272]Kenyatta and members of his family used the AFC facility to borrow money and acquire land including the Gicheha farms in Kiambu district and the Ziwani estate in Taita Taveta which covered tens of thousands of acres which historically belonged to indigenous people of the areas.[273]

Another prominent beneficiary of AFC loans was Evanson Kamau Waitiki who in 1974 acquired from a European a 940-acre farm at Likoni, south of Mombasa. The farm, overlooking the Indian Ocean, had a stock of 900 heads of cattle and 300,000 chickens. In the late 1990s, hundreds of locals, angry that a person from upcountry owned such a huge chunk of land in their region, invaded and subdivided it. After much controversy, the government bought the land from Waitiki and sold it cheaply to the occupying squatters.

Corruption in the Judiciary

Corruption in the Kenya Judiciary has a long history. The “third branch” of government has been under public scrutiny since independence for a myriad controversies ranging from questionable rulings to corruption and abuse of office.

Sir Alfred John Ainley, the first Chief Justice (CJ) of Kenya who was appointed by the Queen in 1963, left five years later in an aura of controversy after a ruling that more than one person may have been involved in the murder of nationalist politician Pio Gama Pinto in 1965. The ruling did not go down well with the establishment which wanted the accused person Kisilu Mutua convicted as the sole killer and the matter disposed of as soon as possible. Mutua, a poor man who earned his living as a cart-pusher, denied involvement and said he was not even in the area when the murder took place in the Westlands area of Nairobi. Nevertheless, he was sentenced to life imprisonment. Pinto’s day-light killing was thought to have been planned and carried out by the Special Branch.

Ainley’s replacement, Arthur Dennis Farrell, was appointed by President Kenyatta in May 1968 and lasted only two months. He seemingly lost his job after reducing the sentence of Kenyatta’s nemesis Bildad Kaggia to six months’ imprisonment from a one-year jail term imposed by a lower court on charges of holding an illegal meeting. The case created a lot of political heat because of the explosive relations that had simmered between the two former Mau Mau detainees. Kenyatta had publicly denounced Kaggia; he wanted him sent to prison for a long period of time. It was clear executive interference had everything to do with Farrell’s quick exit.

Kitili Mwendwa, the first African CJ who took over the position that same year was killed in a road accident in 1971, opening an opportunity for another expatriate Judge, Sir James Wicks. During both Kenyatta and Moi regimes, Wicks became a puppet of the Executive, and carried orders, however ridiculous, without question. He allowed the President to interfere with the work of the Judiciary and was blamed for introducing laissez-faire attitude among Judiciary staff. He also oversaw the imprisonment of dozens of suspected political dissidents.

Chapter 7
Kenyatta: A tribalist or a nationalist?

TWO THINGS CHARACTERIZED Kenyatta's life: "his tribal background as a Kikuyu; and his love of the land."[274] Those attributes were evident not only in his much-publicized *Facing Mount Kenya,* an anthropological collection of papers explaining the customs, traditions and life of the Kikuyu people which he wrote while in England, but also in his speeches and actions before and after becoming President.

Almost everything Kenyatta did from the time he entered politics to the time of his death was dictated by ethnicity. Kenyatta's visit to England in 1929, for example, was on behalf of the Kikuyu – not *all Kenyans*. In a letter he wrote from London for publication in *Muigwithania*, a publication of KCA, Kenyatta left no doubt that Kenya belonged to the Kikuyu.

> Now the time has come for us Kikuyu to open our eyes and see how matters stand. If you want the country to really belong to the Kikuyu as God intended…(then) rise up, let us begin and do this… The black people have very much land, and rich land, but they do nothing with it: it remains idle. Now do you want it to continue to be said of us that we are slothful?[275]

As a matter of fact, KCA's primary objective was, "to help the Kikuyu improve himself as a Mu-Kikuyu…"[276] In another paper entitled: *The Life of Chief Wang'ombe: My People the Kikuyu,* Kenyatta talked of "a Kikuyu paradise which Kenyatta said existed before the white man's arrival."[277] The paper ended with "a strong plea for Kikuyu independence."[278]

At Nyeri on 26 July 1952, he said: "I am a leader of Mumbi…"[279] And in a plea for financial support for the construction of the Githunguri College – an idea mooted by Koinange – he wrote:

> To all members of the House of Mumbi wherever you may be. I greet you with all my heart, which is full of gratitude and overjoyed

> for the way the Almighty God has helped by giving us the opportunity of seeing and greeting one another with our hands.
>
> I would like to inform you that African people throughout the continent are awakening and beginning to trust with mutual confidence in each other, determined to work hard for the benefit of their countries. Therefore, arise all of you and let us be united as we set about working hard to do some creative work of lasting value for the whole children of Mumbi.
>
> One of the first objects which I want with all my heart is to see how we could build one beautiful school where Mumbi's children could be educated. What I have in mind is that, before we start doing anything else, we ought to complete the school building which you started at Githunguri so that it may be like a great gift or memorial to our father Gikuyu and our mother Mumbi.
>
> May the Peace of Almighty God keep us united and give us the strength and ability to accomplish that work with love. I am Your Servant, Jomo Kenyatta.[280]

Through that appeal, enough money was collected, and the school was built and opened in January 1939.

Interestingly, when Kenyatta was asked in Maralal whether he considered himself a Kikuyu or a Kenyan, he said he was neither a Kikuyu nor a Kenyan. He thought of himself as an African "who identified himself with (the) cause of freedom of oppressed people everywhere."[281] And if that was not enough, in signing off some of his correspondences, Kenyatta simply wrote: Kikuyu, Kenya, East Africa.[282] That showed where Kenyatta stood during that time of the country's history.

Since becoming Prime Minister and then President, Kenyatta demonstrated an open bias for his Kikuyu people. In his first Cabinet, six out of 15 Ministers were Kikuyu, with key Ministries of Finance, Defense, Foreign Affairs, State, and Attorney General (AG), going to Kenyatta's tribe.[283] The country's political economy was also controlled by Kenyatta, his wife, Mama Ngina, Dr. Mungai, Charles Njonjo and a few others.[284]

In Kenyatta's Cabinet list of 1963, the Kikuyu accounted for 3.5%; the Luo 21%; the Kamba 10.5%; and the Luhya, Mijikenda, Kisii, Kalenjin, Meru, Taita, Maasai, and Kamba, one member each. In 1966, the Kikuyu were 30.4%; in 1969, 31.8%; and in 1974, 31.8%.

Cabinet Members, March 1963

Jomo Kenyatta – Minister for Constitutional Affairs (Kikuyu)

1. Ronald G. Ngala – Minister for Administration (Mijikenda)
2. A M F Web – Legal Affairs (European)
3. Sir Anthony Swann – Defense (European)
4. W. B. Havelock – Agriculture (European)
5. P. M. Muliro – Commerce (Luhya)
6. L. G. Sagini – Education (Kisii)
7. F. M. G. Mati – Health and Housing (Kamba)
8. T. J. Mboya – Labor (Luo)
9. B. R. MacKenzie – Lands, Settlement and Water Development (European)
10. B. Mate – Lands, Surveys and Town Planning (Embu)
11. D. T. arap Moi – Local Government (Kalenjin)
12. J. K. ole Tipis – Social Services (Maasai)
13. B. Jamidar – Tourism, Forests and Wildlife (Asian)

Cabinet Members, June 1963

Jomo Kenyatta – Prime Minister (Kikuyu)

1. Oginga Odinga – Home Affairs (Luo)
2. Tom Mboya – Justice and Constitutional Affairs (Luo)
3. James Gichuru – Finance and Economic Affairs (Kikuyu)
4. Dr. G. Kiano – Commerce and Industry (Kikuyu)
5. Dr. N. Mungai – Health and Housing (Kikuyu)
6. Mbiyu Koinange – Minister of State Pan-African Affairs (Kikuyu)
7. Joseph Murumbi – Minister of State, Prime Minister’s Office (Maasai/Asian)
8. D. Mwanyumba – Works, Commerce and Power (Taita)
9. E. N. Mwendwa – Labor and Social Services (Kamba)
10. J. H. Angaine – Lands and Settlement (Meru)

11. J. D. Otiende – Education (Luhya)
12. Samuel Ayodo – Local Government and Regional Affairs (Luo)
13. Achieng Oneko – Information, Broadcasting and Tourism (Luo)
14. Lawrence Sagini – Natural Resources (Kisii)
15. Bruce McKenzie – Agriculture and Animal Husbandry – (European)
16. Charles Njonjo – Attorney General (Kikuyu)

In his desire to populate the civil service with his people, Kenyatta looked for young Kikuyu men, some of them in their twenties, and gave them key positions in government. Bernard Hinga, a career policeman, was made Police Commissioner at the age of 33; Ben Githu, Commander of the General Service Unit (GSU) at 35; and James Kanyotu, Head of the Special Branch at 28.

Others who were identified at an early age were, Eliud Matu Wamae who became deputy General Manager of the Central Bank of Kenya (CBK) at 28-years-old; Joseph Githenji, Assistant Director of Personnel at 31; and Josephat Njuguna Karanja, High Commissioner to London at 34. Eliud Mahihu and Isaiah Mathenge were district officers in 1961 when they were made provincial commissioners. At 29, Kenneth Matiba was an education officer and five years later became a Permanent Secretary.

Out of seven PCs during the first decade of Kenyatta's rule, four were Kikuyu; and almost all heads of parastatals in the 1970s were from Central region. By 1972, 50% of all top jobs in government were held by the Kikuyu.[285] Bernard Hinga, a Kikuyu, was Police Commissioner from 1964 until 1978 when Kenyatta died. In senior diplomatic positions, Kenyatta reserved the most prestigious posts for the Kikuyu. He chose Josephat Njuguna Karanja, a fellow Kikuyu from Kiambu as the first High Commissioner to London brushing away pleas by Mboya to have Bethwell Alan Ogot, a Luo, posted there. Because of its centuries'-old relations with Kenya, the Court of St James is the most important mission for any Commonwealth nation. Kenyatta proposed Ogot for New Delhi, but he turned down the offer. Instead, the President picked Odinga's close ally, Adala Otuko, for the less-important Russia post; and sent Burudi Nabwera, a Luhya, to the United Nations in New York. Robert Ouko, a Luo and Mboya's friend, who at independence had been appointed Permanent Secretary of

Foreign Affairs, lasted in his position for only one year. He was transferred to the Ministry of Works and his position taken by a Kikuyu, Leonard Kibinge.[286]

The following is a list of influential Kikuyu that headed key parastatal organizations in the 1970s:

1. Bethuel Gecaga – Chairman, Industrial Development Bank
2. Philip Ndegwa – Chairman, Agricultural Finance Corporation
3. John Michuki – Executive chairman, Kenya Commercial Bank
4. Matu Wamae – Executive director, Industrial and Commercial Development Corporation
5. Ephantus Gakuo – Director general, East African Railways
6. Stanley Githunguri – Executive chairman, National Bank of Kenya
7. Peter Kinyanjui – Chairman, East African Harbors Corporation
8. Julius Gecau – Managing director, East African Power and Lighting Company

While it makes sense to suggest that the elevation of the Kikuyu to higher offices was due to their advanced education, it is equally reasonable to argue that tribalism and politics played a major part. Another argument could be that the Kikuyu was the largest community among the 42 tribes and thus deserved a bigger slice of the cake. But those in power during Kenyatta's time exhibited a blatant bias against the rest of the country for no reason other than tribalism. For example, in one swoop in 1969, Dr. Julius Kiano, who was the Minister of Education, sacked 12 European teachers in Nairobi and replaced them with Africans. Ten of them were Kikuyu.

In some cases, the functionaries did not go for qualified candidates to fill up government jobs. They rather employed under-qualified staff from the Kikuyu community in positions of authority than qualified ones from other tribes.[287] That left smaller communities disgruntled and threatened. "It would appear that what Kenyatta was calling nationalization was indeed the "Kikuyunization" of Kenya, and what he was calling nationalism was the ongoing protection of his political and economic interests."[288]

Murmurs of dissatisfaction over distribution of jobs rattled the Kenyatta regime, and at a meeting at Githunguri in September 1964, he attempted to address it: “There are those who say: ’we are big; Kenyatta is our Prime Minister,’ as though I were a Kikuyu Prime Minister…I am not just the Prime Minister of the Kikuyu. Whether you are a Kikuyu, or a member of another tribe, is beside the point. My work is essentially for the African people, and I have no room for tribalism in my heart.”[289] But Kenyatta was unapologetic about the fact that it was the Kikuyu who fought for independence.

> Some want to tell us that Kenya belongs to all the people. Granted, I know that much. But I have a question to ask: when we were shedding blood, some languishing in prison and some suffering in forests, fighting for *uhuru*, where were the bloody others? … If you want honey, bear the sting off the bee…[290]

However, there was a feeling it was the Kikuyu themselves who encouraged tribalistic outrage against the community. They had the tendency of speaking Kikuyu in public offices and loved flaunting their wealth by driving around in expensive cars and buying properties in affluent neighborhoods whereas their domestic employees were invariably members of poor smaller tribes. In Parliament, MPs - some of them Kikuyu – expressed outrage at the surge of the Kikuyu over other communities. “I feel humiliated” said Gichugu MP, K. N. Gichoya, in June 1964, “when I hear people say the government is a government of the Luo and the Kikuyu. I am a Kikuyu, and when I hear that I feel somewhat humiliated. It is true that the prime Minister, under the constitution, has the powers to select his own Cabinet, but that Cabinet is expected to be a broad-based Cabinet, so that *harambee* can get its true meaning.”[291]

At one time, an MP tabled a long list of the Kikuyu in government specifically singling out those who earned K£.1,000 (KES.20,000) per month in salary. In the Ministry of Agriculture alone, he named the Permanent Secretary, G. K. Kariithi, his deputy, the two undersecretaries and the director of agriculture.[292]

However, the policy of Kikuyunization stretched beyond the civil service. Since the early 1960s when the government initiated the indigenization program to root out Europeans and Asians, the Kikuyu became the merchant kings. They received government loans to buy off Asian businesses, and within a few years, were dominating distribution, retailing, and wholesale enterprises. Highly-placed individuals such as Njenga

Karume, Charles Rubia, and Kenneth Matiba, were some of the Kikuyu who benefitted from the departure of alien enterprises…"[293]

It turned out too that patronage and nepotism were increasingly the way business was done.[294]

In 1965, Kenyatta attempted to publicly distance himself from tribalism.

> It is true that each one of us belongs to a tribe and that we cannot change our tribes, but we must suspect the motives of those who masquerade as leaders yet appeal to tribal emotions. We must condemn those who seek to exploit such emotions for personal support and prestige. [295]

However, Kenyatta failed to reprimand those within his orbit known to be promoting tribalism. The impression left with *wananchi* was that Kenyatta's priority was on building a predominantly Kikuyu civil service. By 1965 virtually the entire administrative cadre of government workers consisted of Kenyan citizens"[296] many of them Kikuyu.

That appeared to confirm what British colonialists had reported along that Kenyatta "was a tribalist and the greatest single menace to the unity of Kenya."[297] In one letter to London, Jock Leslie-Melville of the New Kenya Party expressed a view that "Kenyatta was a tribalist…who surrounded himself with (Kikuyu) ex-detainees."[298]

Tom Mboya disagreed. "Kenyatta's leadership is in fact African leadership and not Kikuyu leadership," he said. He castigated the Kikuyu who claimed Kenyatta belonged only to the Kikuyu warning such attitude could produce an anti-Kikuyu reaction from other tribes.[299]

A study reported by the Scandinavian Institute of African Studies in 1974 showed in 1969 and in 1972, the Kikuyu – totaling 20% of the Kenya population estimated at 11 million people – were disproportionately represented in 175 highest positions in government that included the President and his Cabinet, assistant Ministers, permanent secretaries, PCs, and DCs as well as commanders of the Armed Forces and heads of prisons, police, immigration and personnel divisions. They took 33.3% of the Cabinet positions and 36.8% of the positions of Permanent Secretaries.[300]

Almost all heads of parastatals in the 1970s were from Central region, majority of them from Kiambu. When John Michuki, a Kikuyu, was Chairman of the Kenya Commercial Bank (KCB), many of the employees were from his tribe leading some to nickname the bank, the Kikuyu Commercial Bank.[301] Other bastions of Kikuyu presence were the National Bank of Kenya and the Central Bank of Kenya. [302]

In the uniformed forces, Kenyatta created the Kenya Air Force and filled it with Kikuyu cadets trained in Israel and Britain. He also formed the General Service Unit (GSU) as a "counterweight to the military" and appointed a Kikuyu as commander. During his years in power, Kenyatta progressively enlarged the Kikuyu control over the apparatuses of coercion.[303]

His own bodyguards were chosen from the most loyal Kikuyu; hand-picked and vetted from among members of the GSU. To incorporate other tribes, Ministers closest to Kenyatta were asked to recommend their most trusted tribesmen to be trained by the British Special Air Service (SAS). The first Recce (reconnaissance unit) Commanding Officer in Kenya was a former British Chief of Defense Staff, (CDS), S. G. Thomson, who served for less than a year until 17 July 1961. Three other British officers followed: S. G. Smith from 27 July 1961 to 20 March 1963; B. McKenzie from 21 March 1963 to 26 February 1964; and R. J. Angel from 27 February 1964 to April 1967. The first African Commander of Recce unit was B. M. Gethi who took over on 18 April 1967 and served for nine years – until 1 September 1978. Between Gethi's departure and 2016, there were 10 commanders distributed ethnically as follows: three from the GEMA community, four Kalenjin, one Luhya, one Coastarian, and one Kamba.

In 1973, MP Martin Shikuku narrated a story in Parliament told him by his grandfather which appeared to characterize the dangers of Kikuyunization.

> Once upon a time there was a great famine and all the hyenas except ten died. Thus, the hyenas went into a little cave where there was little water, and they agreed between themselves that none of them should leave the cave because if anyone of them leaves the cave and dies outside the cave, the rest will not have the strength to walk their and eat him up. Therefore, they agreed that they should all stay together so that the first hyena to die would be eaten by the others.
>
> One day, however, one of the hyenas decided to go out of the cave, and when it was outside, fortunately, somebody's lamb went astray,

> and this hyena moved stealthily, jumped on it and ate it up all alone. Normally when a hyena is satisfied, it laughs or shouts. Therefore, this hyena started laughing and the others in the cave wondered why this hyena was laughing. One of the hyenas in the cave told the others not to worry why the one hyena outside the cave was laughing. He told them, do not worry. He will come and tell us what is amusing him outside. However, because this hyena had eaten too much, he forgot to clean its moustache and large patches of blood splattered on its side.
>
> When it finally entered the cave, one of the other hyenas noticed the blood on the moustache and jumped on it, and bit it hard on the moustache and removed the whole thing. The others followed, and instead of just licking the blood on the sides of the hyenas, they ate it up and pulled off its intestines and all the hyenas ate up this one hyena together with whatever it had eaten outside."[304]

Moral of the story: If the Kikuyu refused to share the cake with the rest of Kenyans, they would eventually be "eaten" by the rest. But if there was one man who didn't mind being "eaten" was Kenyatta. He never relented. On 22 November 1974, Kenyatta appointed 21 Permanent Secretaries who are the accounting officers in various Ministries. Eleven of them – including the Head of the Civil Service, G. K. Kariithi – were Kikuyu, four Luo, two Kamba, two Coastarians, one Kalenjin, and one Luhya.

Chapter 8

Mama Ngina and the poaching menace

OF ALL THE blunders Kenyatta made as President, none was more damaging to his international reputation as the involvement of his wife Mama Ngina and daughter Margaret in the illegal business of game poaching. It was during Kenyatta's time that poaching of animals for elephant tusks, rhino horns, skins and other animal products, took a histrionic dimension.

Illegal animal killings went on in almost all parks and game reserves, but Tsavo National Park was the most hit. The magnitude of poaching and illegal sale of ivory in general emerged in July 1968 when authorities raided a warehouse in Mombasa and found crates marked "jaggery" though containing a cache of ivory worth GBP.52,000 (KES.7 million), destined for the Persian Gulf. The consignment roughly equaled the total sales at the Mombasa ivory room for the whole year, according to conservation writer John Frederick Walker in his book, "Ivory Ghosts: The White Gold of History and the Fate of Elephants".[305] From 1974-1975, fifteen thousand elephants estimated to be half of the park's remaining population were lost to poachers.[306] And between 1973 and 1979, an estimated ten thousand rhinos were killed.[307]

Thousands of tons of ivory were sold every week at the government auctions in the coastal city of Mombasa. At the same time, large quantities of illegal consignments were finding their way out of the country through corrupt channels.

Wildlife poaching did not start with the independent government. Like corruption, killing of animals occurred as way back as the 19th Century when Europeans and Arabs killed elephants and used African slaves to carry the tusks to the coast for onward transportation overseas. Many legitimate companies applied and were issued with permits to hunt for what was called the "white gold.' The only thing dealers were required to have was a dealer's permit. When the British government enacted a law banning free movement of ivory in 1900, it was largely ignored, and poaching continued involving private dealers, customs officials, and European wardens, working with the Game Department. Several of them were prosecuted and convicted. After the end of the World War II, the business was taken over by Asian dealers until the entry of Africans in the early 1970s.

In 1970, the colonial administration which had the customs and excise department control sales was reformed and the Game Department was given the responsibility of selling government ivory through direct negotiations with individual dealers. For six months, from September 1973, all trade in ivory and hunting of elephants was banned. When it was lifted in April 1974, all trade in tusks became the monopoly of the government.[308]

However, after independence, poaching would have taken a different direction if President Kenyatta did not unilaterally make wrong decisions on matters of wildlife conservation at the beginning of his rule. One of the worst decisions he made was to use ivory as an item of "reward" to Mau Mau generals for their sacrifices in the liberation war. Kenyatta allegedly promised a section of Mau Mau generals that ivory was to be "their fruit."

In 1964, against professional advice from the Game Department – Kenyatta personally allowed a former Mau Mau fighter to sell wildlife parts allegedly gathered in the forests during the war. General Kamiti was the first to enjoy that privilege and was permitted to handle animal parts worth up to K£.75,000 (KES.10.2 million). The Game Department was to sell the trophies on behalf of general Kamiti in an arrangement that baffled conservationists. However, when time came for the former warrior to produce the items he could only master a few pieces of ivory and a few poor leopard skins.[309]

That first permit opened floodgates for others to plunge into the trade thus accelerating the pace of poaching. Former freedom fighters went around killing animals and submitting the animal parts to the Game Department as if the trophies had been recovered from forests.

In the following years, more requests for trading permits were received at the Dame Department from former freedom fighters. In 1973, Field Marshall Muthoni walked into the office claiming she had been permitted by Kenyatta to buy ivory at a reduced price. The officer who attended to her, Michael Macharia, refused to approve the transaction. "Within minutes, a call came back from the President himself in which Macharia was asked to explain himself. Not unsurprisingly, he was without explanation. The Field Marshall got her ivory at give-away prices."[310]

Although Muthoni used Kenyatta's name to obtain ivory during the whole of 1972 and 1973, her identity as a Field Marshall in the Mau Mau could not be verified. There was no mention of any such "Field Marshal" during the insurgency and "the whole affair seemed to have been fabricated."[311] Her identity remained unknown though she was feted with publicity when she emerged from the forests allegedly as one of the Mau Mau fighters. Soon after independence many people entered forests only to emerge and identify themselves as Mau Mau fighters. Muthoni could have been one of them. Nevertheless, Kenyatta instructed that both her and her accomplices be given permits, and she continued to "recover" ivory for years from areas hundreds of miles away from Aberdare Mountains.[312]

It was around that time that Mama Ngina and Margaret Wambui Kenyatta entered the world of ivory trading along with Dr. Mungai and other officials throughout all levels of government.[313] They saw an opportunity to make money. Reports say Mama Ngina and close relatives earned KES.800,000 a year from illegal ivory trade.[314]

When they began trading in trophies in early 1974, demand for elephant tusks and rhino horns had peaked in Hongkong and China - the two countries well known for illegal trading in animal parts at that time. From there, the products were transported to other Asian countries including Japan which became the largest consumer of ivory in the world.[315]The international science and technology magazine, "*New Scientist*" reported in 1975 that "Ngina helped arrange for ivory tusks to be transported out of the country on State planes."[316]

It is not known who got Mama Ngina and Margaret into the illegal ivory trading. But the Kenyatta family owned huge tracks of land in Taveta sub-County next to Tsavo National Park; and the temptation of seeing large herds of elephants roaming around with their tusks wiping the wind must have convinced them there was money to be had.

Like her husband, Mama Ngina comes from Kiambu district, a child of the powerful colonial chief Muhoho wa Gathecha and Anne Nyokabi Muhoho. As an administrative officer, Muhoho was a well-to-do man who commanded great respect among his people. Mama Ngina thus came from a privileged background.

At the age of 18, she was offered to 57-year old Jomo Kenyatta as a "gift" and was married in 1951. Little is known about her teenage years and the kind of education, if any, she received. What is in the public domain is that she became a Catholic along with some members of her family and went to Church regularly. After independence, she assumed the title of "Mama" and was the President's most cherished soul mate. "Mama Ngina had literally gone from the village to State House… (and her) learning curve – into a lady of culture and elegance – was steep, but we all admired her resolve."[317] A biographer, the former Governor of the Central Bank, Duncan Ndegwa, remembers the day when Mama Ngina shocked her husband.

> On the occasion of Kenyatta's inauguration…Mama Ngina emerged dressed in long pants and a sleeveless tunic. Mzee had never seen his wife dressed in trousers, or otherwise, so loudly deviating from her norms of dress. It was a tense journey to the ceremony.[318]

The First Lady built for herself a reputation as a person hungering for material possessions. She was particularly captivated by real estate and went out in a big way to acquire as much land and buildings as she could while her husband was in power. "She was very beautiful but massively corrupt,"[319] a British official said of her.

Margaret Wambui, on the other hand, was the mayor of Nairobi between 1970 and 1976 and for ten years thereafter Kenya's representative to United Nations Environmental Program (UNEP). She went into politics early when in 1960 she was nominated as a member of the Kiambu County council representing Dagoretti ward. At independence, she was elected a councilor of the Nairobi city council and was re-elected three times during which time she was elected Mayor.

She was one of two children sired by Kenyatta with his first wife, Grace Wahu.[320] The other was Peter Muigai. While Kenyatta was in detention, it was Wambui who eased Kenyatta's loneliness by sending him frequent letters. Many saw her as Kenyatta's most favorite daughter, and it was not surprising that she was rewarded with government positions and opportunities to make money after independence.

The country had strict foreign exchange controls in the 1970s following the balance of payments crisis in 1971/72, but that did not deter the elite from circumventing regulations and exporting large sums of money overseas.

“There is a wholesale grabbing of money in Kenya,” MP Martin Shikuku lamented in Parliament in 1972. “These big men steal public funds, and they have friends of influence, and they get away with it.”[321]Reports had emerged of the Kenyattas buying properties abroad.

Early in 1974 a game warden, Ian Parker, was asked by private conservationists, among them J. Block, a local hotelier, and Tony Dyer then president of the East African Professional Hunters’ Association, to prepare a comprehensive confidential report on the extent of poaching and corruption in the wildlife sector. Initially, the report, to be called simply EBUR (Latin for ivory), was to be confined to two or three sponsors for fear of retribution, but it was later released to the British High Commission and the American embassy in Nairobi who came back to say the report was “too hot” to handle because it touched on members of the Kenyatta family.

It was hoped in conservation and diplomatic circles that exposure of Kenyatta’s involvement in the illegal trade would trigger reaction from foreign governments and spare animal slaughter. When the media got wind of its existence, on 2 February 1975, Block and others decided to forward a copy of the report to the Director of Intelligence, James Kanyotu, who expressed the President’s desire for secrecy. [322] The report was muzzled and those who were familiar with its contents were intimidated to remain quiet.

A British Parliamentarian friendly to Kenya, Lord Fenner Brockway, reacted angrily when he saw reports on the contents of EBUR and wrote a damning letter to *The Times:* “I find it difficult to believe that Kenyatta himself has been aware of – still less participated in – the exploitation of man and nature. Nevertheless, the evidence against Kenya’s elite appears to be damning.” He called on Kenyatta to investigate the allegations made in the EBUR report “and the whole aggrandizement which lies behind them, and to advise how it be ended.”[323] Kenyatta simply ignored that plea.

In 1973, however, buckling under pressure from conservationists around the world, Kenyatta revoked all private elephant tusks trade permits, though “loopholes remained in legislation that allowed unscrupulous government officials to sell trophies in the government Mombasa ivory auction rooms, thus creating opportunities that were exploited by ivory traffickers.”[324]

In July 1974, licensed hunters went to the Minister for Tourism and Wildlife, Mathews Ogutu, to express concern about the growing ivory trade and the involvement of the Kenyatta family. This is what Ogutu told them:

"What can I do when he (Mzee Kenyatta) has just instructed me to issue a permit for 15 tons (of ivory) to Margaret Kenyatta and 5 tons to Njoroge Mungai (Kenya's Minister for foreign Affairs)?"[325]

The Game Department also appeared to conceal information for reasons only known to top officials. In some instances, sources and destination of ivory were not indicated; in others, whole pages of entries were crossed out without explanation. Whatever information was available in the register indicated a sharp increase in supplies from the Game Department directly to individuals or dealers rather than to Ivory Rooms in Mombasa for auction as was the normal procedure.

There was always some fidgeting of numbers to confuse custom officials and the traffickers to make money. In 1975, for example, Kenya exported to Hongkong 106 tons of ivory, but figures in Hongkong showed 148 tons. No one knows what happened to the missing 42 tons, but suspicion was that they were smuggled out of Kenya.[326]

Mama Ngina also reportedly traded in charcoal. She exported the products to the Middle East without caring about the long-term effects of deforestation. In 1971, the government announced a ban on charcoal production, but that ban was not officially gazetted and Mama Ngina reportedly continued to export the product.

There were many stories about ivory poaching and a whole range of other (alleged wrongdoings) implicating the Kenyatta family at the time. The feeling of many was that the old man was slowly getting beyond (his prime). As he got more aged, so younger 'wolves' began to take over, and she [Mama Ngina] was one of them…"[327] When her husband died in 1978, she became the epitome of corruption.[328]

Through the United Africa Corporation (UAC) in which she was the major shareholder, Margaret Wambui exported 50 tons of ivory to Peking, (now Beijing) China in 1972. Unspecified shipments also made their way to Shanghai and Peking throughout 1973 and 1974 among them one delivery of 10 tons of ivory.

A report written by Jon Tinker of the *New Scientist,* said the ivory was flown aboard the Belgian airline Sabena to Athens and then to Brussels. The export license showed the ivory was headed for Peking, while a letter from the Game Department to customs officials at Nairobi airport indicated it was headed for Hongkong and Japan.[329]

An UAC official said all the ivory came from the Game Department despite a ban by the department that, “all dealings in ivory be suspended indefinitely with effect from the first of September 1973.”[330] And even after the ban was lifted in July 1974, only the government could trade in ivory tusks. However, that order was ignored by officials who continued to issue trading licenses and both Mama Ngina and Margaret Wambui were beneficiaries.

When questions were raised about violation of the ban, the government claimed the ivory exported through those licenses was not connected with poaching, nor was there any evidence of bribery and corruption. The State was particularly incensed that Kenyatta’s family name had been dragged in, in discussions of the issue.[331] Instead, officials blamed not local operators, but what it called ivory magnates from outside Africa, in Belgium, Britain and the Far East for involvement in poaching.[332] Another explanation from the government was that there was a “grace period” to allow dealers to dispose of whatever stocks they had. The only problem with this position is that no public pronouncement was made to that effect.

In Kenyatta’s Cabinet, two Assistant Ministers in the Ministry of Tourism and Wildlife, JM Kariuki and Clement Lubembe, as well as Minister Paul Ngei were identified as among those who bought trophies directly from the department.[333] Others included the Chief Warden, John Mutinda, who is cited in various testimonies as having either colluded with business people to siphon out ivory by issuing them with permits or personally participated in exportation of the product.

Several important people and game officials were arrested. In 1973, Esther Mwikali Kariuki, wife of JM Kariuki, was arrested and prosecuted for illegal possession of ivory and she was fined K£.450 (KES.9,000). A businessman W. Harvey and four others were arrested in August 1973 in possession of 63 elephant tusks but were released a few weeks later after the police prosecutor entered a *nolle-prosequi* plea on “instructions from above”.

At one time, JM Kariuki planned to introduce a motion in Parliament that would have implicated Kenyatta in corruption including his involvement in illegal trading. That never happened. In early March 1975, Kariuki was abducted from the Hilton Hotel in downtown Nairobi, shot and his body dumped in Ngong forest. His killers have never been found.

On 29 December 1974, a warehouse was raided in Nairobi’s industrial area and 800 tusks worth US$.1.4 million (KES.1.4 billion) ready for shipment were seized. When officials went back a few days later to collect the ivory from government stores, only 295 tusks worth US$.55,000 (KES.5.5 million) were found, the rest having disappeared in thin air. Rumors were rife that very senior state officials were involved but no arrest was ever made.[334]

During that whole period, a marked increase in poaching of elephants and rhino in Kenya's game parks was noted. "Some Game Department officials and *wabenzi* poachers…(were) observed, identified, and reported, operating boldly and with impunity at Maasai Mara Game Reserve, Tsavo (West) National Park, South Horr Valley (an elephant sanctuary), Meru Game Reserve, Mount Kulal (in northern Kenya) and Ukambani (Tsavo East), among other places."[335] There was an echo from conservationists for the resignation of Minister Ogutu, but that did not happen.

By 1974, Kenyatta and Mama Ngina had "amassed extraordinary personal assets" suspected to have been acquired partly from illegal exports. In 1972, Mama Ngina bought the old Gailey and Roberts commercial building on Kimathi Street and immediately doubled the rent. One tenant's monthly rent payment shot up from KES.4,000 to KES.10,000. The tenant was asked to pay or face closure or deportation. He paid. That is how Kenyatta's business-minded wife operated.

In 1973/1974, she reportedly bought 21 houses at the Swiss Cottage residential area in London for GBP.600,000 (KES.81 million) in cash.[336] It was not known if the money came from the sale of illegal ivory, but the purchase certainly raised eyebrows. "There is virtually no way that she could have accumulated such large external funds except by contravening Kenya's currency regulations."[337]

Such corruption continued throughout the 1980s – a bit more discreetly, to be sure – but no less pervasively.[338]

By 1979, 47 high ranking officials out of 77 wardens in the Wildlife Conservation and Management Department, a successor to the Game Department, were under police investigation.[339] There were many other instances when people were arrested with huge quantities of ivory parts, appeared in court and were let go after intervention from senior government officials. One American owner of an import-export company, Richard William Harvey, two Kenyans and two Ugandans, were arrested in August

1973 in possession of 63 elephant tusks weighing 1,480 pounds. The following month they were all released "on instructions from the Attorney General's Office."

Judicial officials were frustrated by the constant interference in cases by government officials prompting one magistrate, P. N. Tank, to remark when dealing with a case of two men charged with illegal possession of 26,500 colobus monkey skins that "…it looked as though there was no rule of law as far as trophies were concerned."[340]

The involvement of uniformed officers in poaching and trading in animal parts has been a well-known fact. Apart from rangers and senior wildlife officials, the military and the police have also engaged in illicit trade. In addition, corrupt Judges and prosecutors have been bribed to either 'kill' investigations or free suspects once they appear in court. Whenever fines were imposed they were so small that culprits easily went free. Between January 2008 and June 2013, 70% of the suspects taken to court paid fines and only 4% were sent to jail. In addition, 15% of the 202 cases presented in court during that period were withdrawn.[341]

During Kenyatta's era, at least 70,000 elephants were killed representing about half of the entire population of the elephants, illustrating the extent of high level corruption.[342]

Politicians and businessmen feared Mama Ngina because of her influence, making her, "one of the most unpopular figures in the country." At one time, she instigated the deportation of an Asian businessman who "insulted" her for demanding payment of an overdue bill for clothing.[343] Like her husband, Mama Ngina never paid most of her bills. In June 1973, for example, the *Sunday Times* of London reported that after buying ivory worth US$.264,000 (KES.27 million) from local dealers, she refused to pay, leaving the sellers to absorb the loss.

Despite a 1989 world ban by the Convention on International Trade in Endangered Species (CITES) on the sale of ivory, the business boomed. In 1971, a kilogram of raw ivory was selling at US$.9.44 (KES.977), in Hongkong. The price went up to US$.12.10 (KES.1,252) in 1972, and in 1973 the product was selling at US$.30.63 (KES.3,170) per kilogram. During the same period, Kenya exported to Hongkong 31.438 tons, 44.457 tons and 146.757 tons respectively.[344] Kenyan ivory also made its way to the United

Kingdom, though in a lesser amount. Official records show that in 1972, Hongkong alone imported 1,000 rhino horns from Kenya.[345]

In 1989, at least three elephants were being killed in Kenya daily. The price of tusks skyrocketed to US$.140 (KES.14,490) per pound, meaning a middle man could earn about US$.3,600 (KES.372,600) from each dead elephant. "Is it any wonder that corruption and dishonesty were rampant?"[346] asked one observer. By 1990, Kenya's elephant population had declined by 85% and rhino by 97%; the finger of blame was directed at the corruption in the wildlife sector.

It was known "a few senior wildlife officials took an active part in poaching and the embezzlement of funds from sale of trophies and other animal parts. Rangers were often required to carry out illegal activities for their superiors, in addition to misdemeanors of their own. Honest officers attempting to resist corruption risked victimization."[347]

A good example was that of the then director of the Kenya Wildlife Service (KWS), Perez Olindo, who was threatened with death after sacking 40 wardens believed to be corrupt in the late 1980s. The supposed guardians of the trade, the Game Department, became a pivotal institution in the business it was supposed to suppress.

A report prepared by Richard Leakey, director of KWS and funded by the World Bank, said at the end of 1988, poaching had become uncontrollable.

To demonstrate the government's commitment in fighting poaching and illegal ivory trade, Moi staged a dramatic burning of some two thousand tusks on 18 July 1989 at an internationally publicized event within the Nairobi National Park. The idea of charring the tusks instead of selling them for money to aid wildlife conservation was viewed variously as a publicity stunt and a practical move to deal with the escalating problem of illegal activities in game reserves. Leakey was proud of the event which attracted adjectives such as "idealistic, imaginative, moral."

Neither Mama Ngina nor Margaret Wambui has responded to the allegations about poaching and charcoal trading. While the latter died in early 2017, the former sits at the top of a mega empire of businesses worth billions of shillings.

Ironically, in 2010 Mama Ngina, talking to a local radio station, Kameme FM, which her family owns claimed the late President had no money when he died and that she had to sell land to educate her children, a statement that amused many Kenyans given what was known about Kenyatta's wealth. She was considered one of the richest individuals in the country with interest in plantations, ranches, real estate and hotels.[348]

Mines conspiracy and coffee smuggling

On 27 September 1974, a damning report appeared in the *Washington Post* by the newspaper's Africa bureau chief in Nairobi, David B. Ottaway, naming President Kenyatta, his family and top government Ministers, for conspiring to throw out two Americans, John Saul and Elliot Miller, so that they could take over what he said was "the world's largest ruby mine" in the Tsavo National Park. Eight months earlier, on 14 January 1974, another American, James Skane, General Manager of Esso Kenya, had been deported from Kenya for trying to collect a two-year old bill from Kenyatta estimated at US$.70,000 (KES.7,245,000) for supplies delivered to the President's businesses. The paper also claimed several other foreign and local firms were owed substantial amounts of money by the President.

In addition, according to Ottaway, Foreign Minister Mungai, had asked a local Columbia Pictures television producer for a US$.14,000 (KES.1,449,000) '*harambee*' contribution "to what was vaguely described as a children's school." The producer, Carl Radin, declined to part with the money. The newspaper report caused a major stir in Kenya and prompted Mungai to dismiss it as an attempt to tarnish the government's name, "indeed a malicious and gratuitous insult…We shall not tolerate the abuse of the freedoms we are now enjoying whether it be by local or foreign individuals," he said in a statement.

That same year (1974), the get-rich-quick Kenyan elite resorted to smuggling of coffee from across the border in Uganda. The world's largest producer of coffee, Brazil, had lost more than 70% of its crop to frost which exposed the markets to a serious shortage of the commodity. Uganda, a major producer, was under a US trade embargo because of Idi Amin's bizarre behavior of harassing and threatening foreigners including Americans. Following the trade embargo, Kenya became the only country through which the commodity could pass to reach markets abroad.

Kenyan politicians and businessmen saw an opportunity and started smuggling coffee through the border using lorries and water vessels via Lake

Victoria on to the port of Mombasa for onward shipment abroad. Millions of Kenya shillings changed hands every day as middlemen bought the 'black gold' cheaply from farmers to sell it at a premium to waiting merchants. Senior government officials including Ministers abandoned work in Nairobi and pitched tent at the sleepy border village of Chepkube, sometimes for weeks, returning with sackfuls of money stashed in car boots. The coffee was shipped abroad, some of it disappearing en-route without trace.

Theft of coffee consignments was so prevalent that the Lloyds of London, an internationally-renowned insurance company, refused to insure shipments of Kenyan coffee because so much of it went missing in transit.[349] Although intense smuggling of coffee through Kenya ended in 1977, small scale transportation of the product through Kenya continued throughout the decade. At one time, the manager of a Uganda coffee cooperative society was arrested as he tried to load 14 lorries with Arabica coffee for transportation to Mombasa via the border town of Malaba. In 1979 alone, 50,000 tons of Uganda coffee; out of a crop of 165,000 tons were lost to smuggling.[350]

The illegal business enriched individuals but also Kenya's exchequer which, for the first time, recorded a balance of payments surplus of KES.2.2 billion. Foreign exchange reserves went up to KES.2.7 billion, the country's GDP ratcheted to a record 7.3%, and the supply of money rose sharply to 47%.[351]

The money obtained from coffee smuggling enabled civil servants and other elites to buy luxury cars and invest in real estate. Some boasted having so much money; they didn't know what to do with it.[352] In his autobiography, "*A Daunting Journey*," Jeremiah Kiereini – Kenya's third Head of Civil Service - writes that the coffee boom gave him and some of his friends, odd ideas about status and money. "We would not allow people who had cars with a single exhaust to sit with those of us who had dual exhaust systems, at clubs and social events," he notes. He also narrates a story about a friend who pulled out his bank statement in a bar and showed it to a young girl sitting near him. In one of those odd moments of silence that sometimes occur in a noisy crowded place, he loudly asked: "How does it feel to be sitting next to a millionaire?"[353] There was a blush and a silence.

When the price of coffee tumbled, the coffee smuggling across the Uganda/Kenya border stopped. Kenyans went back to fleecing public coffers.

Tender frauds

In 1978 Kenya's leading newspaper, the *Daily Nation* revealed a huge tender fraud at the Embakasi Airport (now Jomo Kenyatta International Airport). It reported that airport officials benefited from the GBP.25 million (KES.3.4 billion) tender meant to transform Embakasi – which started functioning in 1958 – into a modern facility. The fraud was described as the first big tender scam in which some airport officials made a lot of money by using the President's name to arm-twist everyone from contractors to suppliers. Karl Ziegler, a local banker, said in an interview: "The Mister 10% became Mister 20%. It was more than bribery; it was extortion, protection money."[354]

The airport scandal was another example of how officials in Kenyatta's government stole from the government with impunity. "The money-earning technique employed on the airport construction pointed the way to the massive and systematic corruption of later years,"[355] said a local newspaper. Like in all the previous cases, no one was prosecuted.

To gloss over the scandals, the government gathered top government officials and Members of Parliament at the Kenya Institute of Administration-KIA (now Kenya School of Government-KSG) in January 1978 to showcase its determination to fight corruption. The conference called the "Kenya We Want" engaged in long discussions about graft with many agreeing that high ranking officials were behind the menace. It concluded that corruption was a "festering sore"[356] that needed to be stopped. Church leaders weighed in, calling graft a "dangerous cancer…that has damaged many levels of our society…we must condemn the practice unreservedly no matter what the consequences." They expressed the view that the Kenyan political system was led by corrupt individuals who used coercion to foster their private interests.[357]

PLO Lumumba, a former anti-corruption czar, calls leaders who engage in corruption, "mis-leaders." He says "mis-leaders" are animated by the desire for personal glory. They may be courageous and charismatic "but they use these qualities for their personal interest…they will improve their material conditions while they keep their followers in a perpetual state of sorrow and desperation…"[358]

As Kenyatta's health deteriorated during the sunset years of his life, the "Kiambu Mafia" fast-tracked their nefarious schemes of looting by "exploiting his name and regularly forging his signature on official purchasing documents as they feathered their own nests. In addition, bank robberies became a norm.[359] Many of the major robberies in Nairobi by gangsters were reportedly committed in connivance with security officers. Hardcore criminals such as Danson Gachui who was "Nairobi's most wanted criminal," before he was killed in 1977, and Gachuhi wa Wakinyonga who was killed in a hail of bullets at a night-club on 26 June 1978 after robbing a bank in Thika, reportedly sourced their arms from corrupt policemen. Within a period of one month in June/July 1971 four daylight bank robberies took place in Nairobi, and twenty-three occurred during a period of one and half years up to July 1971 prompting Kenyatta to issue a statement saying his government viewed "all these crimes with the utmost seriousness and concern."[360]

It took the single-handed courage of one member of the Kenya Police Reserve, a former British national, Robert Shaw, to hunt down and kill the criminals one by one. The 300-pound crime buster was also a volunteer administrator at Starehe Boys Center in Nairobi. But it was his work as Senior Superintendent of Police working outside the mainstream police protocols that ended the bank robberies in the 1960s and 1970s. The runaway insecurity undoubtedly damaged Kenyatta's legacy.

"Unlike Mandela who has become a latter-day saint and an iconic, inspirational figure far beyond South Africa," said one writer, "Kenyatta is now seen as a diminished, tribalistic and tarnished character."[361] His excesses damaged his "reputation at home and abroad and (obscured)…many of the undeniable contributions and impressive accomplishments of a career that dates to the fight against British colonial rule in the early nineteen fifties."[362]

In retrospect: Kenyan-Asians and Corruption

People of Asian origin have been part of the merchant class since the late 1800s. They operated wholesale and retail businesses and worked as semi-skilled workers in factories. They were ubiquitous in towns as traders, leading to Kisumu, the town abutting Lake Victoria, being referred to as the "Bombay" of Kenya. By the time Kenya got independence, their standards of living were understandably higher than that of Africans. They were the second class citizens enjoying rights and privileges well below the white settlers but much higher than the Africans, who were treated as third class citizens. So, they employed Africans to do menial jobs including housekeeping and tilling of their vegetable gardens.

Those who stayed after *uhuru* used their resources and bank facilities to expand their enterprises, and over time, they became leaders in industry and finance. Indian families such as the Chandarias that invested in wire and stationery manufacturing, the famous biscuit manufacturer House of Manji, Kabazi Canners, which dealt in food processing, and many others became conglomerates.

Many of the Indian manufacturers realized, however, that to succeed in business under an African government, they had either to bribe their way, or incorporate high-level Africans in their board of directors in line with the Kenyanization policy. Thus, prominent Africans like James Kanyotu, a former Director of Intelligence, politician Charles Rubia and others, found themselves in the corporate world either as part-owners or shareholders. Some Africans, like Njenga Karume, went on to establish their own companies.

By 1982, Asians,[363] popularly known as Indians, who were only 1% of the population of 17.5 million people controlled three-fourths of the retail business, 60% of the construction sector, 40% of the insurance and transportation sectors, and 55% of manufacturing. Almost half of the number of doctors and lawyers were of Indian descent.

But even with their success, Indians were always at the receiving end of corruption allegations. Africans accused them of engaging in currency smuggling and hoarding of goods allegedly to spur prices, and of income tax violations and bribery. And because public sector corruption cannot prevail without private sector involvement, the participation of some Indian merchants in the graft menace in Kenya cannot be underestimated. There are those even in the Indian community who believe: “There’s not a single Asian trader who is an honest dealer,” said a Kenyan executive. However, that view is not shared by some Indians who in turn say: “You can’t have Asian corruption without African corruption.”[364] An MP for Kajiado Central, David ole Sankori, put it even more harshly when he told Parliament in July 1994 that behind “every corrupt Asian, there are ten (corrupt) Africans.”[365]

In some instances, it is the Indians themselves who invite blame by engaging in fishy activities. At Independence, for example, Jon Maximian Nazareth, a lawyer and champion of Indian rights, mobilized Indians to contribute money to KANU through Kenyatta and Mboya in anticipation of a nomination slot in the post-independence Parliament. The two reneged on the agreement when they got to power. Instead of nominating Nazareth to Parliament, the Kenyatta government in 1967 deported P. C. Sheth, a prominent member of the East African Indian Congress of which Nazareth was a leader, thus “scattering Indian support for the Kenya Government.”[366] That was an illustration of political corruption in which money was to be exchanged for a public office.

As will be seen in later chapters, some prominent Indian entrepreneurs have featured in many major corruption scandals in Kenya, including the Goldenberg and Anglo Leasing, as well as bank closures that rocked the country in the 1990s.

Chapter 9

From Lamu to Ng'omeni: Beach, here we come!

AFTER LOOTING THE White Highlands, the political elite turned to the 1,400 km of pristine beach-front stretching from Lamu in the north to Ng'omeni in the south. Until 1963, that part of Kenya was controlled by the sultan of Zanzibar based on an agreement of 1895 between the British government and the sultanate. Two months before *uhuru*, Prime Minister Kenyatta signed an agreement in London with the British Colonial Secretary, Duncan Sandys, the Sultan of Zanzibar Sheikh Jamshid, and the Prime Minister of Zanzibar Mohamed Shamte, to transfer the area to the new government.

Immediately, thereafter, a scramble for the coastal prime properties began. Since all sales of frontline plots had to be approved by Kenyatta himself, technocrats found a way of "bribing" him. As a starter, they offered him a 9.056-acre up-market beach plot in Nyali, Mombasa, to soften his heart and get him to start signing the papers…"[367] The manipulation of the President was both dramatic and irregular, nevertheless, a win-win situation for both parties: Kenyatta got what he loved most, and the technocrats opened the door for self-enrichment. Eventually, Kenyatta used the land to build a five-star hotel, The Voyager Beach Resort, which is still run by the family.

Coast PC Eliud Mahihu, in the meantime, was busy processing a long list of requests for beach plots from his family and friends, political bigwigs, and top government officials. At the same time, he was also hatching a scheme to have certain parcels of land exempted from the presidential approval among them trust and agricultural land. On 7 February 1977, Mahihu sent to Kenyatta a file containing several requests for approval which included two plots of ten acres for himself at Nyali. Kenyatta signed them. It was on this parcel, next to Kenyatta's Voyager Beach Resort, that Mahihu built a luxury facility called Bahari Beach Hotel.

Although the Commissioner of Lands was the official custodian of all lands in Kenya, Mahihu – using his position as the senior-most administrative officer at the Coast – regularly overrode him. People were lining up at his office in Mombasa office instead of channeling their requests to the Ministry of Lands and Settlement as required by law. That is how Mahihu became one of the most powerful personalities in the Kenyatta's regime.

In 1970s, one report said, corruption was emblematic in the way land was allocated and changed hands at the Coast. It ceased to belong to the Kenyan people and was considered vacant space to be dished out to politically correct individuals for personal enrichment without reference to the public or to other interested purchasers.[368]

The land grab by Kenyatta and other upcountry politicians took place both at the north and the south coast, wiping out any claims villagers had over their traditional properties. The grabbers began building hotels and holiday mansions and some erected concrete walls that blocked out beach access. Among those who acquired or built hotels in the south coast were Njenga Karume, a businessman-cum-politician and Kenneth Matiba, a top civil servant and later politician. In partnership with two Europeans, Enoch Malmqvist and G. Smith, Matiba established a company called Anglo-Kenya Inns which later became Alliance Hotels[369] that owned a string of hotels along the Kenya coast and upcountry.

The following is a sample list of some of those prominent Kenyans who applied and were granted permission to acquire beach properties along the Kenya coast:

1. D. N. Mbela – Permanent secretary, one-half acre
2. Fred Mati – Speaker of the National Assembly, 2.088 hectares
3. John Mburu – Provincial commissioner, 2.04 acres
4. Dr. E. N. Mngola – Kenyatta's physician, 1.084 acres
5. Samuel Njoroge Waruhiu and another, 5.5 acres
6. J. Wanyoike/G Butler/T. S. Bannister (Jowan Properties Ltd), 174 acres
7. Gurdev Singh (Dee-Dee Development Company), 8.5 acres
8. Isaiah Mathenge – Provincial commissioner (Mwai's Limited), 5.55 acres
9. Paul Ngei – Minister, one acre.

Several Coast politicians also benefitted.

Prof Rashid Mzee, a Coastal MP, called the land-grabbing mania in the region “endemic”[370] while his counterpart James Orengo told Parliament in 1998 that land grabbing along the Kenyan beach had reached phenomenal proportions.”[371]

As a matter of fact, the whole history of the region is characterized by expropriations, lordships and squatting. In 1887, the Sultan of Zanzibar, who controlled a large part of the East African coastline, ceded all his territory, except private lands, to the British East Africa Association (BEAA). The following year, the Imperial British East Africa Company (IBEACo) was founded to develop trade in British controlled areas and made Mombasa its headquarters.

Its rights were transferred to the British government in 1895 turning all waste and abandoned land into crown land. As Europeans streamed into Kenya, they snatched away all rights from Africans including the rights for freehold title deeds in the coastal strip except in rare occasions.[372] Thus, while the Arab and Muslim subjects of the sultan owned private land, indigenous people did not, and came to be known as squatters or tenants of Arab and Swahili landowners.[373]

Hopes for Africans to own private land were extinguished in 1926 when all lands occupied by Africans were designated native reserves. Unlike their counter-parts upcountry who were allocated land after independence, Coastarians especially the local Mijikenda tribes lost out first to Arabs and then to the African elites. The 1963 agreement between Kenyatta and the Sultan recognized Arab land rights over what came to be known as the ten-mile strip meaning the locals could not own land within ten miles from the water-mark.

Subsequently, the Mijikenda people deprived of land invaded and settled on any open fields they could find. Armed radical groups formed to address land rights of the Coastarians, like Kaya Bombo in 1997 and the Mombasa Republican Council (MRC) in 1999 emerged.

On 13 August 1997, the land controversy at the coast exploded when a group of about 20 youths attacked the Likoni Police Station on the south coast. Armed with bows and arrows and at least one pistol, the youths ravaged through the station, stole arms from armory and destroyed property before releasing prisoners and burning the building down. They then went to other government offices and homes of suspected upcountry people and destroyed a total of 43 houses, many business premises and two churches. When they were finished, five police officers and ten civilians lay dead. They said they were protesting over land injustices and unemployment.

In the meantime, the land controversy continued to simmer. A year later, rumors spread that a clandestine movement opposed to the 1963 Kenyatta-Sultan agreement on the ten-mile strip was recruiting members with the intention of seceding from Kenya. The secret activities of a group known as the Mombasa Republican Council (MRC) continued until 2008 when it came up with demands for a separate state encompassing the territory between Tanzania and Somali coastal areas.

Violence did in fact erupt and scores of people were killed in various attacks targeting up-country people until the movement was legalized in 2011. The MRC blamed Kenyatta for the state of landlessness at the Coast.

A well-known coast-born academic, Professor Ali Mazrui, claimed extensive grabbing of land led many Coastal Kenyans to regard non-Coastal Africans as "internal colonizers of the Kenyan Coast."

> As someone who comes from the Kenya Coast, I have seen over the years the wealth of the Coast pass from Coastal hands into the hands of "non-Coastal Kenyans" with tribal connections in the central government in Nairobi…the Coast has been, quite literally, *looted* by non-Coastal Kenyans. Who owns the best land at the Coast? Who runs the best hotels? Who controls the tourist industry at the Coast? Who enjoys the best jobs? Even a relatively superficial scrutiny will soon reveal the overwhelming domination by non-Coastal names.[374]

What Mazrui did not explicitly say was that the non-Coastarians he was referring to were, to a large extent, the Kikuyu.

Lamu gets new settlers

One of the most controversial decisions Kenyatta made during his rule involved the Lake Kenyatta Cotton Scheme in Lamu, north of the coastal town of Mombasa.

The scheme was in existence for several years until 1972 when the government took it over from the Lake Kenyatta Cotton Development Scheme. The cotton project was a failure and had accumulated a huge debt. It was unable to pay salaries, operated with poor equipment, and could not provide basic services such as health care and education for workers' staff. A recommendation was therefore made to transform it into a settlement scheme for landless people who would be encouraged to grow cotton.

Mpeketoni got its name from the phrase "*mpe katoni*" which referred to the paper cartons of personal effects carried by the settlers to the settlement. The phrase means "give him/her the carton." Those were the words barked by officials as the settlers got in and out of the lorries with their belongings. Mpeketoni is part of mainland Lamu located on the furthest north bordering Somalia. The original inhabitants of the predominately Muslim area are the *Bajunis* and the *Wasenya*, a hunting and gathering community, now extinct.

Kenyatta had a serious problem of population congestion in his central province backyard following the return of the Mau Mau fighters from the forests, and squatters who had been rendered redundant by departed white settlers. Many of them were jobless and landless and were threatening security.

In 1963, at Kenyatta's request, Tanzanian President Julius Nyerere, agreed to accommodate hundreds of the Kikuyu at the Mpanda settlement scheme in Rukwa region. Those targeted for transfer were mostly former Mau Mau fighters who were roaming aimlessly in villages and towns and living in slums. The first group that left for Tanzania returned after a few months complaining of tsetse fly infestation. When people on the waiting list got wind of the pest menace, they declined to travel. The settlement plan aborted.

So, when Kenyatta identified Mpeketoni as a possible alternative, many of those selected for the Tanzania trip were diverted there. A total of 10,000 Kikuyu were moved to Mpeketoni between 1969 and 1979.

The PC Mahihu was convinced that only upcountry folks – Kikuyu specifically – were qualified for land allocation at Lamu ostensibly because of their reputation as "hard workers." That was not surprising given the proliferation of the Kikuyu in the provincial administration.

By April 1973, 125 families from upcountry had been settled at Mpeketoni. By the end of 1975, the number had soared to 3,047 occupying an area of 30,470 acres.[375] Two years later the number went up to 3,480 settlers in an area of 35,147 acres. Although the government claimed there was a fair representation of tribes, many the settlers were Kikuyu from

Nairobi, Kirinyaga, Mwea, Murang'a and Nyandarua, and each family was given two acres. The composition of the new settlers was confirmed in a report from the agricultural officer of Witu to the district agricultural officer, Lamu, F. N. Gidali, which explicitly said "the majority of the settlers are from upcountry and are hardworking".[376]

The process of selection was simple but fraught with favoritism. At the grassroots were chiefs whose job was to compile the initial list and confirm that the applicant was indeed landless. They seized that opportunity to recommend names of their own relatives and friends. Once received, the applications were sent to the plot allocation committee comprising government officials who sorted them out and sent them to the committee chairman who was the DC. The DC would then convey the documents to the PC for allocation.

Though there were thousands of landless people in Lamu, the majority of whom were engaged in fishing, only upcountry people were selected for the Mpeketoni scheme. Evidence of Kikuyu domination at the scheme was evident on the list of 200 residents who once applied for food aid during the famine. Apart from four indigenous people, the rest bore Kikuyu names from Central Kenya.[377]

Another confirmation of Kikuyu majority at Mpeketoni was the list of school children being prepared to travel to Mombasa for a *ngoma* competition. All the 46 children called to be fitted with uniforms bore Kikuyu names.

The Mpeketoni land grab has led to frequent skirmishes between the upcountry settlers and local people who want their land redeemed.

A land audit in 2014 showed that 22 companies owned by politicians and businessmen had grabbed a total of 500,000 acres of land representing 70% of the archipelago. President Uhuru ordered the land returned and investigations done into what was described as a criminal conspiracy, and those found to have been involved prosecuted.[378] In September that year, the chairman of the National Land Commission, Muhammad Swazuri, announced a move to revoke the allocations.

Demand for land in Lamu increased after the launch of the Lamu Port, South-Sudan, Ethiopia Transport (Lapsset) corridor, a multi-million-shilling transport infrastructure project intended to build railway lines, international airports, a dam, and resort cities.

Ironically, the land grab in Lamu cannot be blamed wholly on the government. Many Lamu residents have sold their family plots at throw-away prices to developers who built hotels and other permanent structures leaving family members in distress.

In 1990, for example, the government demarcated 747 settlement plots at Hindi and Magogoni settlement schemes and priority was given to the indigenous *wagunya* people. Only 580 local people came out and paid the required 10% deposit. A year later, only 30% of those who accepted had occupied the land. Poverty and lack of knowledge about the value of land contributed to the poor response from the local people. Plots not taken up by the *wagunya* were offered to upcountry people.[379]

The Kikuyu residents of Mpeketoni have continued to deny they left Central province to go and grab land at Lamu. “Those calling us grabbers are jealous because we are a hard-working people,” Lazaro Kagwe who owns ten acres of land was quoted as saying.[380]

Mpeketoni joined a long list of areas in Kenya to receive large numbers of landless Kikuyu, ratcheting ethnic tensions from locals unhappy about the favoritism of the Kikuyu.”[381]

The settlement opened opportunities for the rich to raid the nearby beautiful beach land. In 2011, locals had to battle a group of land speculators who descended in the area to demarcate a 410-acre plot which villagers said belonged to their ancestors. They wanted the land preserved because it was the breeding ground for rare species of turtle inhabiting the nearby Kiunga Marine National Reserve.

Chapter 10

A deadly legacy of political corruption

THE WORD *ASSASSINATION* is used to describe murders committed for political reasons, especially against government officials, and is applied mostly to political murders.[382] In the first four regimes, Kenya has experienced numerous assassinations of high-profile public officials and hundreds perhaps thousands of extra-judicial killings. They were committed by the establishment or through the knowledge of authorities not only for politically-related reasons but for "illegitimate gain." In other words, critics were silenced so that some in government may continue to eat. That is political corruption.

By abolishing the federal system of government at the onset of independence and concentrating executive powers in the presidency, Kenyatta gave himself immense capacity including capacity to eliminate opponents using "special forces" to carry out political assassinations of people thought to be a threat to his establishment.

Such were the assassinations of Gama Pio Pinto on 24 February 1965, Tom Mboya on 5 July 1969, and JM Kariuki in early March 1975. Those are just a few examples of how a government could exterminate its people to stay in power. In addition, scores of people in the predominantly Muslim areas of northern Kenya and upper eastern were ambushed and killed at watering points, while herding livestock, or in homesteads during the *Shifta* war in the 1960s.[383]

As for the three political murders, fingers were pointed at Kenyatta's government. Pinto, a nominated MP at the time of his killing outside his compound in Nairobi was aligned to the opposition leader Oginga Odinga – Kenyatta's arch enemy. He was a victim of the ideological war between Kenyatta, who was western-oriented, and Odinga who believed "communism is like food to me."[384] However, some in the Goan community of which he was a member, believed Pinto was killed "because he was virtually at war with capitalist conspirators – largely over land-grabbing – that included Kenya's first President and his "Kiambu Mafia," and the gods of the Western capitalism led by the US and British governments."[385]

It was easier to eliminate Pinto, a man of Asian descent than Odinga who had fanatical support from his Luo people and whose death would have caused a civil war. Pinto was a dynamic individual, provocative and aggressive, but had few friends in government because of his close association with former Mau Mau fighters. He did not have a national following nor was he a threat to the leadership.

Kisilu Mutua a casual worker was quickly arrested soon after the killing but denied any involvement. Nevertheless, a court sentenced him to death. His sentence was reduced to life on appeal. He spent 37 years in jail and was released from prison on 4 July 2001 still claiming his innocence. In 2017, a court finally exonerated him of all charges and ordered the government to compensate him.A similar pattern followed Mboya's killing on a busy Nairobi street. Considered by the elite as a stooge of J. F. Kennedy's administration, Mboya was highly rated as the man to take over from the ageing Kenyatta. He was the most enlightened member of Kenyatta's Cabinet – eloquent, urbane, and intelligent and a real political threat to the "Kiambu Mafia."

It was not a coincidence that the man who was arrested and prosecuted for murdering him, Nahashon Njenga, was a Kikuyu who reportedly had had some mundane dealings with the Kenyan Minister. Njenga was eventually sentenced to death even though rumors lingered for years that he had been let go and was living as a free man in neighboring Ethiopia.

As for JM Kariuki, the populist Kikuyu leader and a self-professed socialist, things could not have been so different from the other two earlier assassinations. He was picked from the Hilton Hotel by senior police officers on 2 March 1975 and taken to the offices of the Special Branch. During a scuffle with the GSU Commander Ben Gethi, JM was shot but not killed. He was then driven away to an unknown destination, and the following day his mutilated body was discovered by Maasai herdsmen in Ngong Hills. As people were searching for him everywhere, Vice President Moi assured Parliament that Kariuki was in Zambia on a business trip, a statement which was echoed by local publications. That statement was a lie.

JM Kariuki became one of the President's most stinging critics.

Although rich himself, with a stable of horses, farms, and shares in a number blue-chip companies, Kariuki was known as the champion of the underprivileged though a consummate gambler and playboy. He lamented lack of jobs and felt the government was not doing enough to generate employment. He believed "a small but powerful group of greedy, self-seeking elite in the form of politicians, civil servants and businessmen, had steadily but very surely monopolized the fruits of independence to the exclusion of many Kenyans. "We do not want," he said, "a Kenya of 10 millionaires and 10 million beggars"[386] was his most famous quote.

Such criticisms did not sit well with the top brass of the Kenyatta government. Because of his abrasive posture, he was banned from visiting State House and was shunned and hated by top government officials. He was therefore a target of elimination. By persisting in his populist opposition, he gambled, and he lost.[387] Kenyans were shocked at his mysterious disappearance, but Kenyatta's people were elated. A few days after his body was discovered, Kenyatta made a comment that raised eyebrows. He told a story of "a fallen angel, who was 'going bad, so God threw him away,"[388] which many perceived to be a reference to JM Kariuki's death. A Maasai politician John Keen summed it up: "The hyenas have eaten one of their own."[389]

Several government people including police officers Ignatius Nderi, Ben Gethi, Wanyoike Thungu and Patrick Shaw, along with civil servants and politicians were named as people of interest by the Parliamentary Committee that investigated the matter. The Committee report also included Mbiyu Koinange on the list, but on Kenyatta's order, his name was expunged in what amounted to an official conspiracy. On 2 March 2000, the *Daily Nation* ran a shocking expose narrating what happened on the day Kenyatta ordered that the names of a Cabinet Minister and a senior police officer be expunged from the committee report on JM Kariuki's murder.

The expose revealed that members of the Committee were meeting at Parliament Buildings when a call came summoning the Committee Chairman Elijah Mwangale for a meeting with the President. Accompanied by a few legislators among them Charles Rubia, Mwangale rushed to State House where he was confronted with one question: Why are the names of Mbiyu Koinange and the superintendent of police, Arthur Wanyoike wa Thungu in the report? Without directly responding to the question, Rubia nervously blurted out: “*Kama ni hivyo, Mzee, tunaweza kuondoa hayo majina alafu tuipeleke Bunge*, (“If that is the case, we can delete their names before tabling the report in Parliament”).

Kenyatta: “*Kama ni hivyo sawa sawa*” (“If that is the case, then it is alright”).

“Mzee Kenyatta gave Mr. Mwangale a green pen. He made him delete the two names and sign against each deletion.”[390]

That action by Kenyatta was another clear sign of political corruption. In a normal situation, the committee would have been left to complete its report. But Kenyatta resorted to cronyism to sabotage justice.

Kenyatta’s Legacy

Kenyatta’s health began to deteriorate significantly in 1977. Early in 1978, a secret meeting was held at the Nairobi home of the Director of Intelligence, James Kanyotu, with Attorney General Njonjo and Head of Civil Service Geoffrey Kariithi, among a small, insider clique of the “Kiambu Mafia,” in attendance. It was at that meeting that a decision was made for an urgent medical intervention by a world-class medical practitioner.

Using his chummy ties with the apartheid regime in Pretoria, Njonjo quietly arranged – with the approval of Daniel arap Moi who, as Home Affairs Minister, was in-charge of Immigration – for Dr. Christiaan Barnard, a top cardiac surgeon, to visit Kenya ostensibly to address a meeting of the Rotary Club, only for information to emerge later that the real purpose of his visit was to examine the ailing Head of State.

The public came to know of Barnard’s presence only after he made some controversial comments about the positive virtues of apartheid contrary to Kenya’s hard line anti-apartheid policy. The Kenya Ministry of Foreign Affairs, which was not informed of the visit in advance, reacted sharply, and reiterated the country’s position on South Africa which was in sync with the recommendations of the UN and the OAU (now African Union-AU). In a statement, Foreign Minister Munyua Waiyaki blamed Njonjo for “damaging” his efforts of implementing a coherent policy towards the apartheid nation.”[391]

Despite his illness, which was kept secret by Kenyan authorities, Kenyatta went about the business of governing, though he spent extra-ordinarily long periods at Mombasa with its balmy climate than in the usually nippy Nairobi. On 21 August 1978, the President and Mama Ngina played host to Kenyan envoys who were in Mombasa attending a consultative meeting. People who saw him that day said he looked tired and rather spaced out.

Later in the day, his condition still dire, Kenyatta was persuaded by Koinange, Mahihu, and the State House Comptroller, Alexander Gitau, to travel to Msambweni, south of Mombasa, to be entertained by traditional dancers. Mid-way through the performance, the President felt dizzy and asked for a glass of water. He was incoherent, and his speech slurred. He staggered with some help to a makeshift toilet situated behind the dais. While there, he collapsed. Officials speculated at the scene that he had suffered a mild heart attack. Upon resuscitation, he was rushed back to the State House.

His official physician, Dr. Eric Mngola, had already flown to Nairobi and Kenyatta was temporarily left under the care of his nurse. Suddenly, he developed breathing problems, and the nurse requested for oxygen which could only be obtained at the Aga Khan Hospital a mile away. PC Mahihu and some top security officials rushed there, but on their return with the oxygen tank, found people already in a somber mood. "What happened? He asked in astonishment. "I am sorry, Mzee is no more," he was told.

At 89 years old, the man who rose from a manual laborer to become the first President of the Republic of Kenya was gone. Time? 3.30am on the morning of 22 August 1978. It was not until 3pm that afternoon that the public broadcasting station, the *Voice of Kenya*, officially announced the death. All flags were lowered to half-mast.

Some officials who witnessed the last hours of Kenyatta's death blamed the three top officials for allowing the President to leave State House in his poor health condition. He was "abandoned and neglected by his aides and top advisors whose unbridled greed for power, property and money, was their propulsion force," lamented President Moi's press secretary, Lee Njiru. "These fellows, consumed by rapacity greater than that of a desert locust let loose on green foliage, could not be objective about Kenyatta's needs and separate those needs from their own,"[392] he added, without elaborating. Questions were also asked why Kenyatta's personal doctor left town when it was apparent the President's condition required him to be close.

On 31 August, the Speaker of the National Assembly, F. M. G. Mati, delivered a powerful message that represented the feelings of most Kenyans.

> To every Kenyan, Mzee was the legendary Great Warrior who grabbed the 'Lion by the tongue' and set its people free. To us, the Warrior – *Taa ya Kenya* (the Light of Kenya) is not dead. His deeds have earned him immortality and triumph. His spirit will remain with us to illuminate out path of peace and unity as our Hero rests in eternity.[393]

In exiting, Kenyatta left behind a peaceful but extremely polarized nation.

By failing to mold a homogeneous state of 42 ethnic groups, Kenyatta allowed tribalism to fester and influence every sector of nationhood. The question: *Je unatoka wapi* (So, where are you from?) became a cliché and a determining factor on whether one secures admission to a training facility; gets a job; earns a promotion; or, even whether one finds a candidate for marriage. Instead of speaking the national language, Kiswahili, or the official language, English, Kenyatta unwittingly encouraged people to communicate in their own mother tongue which made social integration difficult to achieve.

Kenyatta's Kikuyunization policy was a success. He left the Kikuyu dominating the civil service and the private sector. They owned banks, commercial and industrial plants, and controlled hospitality, transport, and agricultural sectors. They "enjoyed unlimited economic and political influence and repressed any resistance against it."[394] One village alone, Rwathia in Murang'a, ended up having the largest number of billionaires, controlling 20% of the gross domestic product (GDP) and almost 40% of the stock market.

In a newspaper article in June 2016, Dr. Bitange Ndemo, a former Permanent Secretary and senior lecturer at the University of Nairobi's Business School, listed investment bankers, insurance magnates, distributors, and manufacturers, as some of the Rwathia residents who have made a mark in the economic growth of the country.

The Attitudes Survey of 2016 by Knight Frank Wealth showed Kenya had the fourth largest number of dollar millionaires in Africa, the number rising from 8,300 in 2014 to 8,500 in 2015.[395] One does not have to guess how many Kikuyu are on the list.

Upon Kenyatta's death in 1978 "a national bourgeoisie had emerged… (the country) was extensively capitalist and had a more 'developed' and diversified economy than the Kenya of 1963…"[396] A middle-class of young, well-educated Africans took over the management of companies that were hitherto headed by non-Kenyans.

When he died, Kenyatta left behind a provincial administration comprising 35 Kikuyu DCs out of 41; five Kikuyu PCs out of 8, and 13 Kikuyu Permanent Secretaries out of 19 positions.[397] Out of eight MPs nominated by the ruling party KANU four were Kikuyu as at 21 August 1978. There were nine Kikuyu Ministers in a Cabinet of 23, and 13 Assistant Ministers out of 31.

Many viewed Kenyatta as authoritarian and a dictator because of the way he gave himself powers. "His one-party dictatorship did not only undermine the spirit of freedom, but also sabotaged and substituted the best in humans with the worst in them,[398] says politician Koigi wa Wamwere.

Corruption and impunity reached epic proportions as government officials squandered and misappropriated public funds at all levels of the State. They "used public office as a vehicle to loot public resources with very little or no accountability."[399] Even then, not a single senior civil servant was jailed for corruption under Kenyatta's government, despite the Auditor General releasing damning reports of abuse of office year after year.

Although he failed to rein in poverty, disease, and illiteracy as promised on Independence Day, Kenyatta managed to promote economic growth by attracting foreign investment and boosting agriculture through expansion of small scale farming. The Gross Domestic Product (GDP) registered an average growth of 6%. Tourism, trade and manufacturing did well, and the country was sufficient in food supplies.

Kenyatta himself, his family, and relatives, accumulated a lot of wealth. Estimates put his personal wealth at US$.500 million (KES.51.6 billion), while that of the Kikuyu as a community was estimated at far "more than all the other ethnic groups put together:

> They visibly outdistanced other ethnic groups at a pace that posed immediate political risks to their newly acquired positions in government structures…It was perceived as unfair and heightened ethnic hatred between the Kikuyu and other communities."[400]

Kenyatta also left the Kikuyu isolated, and the phrase 1 against 41 became popular among anti-Kikuyu elements to underscore the divisions between the Kikuyu and the rest of the communities. The Kikuyu have occupied the presidency three times, underlying not only their collective power of galvanizing people, but their strength in mobilizing resources for a successful election campaign.

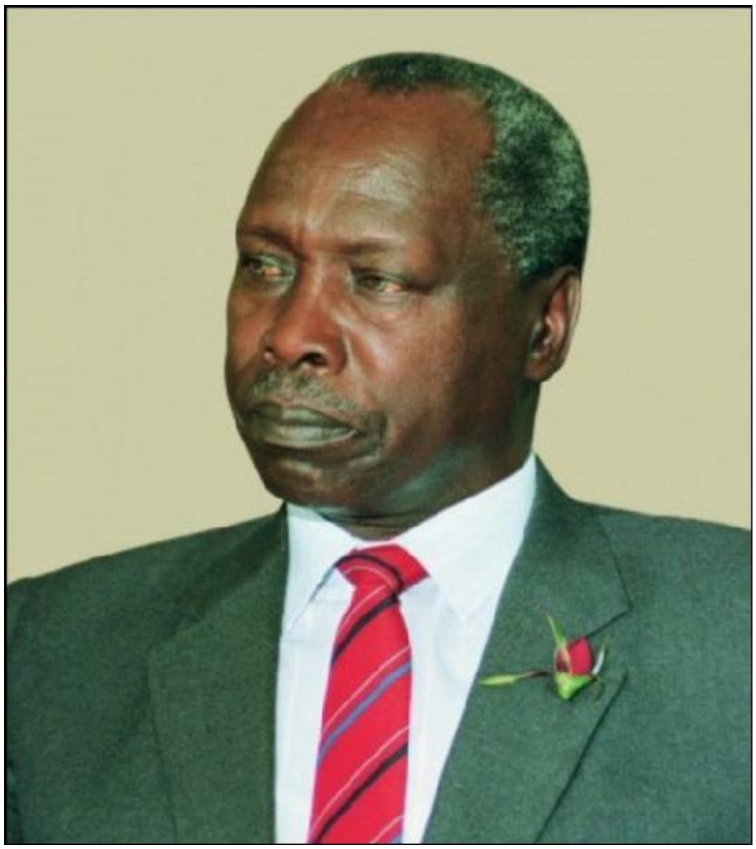
Though Kenyatta left behind a sound economy, his political record was tarnished by intolerance and suppression of opponents. Throughout his rule, “the nation was governed by a presidential but largely authoritarian regime,”[401] said one Kenyan politician. After his exit, 26 political prisoners, among them politicians, academicians and journalists, were still languishing in detention. Three MPs, Jean-Marie Seroney, Martin Shikuku, and George Anyona, were dragged out of the premises of the National Assembly, while others like Wamwere, and writer Ngugi wa Thiong’o, were taken straight into Kamiti maximum prison without any trial.

The murders and political tortures that took place under his watch “reveal his intolerance toward anyone who took a political stance other that what he decreed…and demonstrated a clear abuse of political power by those heading top positions in government.”[402]

Kenyatta’s tenure was therefore a mixed bag of everything in the political and economic arena; hope and despair; successes and failures.

PART II

THE BOOK OF DANIEL ARAP MOI



Chapter 11

Ascension to Power: “That’s the man I am going to appoint”

WHEN IN THE dead of the night he received the shocking telephone call from Eliud Mahihu, the powerful Kenyatta-era PC informing him of the sudden death of President Jomo Kenyatta and ordering him back to Nairobi from his rural home in Kabarak, 180 kilometers away, Moi knew the long wait for a chance to climb the ladder had arrived. Moi had waited for 23 years for an opportunity few get in a lifetime. Hence, he had plenty of time to get ready.

Moi’s ascension to power was as dramatic as it was unpredictable. After quitting his teaching job at the Kabarnet Intermediate School in 1955, he became an Elected Member in the colonial-era Legislative Council (LegCo), earned his first visit overseas as part of the delegation to the Lancaster Independence Conference in London, and on his return co-founded the Kenya African Democratic Union (KADU) together with the likes of Ronald Gideon Ngala and Masinde Muliro. Tough as nails but humble as a dove, Moi was a highly-respected individual in Rift Valley especially within his Tugen community of Baringo County.

Moi served as Minister for Education and then Minister for Home Affairs. In 1966 when Vice President Joseph Murumbi abruptly resigned, Kenyatta looked around, considered candidates from his Kikuyu region including Ministers Koinange and Dr. Mungai, his nephew Ngengi Muigai, Finance Minister Gichuru and GEMA chairman Karume, and rejected them all. When Njonjo flaunted Moi’s name, Kenyatta stretched his hand and said: “That is the man I’m going to appoint.”[403]

For most of his third 5-year term, Kenyatta’s health was failing and the inevitable was expected at any given moment. As he weakened, the Kikuyu political barons and captains of industry became increasingly alarmed after sensing that Moi, “a man one of them described as ‘having *posho* (corn meal) for brains,' might become president."[404] So, when death called on 22 August 1978 during Kenyatta's stay in Mombasa, the succession battle began.

Mahihu scrambled to get the news to a few top officials among them Moi. The hours that followed the call to the vice president that "the eyes of Kenyatta have closed," – were perhaps the most unnerving and poignant moments of his life. He was shaken and fearful. He was not a Kikuyu and certainly not liked by the "Kiambu Mafia."

"Your Excellency, keep your eyes open," a breathless Mahihu told him,[405] urging him to make haste and travel to Nairobi. For three hours, the presumptive president meandered through the dark, lonely roads on that dawn morning, and as advised, kept his eyes open.

What he didn't know was that a special contingent of para-military police composed of 250-strong hardcore Kikuyu recruits known as the *Ngorokos* had planned an ambush somewhere between Nakuru and Naivasha with instructions to eliminate him and stop him from taking over the leadership of the country.

The *Ngorokos* were dreaded members of a secretive section of the Anti-Stock Theft Unit known as the Rift Valley Operation Team whose core mandate was unknown except to a few at the Police Department. The unit was the brain child of an Assistant Commissioner of Police in the Rift Valley, James Mungai, and was formed ostensibly to carry out tasks the police could not execute, including retrieving objects deep in rivers and lakes such as sunken boats, and submerged 'sensitive' equipment such as riffles.[406]

The unit was also tasked to carry out assassinations to prevent a non-Kikuyu from taking over leadership. Coming from a small community in the Rift Valley, Moi was an 'outsider' of the House of Mumbi, even though he had worked quietly and loyally under Kenyatta.

Nevertheless, he became the target of the *Ngorokos*. They planned to get rid of him as well as 300 other politicians and civil servants.[407] The death list was in three components. The first group of 15 comprising top government officials was to be murdered before the announcement of the President's death. Moi, Njonjo, and Kibaki were in turn to be told that Kenyatta was ill, and the President wanted to see them at State House Nakuru. "They would be conducted to the room containing Kenyatta's dead body; then some '*Ng'oroko*' men armed with sub-machine guns with silencers, would leap from their hiding places and shoot all three with their lethal weapons.[408] The people would then pump bullets into Kenyatta's body to make it look that the three had killed Kenyatta. After that:

> An announcement would follow to the effect that the Presidential Guards had caught the 15 – led by Moi – in the act of murdering Kenyatta and in their fury at the treachery opened fire on the 15 and killed them all…The bodies of those shot at State House would then be removed to the '*Ng'oroko*' base near Lanet where they would be dumped into a tank containing sulfuric acid – a highly corrosive chemical – which would soon consume the bodies.[409]

To be eliminated also were top government and military officials. Details of the plot were confirmed in Parliament by Njonjo on 26 October 1978 three months after Kenyatta's death.

Fortunately for Moi, the *Ngorokos* mistimed his travel plans and arrived at the scene of the planned ambush after his car had passed. Accompanied by only one bodyguard and the driver, the Vice President arrived safely in Nairobi. And at 3 pm on 22 August, the man who was ignored and often humiliated by a section of high-ranking Kikuyu elites and dismissed by the British government as "shallow and rather unreliable,"[410] was sworn in as the acting President by Chief Justice Sir James Wicks. In attendance were Kibaki and Njonjo.

The speedily organized private inauguration ended a tense 12-hour period in which anti-Moi forces desperately sought support from top Cabinet Ministers to wreck Moi's promotion. Plans to torpedo Moi from succeeding Kenyatta had been in the works for at least two years in view of the President's failing health. The "Kiambu Mafia" had been holding meetings around the country to drum up support to expunge a constitutional provision that allowed the Vice President to temporarily assume power in the event of the President's death.

Kihika Kimani who was the de facto leader of the 'change-the-constitution' group believed the constitution was faulty and wanted it changed "…so that no future vice president may assume the presidency automatically in the event of the reigning President retiring, becoming physically or mentally incapacitated, or in the case of death." He proposed in the event of such happening, the Speaker of the National Assembly should assume office and be the one to organize elections within three months. If agreed, the proposal would have automatically cut off Moi from the presidency.

The group had powerful Kikuyu including Mbiyu Koinange, Dr. Njoroge Mungai, Kenneth Matiba, James Gichuru, Njenga Karume and Kimani, and a few non-Kikuyu leaders from Ukambani, Western, and Nyanza regions, who held public meetings to rally public support. To succeed, however, the proposal required the Attorney General Charles Njonjo to introduce the amendment in Parliament. A British-trained barrister and a stickler for law, Njonjo declined to go along with anything that violated the constitution.

That did not deter the 'change-the-constitution' group from pursuing its goal. On 7 October 1978, it met in Nakuru and issued a statement detesting 'very strongly' Njonjo's sentiments. "We shall continue to voice the views of the people without any fear or favor," they said. Njonjo was the "African European" in Moi's government. Always in stripped suits with a fresh rose bud on his lapel, and married to an English woman, Margaret Bryson, Njonjo surrounded himself with expatriate whites and was reputed for treating Africans working for him very badly.[411]

Seeing growing opposition to their plan, the group then tried to incite the top military brass to stage a military coup. The Army Commander, Major General J. K. Mulinge, a Kamba, and a former colonial officer, was approached to take over power, but he declined. Mulinge was a disciplined and loyal officer who rose through the ranks to become the first Kenyan to wear the general's medal. He understood the implication of military action and stood with the oath of office he took when he was sworn in.

Backed by a few non-Kikuyu such as Paul Ngei, the 'Kiambu Mafia' reached a dead end in their plot to dislodge Moi. Sensing arrest, the Ngoroko leader, James Mungai, fled the country through the porous border in the north with Sudan. The 'change-the-constitution' group was dismantled. After that, attention turned to what was most important at the time: Kenyatta's death and the solemn burial service that was to follow.

Kenyatta's body had already been transported to Nairobi by a Kenya Air Force plane at the time of Moi's swearing-in, and two British morticians were on the overnight flight from London. The firm of J. H., Kenyon, which had been involved in many royal funerals including that of King George VI and Winston Churchill, was chosen to conduct the funeral arrangements.[412]

Thereafter, the body was laid at State House for a week of public viewing. But before the ceremonial burial at a specially built mausoleum next to Parliament Buildings, the body was taken to Gatundu for one last chance for his constituents to pay homage. On 31 August 1978, the man who helped liberate his country from 68 years of colonial rule, but left behind unfulfilled promises and thousands of disappointed citizens who had expected much more from their first President, was buried with leaders from many countries in attendance.

As Moi settled in office, his enemies explored other ways of containing him. They worked to convince KANU delegates to the upcoming KANU delegates' conference to deny Moi the vote during the presidential nomination process.

But Moi was no fool. He did his ground work and when KANU delegates met on 23 September 1978, he easily won the national executive council's nod as the party's sole presidential candidate. Ten days later, the national delegates' conference – the party's supreme body – unanimously endorsed him as the party's presidential candidate for the 8 November 1979 polls. Being the sole candidate, Moi sailed through unchallenged.

One observer said the struggle for succession was essentially an intra-elite one, the two factions striving to control the regime rather than to subvert it. "Once the succession was decided, the elite, and the bourgeoisie had an overriding common interest in stabilizing the regime on which they thrived.[413]

By vowing to follow "*Nyayo*" (footsteps) as his underlying ideology, Moi somehow guaranteed continuity of national stability maintained under the former President. In a subtle way, it signaled the continuation of Kenyatta's high-handed ways, including the muzzling of freedoms of expression and association and movements, entrenched in the Public Security Act of June 1966. Moi inherited all what was bad from Kenyatta's regime including corruption, tribalism, nepotism, cronyism, and inequitable distribution of resources, landlessness, high unemployment and staggering crime rates.

Though dubbed "a passing cloud" by skeptic Kikuyu elites during his early years of rule, Moi had the endurance and the political will to survive, backed by draconian rules that diminished the power of Parliament and vanquished the role of the opposition.

Chapter 12

The Nyayo Philosophy: "Sing like a parrot"

NO LEADER IN East Africa was maligned as ferociously and condemned as extensively as the second President of Kenya, Daniel Toroitich arap Moi. The list of his alleged transgressions is historically unprecedented: extreme human rights abuse, grand corruption, dictatorial tendencies, mismanagement of State affairs, abuse of office, money-laundering, looting, and greed. Because he expropriated so much land for himself, family, and his allies, critics called him a land grabber, "an accidental Big Man, from whom all power, privilege, and wealth derive…a tribal paramount chief *writ large.*"[414] Moreover, his presidential style of leadership "centered on the power to control, dominate, command, and give directives…[415]

But the towering leader from the populous Kalenjin region in the Rift Valley was also a guiding father and lover of children; a "giraffe with a long neck who sees far" and a "professor of politics" because of his skills in political strategy. He was gentle but tough, a true warrior. He was a peacemaker and a great patriot, a first citizen with a national identification card number 00001.

The British who had been watching Moi all along did not have much respect for him partly because of his "precarious hold on the loyalties of his own people (the Kalenjin), his incompetence as an administrator, and his intellectual shortcomings…[416] he is very unsophisticated by world standards. In some ways, he remains a primitive from the outback."[417]

Moi could not be more different from Kenyatta. Twenty years younger and physically robust, he was much more versatile than his predecessor when he took over government at the age of 54. At roughly 72 years old when he became Prime Minister, Kenyatta was in his sunset years, sharp in mind but tired in body. In the 14 years at the helm, Kenyatta made only two visits abroad: one to England to attend the Commonwealth Prime Ministers'

Conference in July 1964, and the other to Ethiopia for a State visit to his friend, Emperor Haile Selassie, in 1969.

Moi's visits across borders and oceans were countless. He would be away for days and on his return, he would jump into a vehicle and travel straight to the countryside to address a public rally and meet people. He was a workaholic who woke up early in the morning from his Kabarnet residence bordering the sprawling Kibera slums for the ten-minute drive to State House where he would spend the day, and leave for home only as the sun set to arrive in time for his favorite 7pm news on the state-owned *Voice of Kenya* (VOK).

Kenyatta too was averse to spending nights at State House. This is illustrated by the narrative of his social secretary: "One evening, he came from Jamhuri Park rather late in the day. He wanted to sleep in State House, but before too long, the frogs in the fish pond started croaking. He got annoyed and left for Gatundu. He told everyone that the frogs were the ghosts of the white people" wrote Elizabeth Mumbi in her autobiography, "Miss Uhuru 1963: Working for Mzee Jomo Kenyatta."[418] State House was a colonial relic, grand but rather eerie.

While Kenyatta left professionals relatively free to handle issues of national governance so long as they did not challenge his overwhelming powers…Moi was intrusive in the running of government affairs. He insisted on knowing everything taking place in government ministries and intervened whenever he felt officers were misinterpreting his policies and directives.

Kenyatta routinely ceded day-to-day running of State affairs to a clique of "Kiambu Mafia" while Moi coalesced everything around himself and a clique of corrupt 'Kalenjin Mafia'."[419] Moi was "a vicious autocrat and encouraged the development of a personality cult."[420] He was farmer number one; and teacher number one. While Kenyatta 'killed' KANU because he saw no need for it, Moi built it into a strong machine of intimidation and manipulation. He spearheaded a massive reorganization from the grassroots level to the very top with himself as party president and instructed that everyone danced to his tune.

> I call on all Ministers and Assistant Ministers and every other person to sing like parrots," he remarked sternly. "During Mzee Kenyatta's period, I persistently sang the Kenyatta tune until some people said: 'This fellow has nothing to say except to sing for

> Kenyatta.' "Therefore, you ought to sing the song I sing, If I put a full stop you should put a full stop," he said in 1984. "This is how the country will move forward.At one time, he warned officials in KANU to quit if they could not toe the party line. "You will have no ideas or opinions of your own," he told them. "Your opinions are those of the party. Those who think they have ideas of their own are free to quit."

Routinely, Moi expected chiefs and middle level officials to report to him every night about activities in their areas, and regularly telephoned officials to seek their opinion and bark out orders on a myriad things. On top of that, he built a cadre of "special DOs" under Hezekiah Oyugi, the notoriously egocentric Internal Security Permanent Secretary. They were a secretive group of loyalists deployed to preserve the interests of the President and to act as his personal eyes within the population. They reported to Oyugi who in turn briefed the President on every malevolent activity taking place around the country.

Contrariwise, Kenyatta relied on intelligence brought to him by top Kikuyu officials in the provincial administration and depended upon members of his 'Family' – the "Kiambu Mafia" – to read the pulse of the nation. He surrounded himself with the Kikuyu intelligentsia and family members he could trust. His wife, Mama Ngina wielded tremendous influence behind the scenes and Kenyatta leaned on her for advice and direction on many issues. She was ardently loyal but tough and furtively domineering. Moi was separated from his wife Edna and relied only on the loyalists around him.

Moi preached peace, love and unity among all communities while Kenyatta took decisions that benefitted the Kikuyu caring less about possible reactions from the other ethnic groups.

To ensure his grip on power, Moi systematically usurped the functions of the other institutions of governance to the extent that the principle of the separation of powers was rendered ineffectual.[421] Parliament became Moi's rubber stamp and the Judiciary was used to score points against his opponents. For example, in critical human rights cases, Judges convened hearings after normal working hours in the absence of defense lawyers and speedily passed sentences that were based more on political interests than law. Moi made every decision himself and did not trust anyone to do the right thing in his place.[422] The State was himself.[423]

> The manner in which Moi played ethno-politics was more brazen than had been the norm under Kenyatta, and with good reason. Moi lacked not only his predecessor's sizeable ethnic base, but also personal and…anti-colonial resistance credentials. He did not possess the economic resources of Kenyatta to develop patronage networks and co-opt potential opponents. He had not accrued vast personal wealth. He could not benefit from the distribution of the fruits of independence in the way Kenyatta had…And he had to contend with an unfavorable global economic climate following the oil price shocks of the 1970s.[424]

While Kenyatta hardly went to Church, Moi was an ardent Christian who often joined in singing and delivering homilies at the African Inland Mission (AIC) Church on Sundays, and often used the Bible as a tool to teach young people discipline and uprightness. For years, Moi read the Bible and prayed with the Presbyterian Church of East Africa (PCEA) moderator Rev John Gatu every morning before embarking on his daily schedule. His strong religious beliefs determined some of his actions. For example, in 1995, Moi appointed a Commission to investigate *Satanism* popularly known in Kenya as *devil worship*. The Commission was chaired by Catholic Archbishop Nicodemus Kirima, following a slew of stories in the media about devil worshiping in educational institutions.

The Commission's report was so controversial that Moi refused to release it saying it contained sensitive information with legal implications. When the media finally published parts of it, Kenyans were shocked by the sordid details of human sacrifice, cannibalism and blood licking in Kenyan schools. It narrated the experiences of one student who witnessed a ritual at his institution of learning[425] and how a "human body was brought into the room and roasted at an altar. Those present drank human blood and ate the flesh with relish."

Unlike his predecessor, Moi was also a philanthropist who cared for the small man. He often travelled with aides carrying bundles of new currency notes which he readily dished out to passer-byes. He would stop his motorcade at some nondescript food kiosk in the middle of nowhere; buy bananas for himself and food for those he found there. And while travelling abroad, he carried stacks of Thomas Cook Travelers' Checks which he readily donated to leaders of liberation movements and exiles who paid courtesy calls on him. Kenyatta had no time for such populist overtures. He was a receiver not a giver.

When he took over power, *harambee* self-help activities were at their peak, and Moi was quite generous in his contributions. He took *harambees* to a new level with hundreds of events taking place on weekends. Transparency International (Kenya) said the noble initiative had been converted into a form of patronage politics.[426] Every Friday, politicians trooped to Moi's State House to receive brown envelopes bulging with crisp currency notes for weekend *harambee* functions in their rural areas. While recipients appreciated his generosity, some were not amused and thought he was setting a bad example and encouraging people to expect free money. "Free money is a bad concept," said KANU politician Peter Okondo.[427]

Okondo made the remarks from a point of interest. He was the first Kenyan accountancy graduate having studied at the Cape Town University. Before entering politics, he worked with several organizations including the Luo Thrift and Trading Corporation, a business enterprise chaired by Oginga Odinga. His views on *harambee* were considered not only offensive to the presidency but also radical.

Was the money Moi donated to *harambees* his own? It was highly doubtful. Most likely it came from State coffers.

While Kenyatta talked of vanquishing poverty, disease, and illiteracy, Moi was against drunkenness, laziness, corruption and smuggling, problems he inherited from Kenyatta. Andrew Morton, Moi's biographer says the President's war against corruption was not lip service. When Moi, for example, found out one of his sons was lobbying government officials for tenders, he sent a memo to all government departments warning them not to deal with him, and then called the son and scolded him.[428] However, much of it was talk, devoid of action.

Moi was also more politically vulnerable than Kenyatta forcing him to turn KANU into more of a neo-patrimonial political machine using it to suppress deviants.[429] Kenyatta, on the other hand, saw the achievement of independence as more important than actual party organization.[430] In Kenyatta's days, KANU was nothing more than the cockerel badge he wore on his lapel. He saw no need to strengthen it being the sole political organization.

Moi's closest allies were his eight grown-up children – five sons and three daughters (Gideon, Jonathan, Philip, Raymond, Doris, Jennifer, June and John) – and a close group of "Kalenjin Mafia" among them Mark Too, a semi-illiterate rubble-rouser who also acted as Moi's Mr. Fixer. The round-faced Too believed the Kenyan leader "was happier tending his cattle than running the affairs of state;"[431] Nicholas Biwott, the Energy Minister and the President's closest adviser; and Joshua Kulei, a former prison officer who was Moi's private secretary and business partner. Due to their proximity to the presidency these men – all Kalenjin – became some of the most feared and richest Kenyans.

A Kalenjin, Biwott rose from a district officer in 1964 to become one of the most powerful men during Moi's administration. He held five Cabinet positions successively: Trade and Industry, East African and Regional Cooperation; Ministry of State; Energy; and Regional Development, Science and Technology. He was at the center of investigations into the death of Foreign Minister Robert Ouko and was briefly held in custody for interrogation in November 1991 only to be exonerated. Biwott was also a wealthy businessman with investments in petroleum, mining, real estate, agriculture, and energy. The Nigeria-based *Ventures* financial magazine in 2013 placed Biwott on the list of Africa's billionaires with an estimated net worth of US$.1 billion (KES.103 billion). Kenyans liked to refer to him as the "Total Man" a nickname he coined himself during a debate in Parliament in the late 1990s and which he confirmed it in 2000. He said it was important for a politician to be "a man, a total man" - and the name stuck.[432]

Too died on New Year's-eve in 2016 after a short illness, but left behind angry villagers who claimed he had grabbed their 25,000-acre farm in Sirikwa. A court case had gone on for a decade, but a ruling came only after his death early in 2017. The court gave the squatters the right to repossess a large part of the property they said belonged to their forefathers. Too's family which claimed the land was given to them by Moi in 1998 through a presidential decree retained not less than 67.5 acres. The land had been subdivided into six parcels and some of it sold out to third parties, but the court ruled the sale was illegal.

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More noticeably around Moi, however, was “a coterie of Kalenjin, many of them…country peasants trying to get in on every deal – the bigger the better – even when they had no idea of commerce.”[433] Some of them were small businessmen, farmers and “*wazee*” in his village area. Moi also created his own economic elite by squeezing out the Kikuyu who had been at the center of political and economic power throughout Kenyatta’s regime.[434] Those Kalenjin peasants were conspicuous especially during his visits to his Rift Valley region.

Moi, wielding a baton much as king might his scepter,[435] loved the company of politicians and was comfortable with praise shouters like Shariff Nassir, a Swahili/Arab power broker; Kariuki Chotara, a former Mau Mau detainee and Moi’s point-man in the Rift Valley; and Kamba leader Mulu Mutisya, who provided much-needed comic relief to the President during stressful times. Others were politicians Kariuki Chotara, Kabiru Kimemia, and Stephen Michoma. The President would laugh his lungs out to jokes and anecdotes from these sycophants.

And in praising Moi, Peter Oloo Aringo, the Minister for Education, called the Kenyan leader “a ‘Prince of Peace’ who has been sent to this country as a prophet to maintain peace in the country. I would not have known anybody else to have done a job of maintaining things in this country, except for His Excellency President Daniel arap Moi,” said [Peter Oloo] Aringo in 1990.[436]

Then there was this from Elijah Mwangale, Minister of Agriculture, during the opening of the Mombasa agricultural show in 1989: “You speak of the public will,” he remarked while pointing at Moi on the dais. “There is enshrined in human form the popular will,” adding that “even the lobsters and the fishes of the sea, out to the 200-mile limit and even beyond, pay obeisance to our great President, the Honorable Daniel arap Moi.”[437]

However, sycophancy was not in display on the political arena only. During a Sunday service at the Redeemed Gospel Church in Nairobi in February 1992, a pastor showered Moi with profuse heavenly praises that were quoted extensively in official media. “In heaven, it is just like Kenya has been for many years,” Bishop Arthur Kitonga, the church’s founder said as Moi listened attentively. “President Moi has been appointed by God to lead the country, and Kenyans should be grateful for the peace prevailing…

We have freedom of worship, we can pray and sing in any way we want. What else do we need? That is all we need."[438]

Bishop Kitonga had significant "popular power" with extensive international contacts.[439] He was also politically-connected locally, and rubbed shoulders with powerful personalities in government, often commenting on actions of deviant politicians.

Moi cherished genuine friends and rewarded them with land, money, and positions in politics. People with no political standing and popularity were brought into national prominence, such as Dr Josephat Njuguna Karanja and George Kinuthia Saitoti who were plucked out of the University of Nairobi to be appointed Vice Presidents, in succession. Whenever his friends died, Moi did not hesitate to replace them with their kin. For example, he replaced his KADU co-founder Ronald Ngala with his son Noah Katana Ngala who was brought back from his studies in the USA. The parliamentary seat of Moses Mudavadi, a former powerful Local Government Minister was taken over by his son Musalia Mudavadi; MP Juma Boy's parliamentary seat was taken by his son Boy Juma Boy Jr; and Assistant Minister Samson Mmaitsi's position was inherited by his son Vincent Mmaitsi who was taken out of the University and immediately made an assistant Minister.[440]

Moi despised intellectuals

Moi did not have the thick skin to entertain critics and intellectualism and became livid when one crossed his path.[441]During his presidency, Moi imprisoned and detained dozens of intellectuals including university students whom he accused of arrogance and snobbishness.

Yet, when Moi released writer Ngugi wa Thiong'o from detention during the early years of his rule, he received kudos from an unlikely quarter, the famous Kenyan world-acclaimed academician Ali Mazrui.

> I do not believe there is any African country that can teach us as much more about political tolerance and openness so far. All our neighbors have been guilty of greater democratic lapses than we have over the years,[442] he said in a letter to the media.

In his first five months in office, Mazrui said the Kenyan leader had emerged as "Moi the Merciful," a highly laudatory comment that shocked even Mazrui's fellow academicians. That quickly changed, and the Mombasa-born professor became one of Moi's fiercest critics for his,

> “…naked state violence to suppress and vanquish the political opposition and pro-democracy campaigners, among them civil society, opposition political parties, journalists, students, the clergy, and any and every real or imagined political dissident. Opposition political rallies and meetings of government critics were frequently broken up, and violently so.”[443]

Many people fell prey to Moi’s unpredictable anger. In 1982, soon after the failed coup attempt against his government, the American Ambassador William Harrop pleaded with him to treat the alleged plotters mercifully. “I am the President,” Moi retorted. “I don’t take advice, I give it![444] And when he was confronted with criticisms over the scarcity of water due to drought, for example, he snapped back: “I am not a rainmaker.” And when the American media took him on issues of human rights, he was furious: “How many people die in Michigan,” he asked, his eyes popping out: “Is this US government policy?” He said if torture of suspects had taken place, orders did not come from him. “We are the freest country in Africa,” he told the *Washington Post* correspondent Blaine Harden in an interview on 13 March 1987.[445]

During Moi Day celebrations in 1999, the Kenyan President was bitter after the South African High Commissioner in Nairobi, Griffith Memela, had suggested that Kenya adopt the South African constitutional model. “They come here and lecture us – do they think we are fools? I have never gone to any country and asked my High Commissioner or Ambassador to interfere with any other country. We don’t need their constitution,”[446] he said angrily.

Richard Leakey, one-time Assistant Minister in Moi’s government and son of the renowned anthropologist, Louis Leakey, saw Moi as a puzzling individual:

> When you sit down and talk to him he doesn’t come across as venal, scheming or dangerous…He comes across as congenial, compassionate, a benevolent leader…He is the sort of man who will agree with you that red is his favorite color. But then the next day when someone else says: “Don’t you think red is ghastly?” He will say: Absolutely, I couldn’t agree more.[447]

That Moi was always suspicious of the Kikuyu was obvious. He appointed the Kikuyu to government positions for no reason but to send a message to Kenya's largest tribe that he was beyond tribalism. However, occasionally his true colors bleached as Paul Muite recalled in 1980.

> He preaches to you as if he was a tape-recorder. 'I hate tribalism blah blah blah…But occasionally, he drops down his guard. I had been brought to State House on one occasion after speaking out against the government. The 'tape-recorder' was whirring away and then suddenly the tortoise popped out of its shell. And he shouted in [Ki]Swahili, 'Yes, it is you people, the Kikuyu, who will suffer. You are the ones with the wealth. What do my people have, the Kalenjin? One or two cows…isolated buildings.' There was the real man speaking from the heart.[448]

Moi's regime was described as "one of the world's most corrupt leaderships."[449] His was all about "grab, grab, grab, grab and don't care about anyone else,"[450] – a "smash and grab" operation that had disastrous effect on development.[451] He carried on where Kenyatta left and decimated the country's resources more than anyone else. "Just as (Russia's) Lenin will be forever tainted by creating the conditions under which Stalin would succeed him, Kenyatta paved the way for Moi."[452]

In 2006, Moi allegedly received US$.2 million (KES.207 million) cash-bribe derived from an international arbitration dispute. The firm that reportedly offered the bribe did not deny paying; only contending that such payments were "fashionable" in Kenya and it was not guilty of any breach.

The arbitration was in relation to an agreement Kenya entered in 1989 with the World Duty Free company (WDF) to construct, maintain and operate duty free complexes at Nairobi and Mombasa airports. In exchange for approval, it was alleged; Moi asked for and was paid the bribe by the WDF owner Nasir Ibrahim Ali. However, ten years later the WDF was placed under receivership by the Kenya High Court forcing WDF to seek arbitration claiming Kenya had unlawfully destroyed its contractual rights through the receivership order.

However, the International Center for Settlement of Investment Disputes (ICSID) ruled on 25 September 2006, that "Mr. Ali's payment was received corruptly by the Kenyan Head of State; it was a covert bribe; and accordingly, its receipt is not legally to be imputed to Kenya itself." However, the court noted that the corrupt recipient of the claimant's bribe was more than an officer of the State but its most senior officer, the Kenyan President…[453]

President Moi covered his limited education – a high school and teaching certificates – with ambiguous "doctrines" such as "*Nyayo*" which Margaret Thatcher, the British Prime Minister, during a visit to Kenya in January 1988, made it a subject of a subtle joke telling Moi: "As I was driving from the airport, I heard the crowd shout '*nyayo, nyayo!*' I believe, Sir, that you have made your own footprints in the sands of time." The comment at a State banquet in Nairobi received a deafening applause.

Some saw Moi, a shy Kalenjin with halting English,[454] as "inarticulate… didn't have a grasp of policy issues and many of the meetings he had with US officials were very perfunctory."[455] That view by a US embassy official was certainly not shared by those who worked closely with Moi who saw him as a knowledgeable political tactician with an immense ability to consume and analyze facts though, in comparison, Kenyatta appeared more organized and less authoritarian.[456]

As an ardent Christian, Moi was spiteful of homosexuality saying it was against African tradition and Biblical teachings. His interpretation of the Old and New Testaments was that God created man and woman to cohabit and reproduce. As cases of HIV/Aids – then thought to be prevalent among homosexuals – became widespread, posing a serious health problem, Moi in 2001 advised Kenyans to refrain from sex "even for only two years"[457] to stop the spread of the disease. Kenyans did not heed that call and the epidemic multiplied among people of all ages.

One thing Kenyatta and Moi shared was greed.

Chapter 13

Moi and Tribalism: Preach water, drink wine

ETHNICITY IS ONE of the biggest challenges and a pivotal component of Kenyan society. It dominated discussions during Kenyatta's time and continued during Moi's rule, posing a threat to national unity and stability. For Kenyatta, it was about preserving the House of Mumbi and continuing domination of the Kikuyu over other tribes. For Moi, it was about upending the status quo, uplifting the social and economic interests of his historically marginalized people, and proving that the non-Kikuyu can be trusted with instruments of governance.

Upon taking office, Moi began a systematic purge of Kikuyu elements in his government replacing them with Kalenjin and members of the broader Kalenjin community such as Maasai, Turkana, and Samburu, known by the acronym KAMATUSA. The exercise was gradual but extensive and in the long run the Legislature, executive, Judiciary and most importantly, the bureaucracy were staffed or led by non-Kikuyu. The Kalenjin were not as skilled as their counterparts. Some of them were "ignorant, inept and, at times, illiterate.[458] To change that, Moi had to get his people into institutions of higher learning. He started by removing the Kikuyu who were responsible for selecting applicants to public schools replacing them with the Kalenjin. Then, he enticed those of his people studying and teaching in institutions abroad to return home and take up positions in government. Consequently, the number of Kalenjin students in secondary schools and universities went up and they began to take up positions in faculties.

As tribalism and nepotism spread in the public service, Ikolomani MP Seth Lugonzo introduced a Bill in Parliament in 1985 to create a permanent ombudsman tribunal to deal with complaints of abuse of power, corruption, and ethnicity, among other things. But it was the issue of tribalism that took center stage in the debates. Lugonzo said it was a "menace to the welfare of this country. It deters development and interferes with stability."[459] The motion was rejected.

Towards the end of 1980, Moi took a controversially cosmetic step to tackle tribalism by ordering the disbandment of all ethnic-based organizations including the powerful GEMA which was the backbone of unity and the bastion of Kikuyu business networks. The association was founded in 1971 as a welfare organization to promote the interests of Gikuyu, (Kikuyu), Embu and Meru people of Mount Kenya, but in all practicalities, it acted as a political party within the ruling party KANU. It was through GEMA that affluent Kiambu characters of dubious qualifications sprang into the political arena during Kenyatta's term, and through it secured top and extremely lucrative positions in government and the private sector.[460]

The disbandment of those organizations did not help ease the spread of ethnicity in the country. What it did was to embolden the Kikuyu into entrenching themselves further in the private sector using resources gathered during Kenyatta's 15-year rule.

In Moi's 1978 Cabinet, for example, the Kikuyu represented 27.3% of the Ministers and Kalenjin only 2%. In 1979 as he consolidated his position at the helm, the ratio in respect of Kalenjin gradually began to change. The Kikuyu were at 29.6% while the Kalenjin rose to 14.8%. To mute criticisms, Moi raised the number of Assistant Ministers from 30 to 47 so that all regions would be represented.

Moi took several actions to ingratiate himself to the people. He introduced free milk to all primary school children in 1979 and suspended all land allocations. He also declared his commitment to fight corruption and tribalism and to root out indiscipline and inefficiency in government.

Moi's second most urgent task was to stamp his authority on the new regime, and he chose the 1979 general elections to do so. That was his chance to weed out his nemesis and to bring in loyalists. Moi was the sole candidate for the presidency, so he had plenty of time to traverse the country to campaign for his surrogates.

In the Cabinet reshuffle, Moi got another chance to rid the leadership of Kenyatta's cronies. Bureaucrats and politicians who owed their positions to Kenyatta were gradually removed and replaced by people loyal to him.[461] "He rotated politicians in and out of important positions, ensuring that factions would constantly form and reform."[462] He fired 13 Ministers and Assistant

Ministers who were the pillar of Kenyatta’s government. In the civil service, he went for the clique, which connived to almost cut short his political career by removing or retiring all those believed to have been associated with the ‘change-the-constitution’ movement, replacing them with his Kalenjin allies. Moi was also suspicious of the Luo and did not forget their fervent support for Kenyatta before and after his release. Nevertheless, some of the Luo appeared on the list of his Cabinet after the 1979 elections.

Kenyatta’s closest associate and brother-in-law Mbiyu Koinange was demoted from the President’s Office to the Ministry of Natural Resources while some of his associates were showed the door. Moi took personal charge of the Ministries of Defense and Lands and Settlement to control day-to-day activities of the military and to curb further grabbing of land by the elite. And as an initial step towards *Kalenjinization* of his government, he increased the number of Kalenjin Ministers from two to three, bringing in Nicholas Biwott, Henry Kosgey and Jonathan Ng’eno, while he retained the same number of the Kikuyu in the Cabinet: Charles Rubia, Arthur Magugu, G. G. Kariuki and Joseph Kamotho.

Moi also replaced all the eight PCs inherited from Kenyatta in 1979 including the powerful Mahihu, reshuffled the diplomatic service, leaving in government only those Kikuyu he thought were loyal to him.

Since Kenyatta’s death, Moi existed in an insecure bubble with enemies and perceived enemies menacingly hovering around him. The *Nyayo* philosophy he had adopted forced him “to remain under the shadow of the Kenyatta persona and to control the balance of power…but he failed to map out an effective strategy to eventually break away from the legacy of the late President.” Some of the people who pledged loyalty to him after the Ngóroko debacle turned out to be his enemies.

That insecurity reached climax in 1982 when elements in the Kenya Air Force staged an abortive coup in August 1982.[463] After that, Moi became increasingly authoritarian and ran the government based on terror and torture.[464] At the same time, the military was divided on tribal lines, and as commander-in-chief, Moi could no longer predict the political intentions of the men and women in uniform.

In October 1982, the national radio Kenya Broadcasting Corporation (KBC) began to play a curious song on its English and Kiswahili channel. To a listener, it was a religious chorus with seemingly patriotic lyrics, but to a discerning listener it was far more than that. It seemed to point to Njonjo whose ties with Britain and South Africa were raising eyebrows and causing rueful shakes of heads within Kalenjin elements in government. The Kalenjin did not trust Njonjo and felt he was stirring trouble within the government.

One day in June 1983, Moi called a choir group to perform the song during a ceremony at State House attended by government officials. The President was a great fan of praise songs and this was only one of many such performances he had organized to entertain his guests. But on that day, the song was not about Moi or his achievements but about a 'traitor' within, a Judas Iscariot out to betray Jesus (in this case Moi).

Wafuasi walianza kutazamana, ni nani atakaye msaliti Yesu.

Kati yao hawakuweza kumtambua, atakaye msaliti.

Siku ile ya kwanza Yesu kasulubiwa alikuwa ameketi na wafuasi wake

Kati yao hawakuweza kumtambua Yuda atakaye msaliti.

Translation:

His followers looked at each other, to see who would betray Jesus

Among them they couldn't tell who would betray him

On that first day when Jesus was crucified, he was with his disciples

But they could not identify Judas who was to betray him.

Unbeknown to those in attendance, the Judas on the song was Njonjo. The silence after that song titled *Msaliti* (the traitor) was deafening. A general air of queasiness pervaded as Moi ordered a repeat of the song. By that time, it was clear to everyone that chips were about to fall. Where and how far no one knew. During the opening of the 1983 Nyanza agricultural show in Kisii, with Moi present, Agriculture Minister Elijah Mwangale made a startling remark that the government "had discovered the existence of a *msaliti* (a traitor) within its ranks…whose objective was to undermine the government of President Moi and eventually topple it."[465] Mwangale did not reveal the supposed traitor's name, and it was not until July 1983, when Mwangale pointing at Charles Njonjo in Parliament declared: "Njonjo you are the traitor we are talking about."[466] Subsequently, Moi accused Njonjo of plotting to overthrow the regime to cover up illegal business transactions and contributions; and of being involved in "the unlawful disturbances" of August 1982 when the Air Force attempted a coup against Moi.[467]

The President suspended Njonjo from the Cabinet, appointed a Commission of Inquiry to investigate him, and confiscated his passport to prevent him from fleeing. For seven months, 62 witnesses lined up before three Judges to give evidence against Moi's one-time friend. As expected, Njonjo was found guilty of all the charges and was expelled from KANU. He voluntarily resigned from Parliament. Njonjo's downfall was surrealistic. Here was a man most responsible for Moi's ascension to power. He had risked everything while fighting off his own Kikuyu kin who wanted to stop Moi from taking over from Kenyatta. Now, he was a victim of ethnic and political chess game.

The sad thing is that Njonjo over-rated himself and sometimes took advantage of his position in government to deepen his relationship with the British who had little regard for Moi. His lack of grassroots support even among his fellow Kikuyu restricted his political reach making it difficult for him to completely overshadow the "professor of politics." He was rude, eccentric and defiant. His rumored comment never to be flown by an African airline pilot further alienated him from the elite and the commoners who viewed him as an extension of British colonial views of Africans.

Njonjo's influence was immense both inside and outside the government. He was the blue-eyed boy. The British High Commissioner in Nairobi, Anthony Duff, described him as "the black Englishman," outwardly an intelligent man of urbane charm…often the haven of normality and calm good sense to which one turns with relief when the rest of the Kenyan political scene appears to be shrouded in impenetrable cotton wool.[468] An American diplomat rated him as "svelte, dapper, articulate, informed, and totally incongruous in the black African context."[469]

On allegations of being a traitor, the former Attorney General was highly humiliated, but he suppressed his feelings about his former boss until years later when he reportedly called Moi "just a hick." He claimed in the 1970s Moi used to burst into tears in his office saying, "These Kikuyu will kill me when *Mzee* dies." Njonjo claimed he would take him by the hand and tell him, "Don't worry. Nothing will happen."[470] Those sentiments confirmed widely-circulating reports that the Kikuyu did not want an 'outsider' to take over the presidency, a position they believed was meant for the House of Mumbi.

Disgraced, the respected lawyer faded into the background. Early in July 1998, Njonjo was at the Jomo Kenyatta International Airport to see off his wife on her way to England. Coincidentally, Moi arrived to catch a flight overseas and saw Njonjo.

"What are you doing here"? Moi asked. When Njonjo said that he was seeing off his spouse, Moi retorted:

"Why are you not travelling with your wife"?

"You took my passport away from me." Njonjo responded.

The Njonjo commission of inquiry had been told by the Principal Immigration Officer, James Mutua, that Njonjo held four passports, one of them diplomatic No. D19. They had all been withdrawn.

"Oh," Moi responded, "you should have it back."

The next day, the passport was returned to Njonjo.[471] On 9 July 1998, Moi appeared to have forgiven Njonjo when he appointed him Chairman of the Board of Directors of the Kenya Wildlife Service (KWS).

Overall, the Kikuyu were unhappy about the trimming of the Kikuyu from influential positions and their replacement with the Kalenjin and appointees from smaller tribes. An assessment report by the US Directorate of Intelligence issued in March 1983 warned of civil instability if Moi continued to intensify "efforts to reduce the dominance of the Kikuyu tribe" saying it would cause serious problems for the country's stability.

> Although we believe it is less likely, Kikuyu unhappiness with Moi could lead, in the extreme case, to widespread civil disorder. This in turn, could prompt either a military takeover by senior officers – who are sympathetic to Moi and would want to restore order – or a spontaneous uprising by lower ranking Army personnel largely from the Luo and Kikuyu tribes.

That the Americans were issuing that caution less than three months after the attempted Kenya Air Force coup illustrated the continuing influence and strength of the Kikuyu people. They still controlled the economy and the ruling party KANU. The Kalenjin were not as endowed as the Kikuyu when it came to education and skills, and could not therefore broadly replace the latter in one swoop. The process had to be done gradually and carefully not to cause further tribal friction.

That was more so in the armed forces. While the Kamba dominated the military at the level of Brigadiers upwards of 31% ahead of the Kikuyu at 25%, the latter had more Colonels at 33% and Lieutenant Colonels at 31% against 21% Luo and 24% Kamba respectively. Four years after independence, 22.7% of the officers were Kikuyu compared to 28% Kamba.[472] The radicalized lower ranks of the military comprised a mixture of many tribes including the Kalenjin who were mostly found in logistics, intelligence, and barracks command. Moi therefore depended on the Kamba to protect his regime.

Nevertheless, there was an urgent need for Moi to rectify the situation. He therefore began a process of recruiting young Kalenjin graduates to take up commissioned levels in the military and promoting those in middle level positions. When General Mahamoud Mohamed, the man who helped quell the failed coup, retired in October 1996, an opportunity opened for Moi to fill the top position with his person. He chose his Tugen tribesman Daudi Tonje, a career soldier who joined the King's African Riffles (KAR) way back in 1962 and rose through the ranks. Before promotion to CGS, he had been speed-tracked through four promotions – from head of the Defense College to Chief of General Staff in three years.[473]

Between the time Moi took over the presidency in 1978 to the time he left in 2002, there had been eight Army Commanders – four of them Kalenjin: Lt Gen J. M. Sawe (1979-1986; Lt Gen Daudi Tonje (1993-1994); Lt Gen Augustine arap Cheruiyot (1994-1998); and Lt Gen Lazarus Sumbeiywo (2000-2003).

Moi made changes in the other uniformed forces including the police and the crack GSU which was Kenyatta's creation, by pushing his people upwards. To win over top serving and retiring military officers, Moi gave each one of them land in the Rift Valley. However, that did not deter non-Kalenjin officers, especially the Kikuyu and the Luo, from complaining about the speed in which the Kalenjin were being promoted. That discontent reached a climax in 1985 when reports of internal strife and rumors of a possible coup emerged in the armed forces.

In 2000, the Chief of General Staff (CGS) General Tonje announced new rules on appointments and promotions which appeared to quieten the discomfort. All future appointments were to be pegged on academic performance; and to be promoted, officers were required to have a university degree while cadets, lieutenants, captains, and majors had to pass at least certificate level examinations in military science. The rules were contentious, but they eliminated random promotions of the past in which officers were promoted based on ethnic considerations.

The South African Institute for Security Studies (SAISS) did not fail to note the conspiracy of tribalism in the security forces, noting “the Kenya armed forces’ reputation as a politically neutral establishment has been undermined by irrefutable evidence of tribal favoritism in the appointment of key posts. In the military (and the Police and the GSU), there is a virtual monopoly of President Moi’s ethnic group, the Kalenjin, in the top brass.”[474]

In 1986, one third of the lieutenant colonels and colonels were still the Kikuyu with an even larger Kamba component. The Kalenjin took only a fifth of the senior positions.[475] Moi promoted the Kamba, Kalenjin, Somali and the Samburu wiping out Kikuyu representation so that by 1996,[476] of the five military heads, three were Kalenjin and the remaining two were Maasai and Mijikenda. In the middle of the 1990s, the SAISS counted 18 Generals in the military of which a third were Kalenjin; of the 20 Brigadiers seven were Kalenjin. Under Moi the Kenya Army became “Kalenjin at the bottom, Kalenjin at the middle, and Kalenjin at the top.”[477]

Chapter 14

Enticement: The "kitu kidogo" mentality

WHILE KENYATTA INITIATED corruption, and made it a pastime for well-placed government officials, Moi institutionalized it and made it routine within all ranks of society. A joke is told that during Kenyatta's presidency only the elite benefitted from government tenders, but when Moi came everyone 'ate' – from the cart pusher to the tea girl and the junior clerk, to Members of Parliament, Ministers, Judges, and presidential staff.

"Yes, there was 'eating'" during Kenyatta's era but the "eating was done with a pen-knife". The present "eating" is done using a *njora* (a deadly weapon), said Nairobi MP Paul Kihara in April 1998."[478]

As much as petty corruption involving small amounts of money thrived under Moi, so did mega corruption, involving billions of shillings. It was common for a counter clerk at the lands registry to pocket hundreds of shillings daily by 'hiding' and then 'finding' a file just as it was easy for a procurement officer to inflate a tender and skim off large amounts of money. Consequently, terms such as '*kitu kidogo'* (something small), *'chai'* (tea) and '*hongo'* (bribe) became part of the local vocabulary and defined the many types of corruption that flourished under Moi. They even inspired a local afro-beat musician, Eric Wainaina, to compose a song "*Nchi ya kitu kidogo,*" a country of something small, in which he lambasted the elite for their avarice. The song became a hit with *wananchi* but when he sang it at a musical festival before an audience that included vice president, George Saitoti, his microphone was shut down before the song ended.[479]

When Moi came to power many Kenyans hoped corruption would end. Why? Because Kenya's second president was a staunch Christian; and as a man with a strong rural upbringing, he was less entangled in the twisted urban lifestyles of intrigues, corruption, and conspiracy. Unlike Kenyatta, he was a 'small man' who was bringing into the leadership an aura of humility and simplicity. Therefore, they believed, he would go after the corrupt and put an end to sleaze that was already eating into the fabric of the Kenyan society.

He demonstrated that commitment by lashing at corruption and those involved in it whenever he went in the country, even as his family and cronies were amassing wealth. At one time, he showed up in Parliament to personally lead a debate on a legislation intended to deal with the menace.

In 1982, Moi formed a working committee to draft a national code of conduct to deal with various issues including inequitable distribution of resources, misappropriation of public funds, and corruption. In announcing its formation, he accused some of his officials of greed and selfishness and promised tough action. “These officials,” he said angrily, “are exploiting people through misappropriations, corrupt practices, blackmail and bribery.” He said his government would no longer tolerate graft and those caught would be punished severely. The working committee, chaired by a prominent businessman, B. M. Gecaga, submitted its report in October 1983, but that was the last time anyone heard of it.[480] The whole charade appeared to be a public relations stint to hoodwink Kenyans into believing he was serious about corruption. It was a show of empty bravado.

In some instances, tenders worth millions of dollars were given to Moi’s cronies to undertake projects that made no sense whatsoever. In Moi’s own Baringo district, for example, roads that went nowhere were built; not that they were needed but because they provided opportunities for looting. Local farmers used those empty roads to dry their produce, while goats and sheep lay on them for sun-bath after grazing.

MP Richard Maoka Maore of Ntonyiri likened greedy officials to “scavengers” who hang around the corridors of power. “The scavengers have nothing else to eat and they have now started “eating” public revenue without knowing that they are behaving like a hyena. When you shoot a hyena’s stomach, its intestines hang. It looks at that as a delicacy and then starts eating them. This is what is happening.”[481]

A former Moi detainee, Koigi wa Wamwere, put it more crudely. He remarked that when in March 1982 an Attorney General and a Minister received KES.3 million and KES.1 million respectively “to cover up illegal foreign repatriation” by a Kenyan bank, that was corruption. “When government ministries engaged in the employment of 85,397 bogus employees that allowed government officers to receive from the government nearly KES.85.3 million every month in the form of fake salaries, the creation of such a hole in government coffers was corruption."[482]

Despite all the warnings from Moi, MPs and senior government officials found corruption irresistible. Some of them used what they obtained illegally to gain political power. They stood for and won seats in Parliament, and in the process transferred their avaricious activities to the august House. At one time in 1998, some MPs raised the matter in Parliament saying those who stole from Corporations or ministries should not find a place as legislators let alone as Cabinet Ministers.

MP Mukhisa Kituyi of Kimilili narrated a story of a candidate for a parliamentary seat in Meru who confessed his sins at a public meeting and asked to be voted anyway: "I am a thief," he said, "but unlike other thieves I have brought what I stole to share with you. Who else got money from Goldenberg (scandal) and is sharing with you? I have brought it home. So, elect me, because I have brought what I stole out there to you."[483] He won.

The International Risk Consultants Kroll in a report in April 2004, claimed Moi had assets in 28 countries including hotels and houses in South Africa and in the US, a 10,000-hectare ranch in Australia and residences in London. The same report also claimed the Moi family and its close allies had laundered US$.400 million (KES.41.4 billion) through accounts in Frankfurt, Switzerland, Belgium and Germany, and had stashed money in offshore accounts in the Cayman Islands.[484]

A foreign correspondent, Chris Tomlinson, told a story of how someone mistakenly opened a closet door at State House and found dozens of miscellaneous briefcases full of money stacked to the ceiling. It was believed the money had been delivered by a businessman who wanted to win government tenders. Once the loot was removed, Moi's staff "didn't know what to do with the briefcases."[485] In his memoir, the American envoy, Smith Hempstone, talks of seeing people at the State House waiting room carrying briefcases he was told were stuffed with money to give to Moi.

As a beneficiary of settler land in the White Highlands, Moi was already one of the largest land owners in the country when he became President. Apart from owning 1,600 acres at Kabarak, his vast estates included 2,344 acres at Kampi-ya-Moto; 20,000 acres at Bahati; 20,000 acres in Olenguruone; and 50,000 acres at Ol Pejeta Farm. He also had seven private residences, commercial buildings, investments and businesses.[486] The

Ndung'u report mentioned Moi and his five children as some of those who benefitted from large-scale land grabbing, but Moi dismissed the report as "political gimmick."[487] In the first two decades of his rule, his net worth was estimated at US$.1.2 billion (KES.124.4 billion).[488]

Compare that to the time in 1955 when he left his village of Tambach on a third-class train journey to Nairobi armed with a metal box containing his meagre contents of mismatched clothes; "his trademark blue shirt, grey shorts, long canary yellow socks and shoes," which he constantly wore as a school teacher. His total possessions comprised his residence, a "long, low wooden structure,"[489] a posho mill and a few goats which were not much in value. Two decades later, Moi was swimming in personal wealth which must even have surprised him. Moi's State House became the center of wheeler dealing, contrivance and thievery.

The land grab was so intense during Moi's time that the government of Mwai Kibaki that succeeded him demanded the return of millions of hectares seized "inappropriately" or face seizure. Not a single hectare was surrendered following that warning and the government did not "expose the corrupt" as the lands and settlement Minister, Amos Kimunya, had threatened.

Moi was not keen on the land-buying companies that had sprouted during Kenyatta's time. By the time of Kenyatta's death, there were 1,000 land-buying companies, with more than two thirds of them belonging to influential individuals from Central Province, and a few from Rift Valley, Western and Kisii regions.[490] He blamed the leadership of those organizations for engaging in fraudulent activities, the same activity he appeared to encourage by allowing relatives and cronies to grab public land. While in the early 1980s some of the organizations showed unwillingness to issue title certificates to their members, Moi ordered that they be distributed so that members could take ownership of the plots parceled to them.

The companies, which were controlled by politically-connected individuals, were riddled with corruption. One company, according to the *Daily Nation*, was found to have "settled their kin on 51,539 acres of land in Laikipia, 21,050 acres in Njoro and Nakuru, 1,200 acres in Molo, more than 4,000 acres in Bahati area of Nakuru, and 1,400 acres in Mau Narok."[491]

Moi's decision to dress down the firms led to the weakening of the companies, and in at least one case, that of the powerful Ngwatanoro Company resulted in the resignation of Kihika Kimani, the man who engineered the ‘stop Moi’ campaign after Kenyatta’s death. Under pressure from KANU stalwarts, Kihika dropped out of the race in the 1979 elections paving way for Moi’s favorite sycophant Kariuki Chotara to enter Parliament unopposed.

Invading public utility land

At the time he took over government, most of the prime land had been grabbed by the Kikuyu. He was left with only forest lands and urban plots belonging to government parastatals to give out to his friends and cronies including lands belonging to the Agricultural Development Corporation (ADC) and the Kenya Agricultural Research Institute (KARI), now Kenya Agricultural and Livestock Research Organization (KALRO), in Trans Nzoia, Nandi and Uasin Gishu.[492]

The ADC was established in 1965 to facilitate the transfer of land from Europeans to locals but its mandate was expanded to include promotion and execution of agricultural schemes and reconstruction by initiating and expanding agricultural undertakings and enterprises. Initially, the ADC was under the supervision of the Ministry of Agriculture, but in the late 1980s that role was transferred to the office of the President, and that is when the malfeasance of land grabbing under Moi began.

Table 14.1: ADC Farms sold irregularly

Sold to (Beneficiary)	Farm	Locality	LR No.	Acres	Sold for KES	Sale price per acre (KES)	Estimated Market Value (KES)
Mbithi	Astra	Machakos	9917/9	5518	3,310,920	600	1,103,600,000
Charles	Astra	Machakos	9917/9	5516	3,309,720	600	1,103,200,000
AIC Church	Astra	Machakos	9917/8	3851	-	-	770,200,000
Mwisho	Edge	Trans Nzoia	7581.1/2	2490	286,000	115	498,000,000
Karuna Units	Edge	Uasin Gishu	8466	893	240,000	269	178,600,000
Summer Hills	Edge	Nakuru	8324/3	2315	526,290	227	463,000,000
Ndeffo	Lusiru	Nakuru	9955	2820	405,000	144	564,000,000
Kimoso	Lusiru	Uasin Gishu	1000	324,400	324	200,000,000	
Arap Too	Waterfalls	Trans Nzoia	4486	795	96,000	121	159,000,000

Nyakiambi	S& B	Nakuru	961	290,770	303	192,200,000	
Arnagherry	S& B	Trans Nzoia	6136 5712	1756	620,800	354	351,200,000
Abdul	Quintin	Trans Nzoia	1/2/76	787	866,800	1,101	157,400,000
Ndoinet	Quintin	Nakuru	8323	1127	248,683	220	225,400,000
Subukia	Avondale	Nakuru	10480	3712	2,655,320	715	742,400,000
Njenga	Avondale	Nakuru	9069 9062	149.33	397,000	2,658	29,866,000
Baringo Farmers	Fensbo	Nakuru	13217 2/3	1221	401,841	329	244,200,000
G.K. Kariithi	Tarkwet	Nakuru	10372/112-86/9370	1238	1,700,000	1,373	247,600,000
Kimiti Farmers	Kiboko	Nakuru	9674	800	188,680	235	160,000,000
Haraka Farmers	Lelechwet	Nakuru	8020	1895	516,286	272	379,000,000
Minot	Pele	Nakuru	7606	358	125,000	349	71,600,000
Bridge	Murten	Nakuru	9242	242	142,000	587	48,400,000
E. K.	High Over	Nakuru	11369	741	500,000	674	148,200,000
Njenga	Garbutt	Nakuru	10829	737	310,000	421	147,400,000
Catholic Church	Baraka	Nakuru	9867	1040	13,000	13	208,000,000
B.N. Hinga	Broatich	Nakuru	9216, 11420	1112	640,000	575	222,400,000
Ngao	Broatich	Trans Nzoia	6991, 6992/1	6899	340,000	49	1,379,800,000
Boma	Broatich	Trans Nzoia	5558/2	1380	310,000	225	276,000,000
Naisabu & Kibomet	Kibomet	Trans Nzoia	1839, 3709	5053	2,451,000	485	1,010,600,000
Gitwamba	Kaboya	Trans Nzoia	6439/4	1235	327,000	265	247,000,000
Mutwot	Kaboya	Uasin Gishu	8409/2	1031	300,000	291	206,200,000
Total	58,672	21,842,510	11,734,466,000				

(Chart: Courtesy of the Kenya National Commission on Human Rights/Kenya Land Alliance).[493]

KARI on the other hand was established in 1979 during Moi's reign to undertake research in food crops, horticultural and industrial crops, livestock and water management – all intended to ensure food security through improved productivity and environmental conservation. However, it wasn't long before land grabbers began to nibble on the fertile pieces of parastatal land throughout the country. Within a few years, 3,550 acres of KARI land worth KES.1.3 billion had been disposed of. Available documents showed one company and four prominent individuals among them Limuru MP Kuria Kanyingi, Minister Kiano, and a retired military officer, were "corruptly" allocated a total of 223 acres.[494]

Table 14.2: Positions of benefactors of the irregular allocation of KARI land

Beneficiary	**Allocation reference**	**Hectares**	**Value (KES)**
Former Director of Land Adjudication	LR.10/94/42/13	20.2	15,003,912.00
Former Director of Agriculture	LR.10/94/42/12	20.2	15,003,912
Former District Commissioner	LR.10/94/42/10	8	6,004,530
CEO, Export Processing Zones	LR.10/94/42/9	8	6,004,530
Former Officer in Charge of Police Division, Kitale	LR.10/94/42/8	8	6,004,530
Former MP	LR.10/94/42/7	8	6,004,530
Former Provincial Commissioner	LR.10/94/42/6	8	6,004,530
Former Ambassador	LR.10/94/42/5	8	6,004,530
Former MP	LR.10/94/42/4	8	6,004,530
Bishop, Africa Inland Church	LR.10/94/42/3	8	6,004,530
Former MP	LR.10/94/42/2	8	6,004,530
Former MP	LR.10/94/42/1	8	6,004,530

(Courtesy: Kenya National Commission on Human Rights and the Kenya Land Allowance)[495]

There were dozens of ADC and KARI farms totaling tens of thousands of acres many of them in the soil-rich Rift Valley that were given out. One of them was the 5,109-acre Ngata farm, an animal and crop husbandry research land outside Nakuru which was administered by the Department of Settlement in the Ministry of Lands. Formerly owned by Lord Maurice Egerton of Tatton, a member of the British aristocracy, the sprawling farm is within what was previously known as the White Highlands. Moi was interested in the land which was then owned by the ADC. Although it was valued at KES.22 million on 2 May 1979, Moi agreed it be subdivided and distributed to politically correct individuals at a throw-away price of only KES.4.8 million.

In a letter to the Minister of Lands and Settlement, Jackson Angaine, dated on 28 July 1979, the director of settlements, P. K. Gota, explained that he had been instructed by Moi to allocate the farm to the following people: Erastus Mbijiwe, deputy commissioner of police, 100 acres; George Kimeto, provincial intelligence and security officer, 100 acres; Elijah Sumbeiywo, head of presidential security; Moi's body-guard Major Peter Ikenye; head of the presidential guard Bernard Njinu, 50 acres each; and Gota himself 287 acres. An additional 43 farms were supposedly to go to Moi's supporters.[496] It is not known if the distribution was made in that manner.

Towards the end of the year and before the 8 November 1979 general elections, Gota drew a long list of plots available for allocation and sent it to the Minister noting that Moi had expressed a personal interest in 50 acres of Plot No. 11 Moyasett, which was eventually allocated to Moi's friend who was not named. Among the plots on the list was the 2889-acre Mitimingi SFT farm in Elementeita. Kenyatta's physician, Eric Mngola, was allocated 1,000 acres of the land but he failed to put a deposit, and it was eventually sold to an entity called Mawamu Group.[497]

In Parliament on 16 November 2000, Lurambi MP, Newton Kulundu challenged the government to confirm or deny that the following government officials had benefited from the Ngata farm:

1. General Jackson Mulinge (Military) – 682 acres
2. General Mahmoud Mohamed (Military) – 233 acres
3. Benjamin Kipkulei (Senior civil servant) – 80 acres
4. Dr. Sally Kosgey (Senior civil servant) – 49 acres

5. Mohammed Haji (Cabinet Minister) – 10 acres
6. Joseph Kaguthi (Provincial administrator) – 10 acres
7. John Kaleli (Clergy) – 50 acres
8. Francis Ole Kaparo (Speaker of the National Assembly) – 10 acres
9. John Lokorio (Deputy press secretary) – 50 acres

The Minister's response was dodgy. "I don't know," he said, adding: "why did he (Kulundu) specifically have to pick those names…But there is nothing wrong because they are all Kenyans and they have a right to get those pieces of land."[498]

Another ADC farm that was dished out to Moi's close associates was the 1,250-acre Kerma farm also in the Rift Valley which was bought from a European settler for KES.2.3 million for distribution to the landless. Like most parcels of land in the White Highlands, the farm did not go to the landless but to the elite.

In 1991-1992, land totaling 202 hectares belonging to the Kisii regional center which was part of the International Plant Genetic Resources Institute (IPGRI) African Leafy Vegetable Program, and the Lanet beef research sub-station which belonged to KARI, was given to two individuals and a school for free.[499]

As Kenyans continued to grumble about illegal allotments, Moi appointed the Commission of Inquiry into Land Law Policy in 1999 chaired by former Attorney General Charles Njonjo. Although the Commission produced a policy framework recommending a curb on presidential powers over land, no action was taken, prompting a pressure group called the Kenya Land Alliance (KLA) to demand that the report be made public before Moi vacated office in 2002. That did not happen and when Kibaki took over, the report was shelved.

A 2000 Parliamentary Accounts Committee (PAC) report contended that the allocations of ADC's land, forests and research stations to well-connected people were "shrouded in secrecy and corruption. There was no proper valuation, advertising and tendering before disposal and Kenyans were badly fleeced."[500]

Several cane farms in Nyanza also fell into the hands of the politically-correct Kenyans. A good example was the Muhoroni sugar company which was run down in the late 1990s leaving it with huge debts. In 2004, the Assistant Minister for Lands and Housing, Joshua Orwa Ojode, revealed names of several elite members who were beneficiaries of cheap Muhoroni land, among them: Hezekiah Oyugi (82.6 hectares, LR 6061/1; Wilson Ndolo Ayah (32.5 hectares, LR 6017/7; Prof Simeon H. Ominde (8.7 hectares, LR 6016/4; Cabinet Ministers; top civil servants; and members of the clergy.[501]

Although some of the above-named individuals paid for their pieces of land some reportedly didn't.[502]

Other government bodies that suffered massive land grabbing by the elite are the Kenya Institute of Education (KIE), now Kenya Institute of Curriculum Development (KICD); the Kenya Railways Corporation (KRC); the Kenya Post and Telecommunication Corporation (KP&TC), now Posta; Kenya Airport Authority (KAA); and Kenya Industrial Estates (KIE). Some of the same people who appeared in other lists also appear among those who benefitted from these lands.

Christian organizations were not left behind. The report of the Commission of Inquiry into the Illegal and Irregular Allocation of Public Land said the country had fallen into a state of "moral decadence" as churches, mosques and temples joined in the land grabbing mania.[503] The full list of land grabbers is contained in the Commission report. The Commission confirmed that at least 200,000 illegal titles to public land were created between 1962 and 2002, 96% of them from 1986-2002, during Moi's presidency.[504]

Like Kenyatta who grabbed large parcels of land at the Coast, Moi too left a finger-print on the pristine beach stretch although not of a grand scale. He was accused of grabbing land belonging to a mosque in Kwale which he later surrendered back to the people, and of trying to change the "terms of an agreement for a piece of beach land he allegedly sold"[505] to his once close allies, businessmen and former nominated MP Rashid Sajjad, Mohammed Bawazir and Mohammed Zubedi. Moi was also embroiled in a controversy with owners of African Safari Club – a flagship of several hotel properties at the Coast – over the operations of the Flamingo beach hotel in Mombasa which he allegedly wanted to control.

Sajjad admitted grabbing public properties estimated at KES.1.6 billion, which included Uhuru recreational grounds in the city center, a public beach, a clinic, and land belonging to schools and prisons.

In March 2014 Sajjad, a former Chairman of the Board of Kenya Ports Authority and financier of KANU, surrendered title deeds of 18 properties to the anti-graft body EACC over threats of repossession and/or prosecution.

A year earlier, Nairobi senator Mike Mbuvi Sonko, returned to the government a piece of land at the Coast worth KES.9 million he reportedly bought from a former MP.

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But the most interesting case of land grabbing related to a strip of road approximately one kilometer long named Mama Ngina Drive. This piece of real estate has a panoramic view of the open sea and Likoni channel and a look-out for ships arriving and leaving the port. There are also historical archaeological monuments. For many years, the strip has been a popular destination for locals and visitors who go to enjoy the cool ocean breeze and marvel at the huge waves that splash violently on the rocks at the banks. It abuts a scenic 9-hole golf course overlooking the open sea and a private club whose membership is the who-is-who in society.

In the early 1990s, the land was the subject of contention as prominent people scrambled to acquire the land for subdivision and sale. In 1999, Moi ordered the Mombasa Municipal Council, the trustee, to hand over the title of Mama Ngina Drive to the National Christian Council of Kenya (NCCK) to develop it for its religious use. As the NCCK began to build a wall to fence it off, protests from conservationists and civil society groups exploded. The activists filed a case to block the transfer of the land. It was rumored then that the NCCK was being used as a cover-up by prominent KANU politicians to seize the land for profit. A High Court dismissed Moi’s edict and the property was returned to the people.

On 3 December 2004, the Minister for State and National Heritage, Najib Balala, signed a Gazette Notice No. 9494 to have the site protected from grabbers. However, it was not long before some devious private developers tried again to take over the land.

In 2015, the PIC revealed that once again crooks had taken possession of part of the eight-hectare land belonging to Fort Jesus Museums, a UNESCO World Heritage monument. Public outcry and intervention by the government, the Coast Tourist Association, the World Society for the Protection of Animals, and National Museums of Kenya, saved the sites from being sold off. Fort Jesus was reportedly among seven museums in the country whose land was under threat from grabbers.

Chapter 15

Money Laundering: Moi-era billionaires

SOME CALLED THEM the "Moi-era billionaires"[506] – the small, well-connected, conniving group, of individuals who made money, lots of it, from either bilking the government or by engaging in drug trafficking, gun-running and a variety of criminal activities. Others referred to them as just "the cartel." Among them were junior civil servants who rose from lower ranks to occupy influential positions in government, while others were petty businessmen like Kariuki Chotara and Kuria Kanyingi who benefitted from state tenders in connivance with corrupt public servants. Both became wealthy power-brokers and Moi's trusted confidantes. The millions and billions they made from deals were invested in farms and ranches.

However, as the elite became more sophisticated and foreign secret havens were discovered, the rich moved their surplus money to offshore accounts in institutions along the Indian Ocean islands and to the Isle of Jersey and Switzerland. The idea was to shelter their fortunes "from the prying eyes of African tax authorities…"[507] and to take advantage of low taxes and loopholes for purposes of money laundering. Mauritius was particularly attractive to Kenyan looters because of its proximity in the Indian Ocean and its long history of stability. London too is known to be favored by Kenyan looters desiring to hide money overseas. "London snaps up all stolen loot without as much as a wink of shame," says one report.[508] There were several other secret destinations where the looters could hide their ill-gotten money.

In June 1986, the *Finance and Development*, a publication of the International Monetary Fund (IMF), published a report showing funds held by Kenyan elites in foreign banks equaled KES.930 million in 1982; KES.870 million in 1983; and KES.830 million in 1984. Other reports said since independence until the late 1980s, Kenyan elites had stashed abroad an equivalent of US$.5 billion (KES.518.5 billion), which at that time exceeded Kenya's foreign debt of US$.4 billion (KES.414.8 billion).[509]

In the first decade of Moi's government when strict foreign exchange controls were in place, Kenyans invested their loot mostly in the Isles of Jersey, a small island off the coast of France belonging to the British Crown, as well as in the Central European nation of Switzerland, a traditional tax haven for the rich and some of the biggest companies in the world. Of those named among 238 Kenyan elites holding KES.51.1 billion in the Hongkong and Shanghai Banking Corporation (HSBC) Swiss accounts in 2016 was a prominent Kenyan politician and gem dealer, and a controversial Asian businessman who has been named in mega corruption scandals in Kenya.[510] "*Panama Papers,*" a publication of the International Consortium of Investigative Journalists (ICIJ) also named the former Kenya deputy Chief Justice, Kaplana Rawal; a proprietor of an oil and gas company; and a well-known dealer of ivory products, as among those with money in offshore accounts. The CIJ report showed Rawal and her husband were directors of two companies in the Virgin Islands before she joined the Supreme Court. Reacting to the report, the Judge said she was registered as a director without her knowledge and "was not involved in family businesses except for generally knowing they were involved in real estate."[511]

A report quietly ordered by President Kibaki when he came to power but leaked in 2004 by WikiLeaks shows the maddening extent in which money siphoned out of Kenya during President Moi's time was laundered through shell companies, secret trusts and front-men. The report by auditors, Kroll Associates UK Limited, investigated corrupt transactions and holdings by several powerful members of the Kenyan elite, and details of how state finances were laundered across the world to buy properties overseas. Among the front-men was an individual based in Geneva described as "one of the biggest money launderers" who used a Kenyan bank owned by Moi's cronies, and a slew of lawyers, to transfer millions of dollars across territories.

In November 2017, another bunch of papers called the "Paradise Papers" was leaked identifying Cayman Islands in the Caribbean Sea to be another popular offshore banking site for the wealthy and crooked government officials. Cayman has a population of only 60,000 people but administers about KES 200 trillion worth of financial assets, about a fifth of the entire global stash of money in offshore accounts. It is the sixth largest banking center with 200 banks and 140 trust companies handling dozens of trusts.

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In the early 1971, the country experienced what came to be known as “the coffee boom,” a period in which a black-market trade involving Ugandan coffee was thriving. Brazil, one of the world’s biggest producers, had suffered a devastating blow when frost destroyed all its coffee leaving a big gap on the market. In 1971, the brutal dictator Idi Amin overthrew Milton Obote to become the President of Uganda. His eccentric ways led the US to suspend its US$.250 million (KES.25.9 billion) annual coffee trade with Uganda in protest, leaving Uganda with no market for its favored commodity.

That’s when Kenyan businessmen stepped in and took advantage of the situation by smuggling the commodity and marketing it abroad. They set camp along the common border and for more than a year, bought huge consignments at low cost and transported them to the port of Mombasa for onward transmission overseas. Scores of people became millionaires and an instinctive rush to hide the loot became irresistible.

But there were people who chose to earn money from corporate boardrooms using their positions in the public sector. A 2003 government investigation, for example, concluded that the Chief Executive of the Kenya Power and Lighting Company (KPLC), had abused his office over a period of two decades. The man was a ‘blue-eyed boy’ in public and corporate sectors who enjoyed close relations with President Moi. But when early in 2003 – at the beginning of Kibaki’s administration - information spread that all was not well in the power sector, the government took notice and ordered an investigation. Energy Minister Ochilo Ayacko appointed former Limuru, MP George Nyanja, to probe the organization which had recorded three consecutive years of financial losses starting 2000. When the man was summoned to appear before the committee to explain, he declined. Ayacko sent him on compulsory leave.[512]

In its report tabled in Parliament in December 2003, the Nyanja investigation committee blamed KPLC for creating an artificial power shortage so that two foreign companies, Westmont of Malaysia and Iberafrica of Spain, could supply power generators via diesel barges at a cost four times the market price. The committee also found that KPLC – in which the government had 51% shareholding – had transferred millions of shillings to an offshore account without authority.

"(We found) mismanagement, total abuse of office, because even ethics, morality, requires that you don't do certain things," said the Nyanja report. The investigative committee recommended Samuel Gichuru's prosecution and seizure of his property. He was not prosecuted, and there is no information that his assets were confiscated after that investigation.

The man's name cropped up in another scandal, this time involving money laundering. In February 2016, a Jersey court in the UK charged Gichuru and a former Kenya Energy Minister, Chris Okemo, with 53 counts linked to "commissions" paid by foreign companies to win Kenya Power tenders. A total of KES.1.01 billion were found hidden in a Jersey offshore account. A company linked to Gichuru, Windward Trading Limited, admitted in Royal Court documents in Jersey of receiving bribes from 11 firms that sought contracts in Kenya.[513] Okemo was named as a beneficiary of the bribes paid to Gichuru, according to court papers. Companies named in court papers as having paid kickbacks to Windward Trading Limited, included the Finnish Energy company, Wartsila; Knight Piesold; British engineering firm Mott Macdonald; and Capitan (Europe) Limited.

Meanwhile, it was alleged, the two individuals continued to withdraw money from the account until 2002 when Jersey authorities froze it after being notified of suspicious transactions. By that time, they had allegedly transferred half a billion shillings in foreign currency from the account. What was left in the back was the equivalent of KES.526 million.

An official of Knight Piesold, one of the companies involved in the designs of the Ewaso Nyiro dam, said it was difficult to do business in Kenya without paying commissions. "It was like tax…One person we paid was… Samuel Gichuru,"[514] Peter Garrat said in papers seeking the extradition of Gichuru and Okemo to Jersey to face the charges.

"This case is historic. It is the first time there has been a prosecution in respect to the corruption during the Moi era," said Howard Sharp, a Queen's Counsel, who prosecuted the case.

According to the *Daily Nation*, Gichuru opened secret bank accounts at the HSBC Bank Plc and at the Royal Bank of Scotland International in Jersey in 1986, with the help of an accounting firm[515] where they reportedly banked "millions of dollars" earned from "consultancy and business introductions".

In 1986, as money poured in from mysterious payments from engineering and energy companies doing business with KPLC, he was advised by his financial friends in Jersey to register a limited company through which the money would be channeled. He formed Windward Trading Company Limited and appointed a local company, Walbrook Trustees, as the administrator. Though his name did not appear on official company documents, and he was not one of the signatories, Gichuru controlled the company between 1999 and 2001, and thereafter he ceded control to other directors.[516]

One journalist described how the scheme worked:

> KPLC would identify the project to be funded. It would then approach a UK branch. ECGD (Export Credit Guarantee Department) would then provide a guarantee to the bank that the loan would be repaid in full no matter what. The bank would then use the loan to pay the contracted UK Company for goods and services received. However, Gichuru would inflate the bills and the UK Company…would forward the balance to his Jersey accounts."[517]

The ECGD, set up in 1919, is a British government credit agency which assists UK exporters in subsidized insurance, guarantees, and credits to UK companies exporting goods and services overseas. Although the department has done some good deeds, it has also been accused by human rights and accountability organizations including Transparent International of abetting corruption and selling arms to dictators with poor human rights records.[518] It has been implicated in "some of the world's worst scandals involving British business operating abroad."[519]

The ECGD role in the Turkwel Gorge Hydro-Electric Dam in Kenya is worth mentioning, so is that of Gichuru as Chief Executive of the KPLC. The project was conceived during Kenyatta's time in the 1960s, but it was not until 1986 when Moi was in power that a feasibility study was carried out through a contract to a French company, Spie Batignolles. There was no international bidding and the contract was for US$.250 million (KES.25.9 billion) an amount that was US$.64 million (KES 6.6 billion) more than originally estimated. Experts said the terms of the contract were "extremely disadvantageous" to the Kenya government and likely to leave the country with a huge debt burden. The project ended costing Kenya US$.450 million

(KES.46.7 billion) – three times the initial estimate.[520] Originally, the dam was meant to produce 160 MW of electricity, but by 2000 it was producing only 80MW because of low water levels that had been predicted before construction started.

Hundreds of people who depended on the dam during times of famine were displaced from the area and the life of the pastoral Turkana people was severely disrupted. The dam also caused irreparable environmental damage to indigenous species of plants which were the main source of survival for people and livestock, changed flood patterns and threatened fauna habitats, the United Nations Environmental Program (UNEP) said.[521]

Because of corruption and fiscal mismanagement surrounding the project, the consultative group meeting of donors, including the World Bank and the IMF, imposed a full aid embargo on Kenya, and in 1996 aid to Kenya's energy sector was frozen.

In August 2009, the Kenya government approved 18 irrigation projects meant to stimulate the economy and create jobs through production of rice and maize crops. All including Turkwel were to be governed by an authority called The Ewaso Nyiro Development Authority (ENDA).

Gichuru was in-charge of both the Turkwel and Ewaso Nyiro projects. The foreign company that was to design the project was Knight Piesold (KP) which eventually was found to have issued dubious invoices describing the payments only as "For services rendered in Kenya to Ewaso." Gichuru was the one who reportedly signed the tender award documents to Knight Piesold and much of GBP.43 million (KES.5.8 billion) price was paid up front.

The World Bank noted in its 1992 report that "the exorbitant cost of this contract together with the high level of upfront payments…even before the feasibility study was completed, raises fundamental questions about procurement practices and financial mismanagement." The World Bank which investigated the cost of the feasibility study eventually cleared the company of any wrong-doing.[522]

On 24 February 2016, Windward Trading pleaded guilty to four counts of money laundering. A Jersey Royal Court ordered the company to forfeit GBP.3.6 million (KES.490 million) and stripped it "of all its assets that constituted the proceeds of crime."[523] The Court found Windward held the proceeds of criminal conduct. It "served as a bank account," the solicitor general, Howard Sharp QC told the court.

> Windward Trading received and held the proceeds of criminal conduct perpetrated by its controlling mind and beneficial owner, Samuel Gichuru. The company knowingly enabled Gichuru to obtain substantial bribes paid to Gichuru while he held public office in Kenya. The company played a vital role without which corruption on a grand scale is impossible: money laundering. Gichuru…accepted bribes from foreign businesses that contracted with KPLC during his term of office and hid them in Jersey.[524]

What made this case so interesting is that British intelligence officers used information in a divorce affidavit filed by Gichuru's former wife way back in 2006 to unravel his immense wealth. Salome Njeri, listed a long list of assets which she said were acquired jointly claiming Gichuru planned to disinherit her in favor of his girl-friend. The affidavit named a US$.10-million (KES.1 billion) credit balance with HSBC Bank in Jersey Island as part of Gichuru's massive wealth and claimed that "some of the property had been acquired illegally."[525] In a separate affidavit in November 2006, however, Gichuru denied Njeri's allegations.

In the meantime, the matter was taken up by the Kenyan Judiciary to decide on an extradition request from Jersey. Arguments and counter-arguments took place in Kenyan courts over the extradition of Gichuru and Okemo, but by the end of 2017 no decision had been made.

Early in 2017, Britain returned to Kenya KES.380 million, being part of the money confiscated from the offshore account.

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In 2011 Kenya's Ombudsman, Otiende Amollo, estimated that KES.700 billion obtained from corruption could be lying in offshore accounts overseas. The amount was close to the one reported in 2003 by Kroll Associates which investigated secret deposits. The firm found the money was hidden largely in European and Canadian banks.

In addition, it was reported in 2011 that US$.2.1 billion (KES.217.7 billion) had found its way into the country's economy without the government being able to explain its source.[526] How much of it was laundered money from piracy, drug money, or other criminal activities, was not known. However, it is speculated that money laundered from Kenya could be finding its way to terrorist groups in Somalia including Al Shabaab.[527]

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The penchant for thieving Kenyans to hide money in safe offshore accounts has been unrelenting, compelling the EACC in 2016 to announce it had barred 146 government employees from operating overseas bank accounts. In 2015, 450 applications were received from Kenyans wanting to bank abroad. Three hundred-and-four applicants were approved, and the rest rejected. Of those approved 277 were from Kenyan diplomatic staff abroad, and the rest from individuals and companies based in the country. EACC action was in line with the constitution which bars public officers from having bank accounts outside Kenya. At the end of 2016, 367 Kenyans had overseas accounts.

Although an anti-money laundering legislation was signed into law by Kibaki in January 2010, experts think that curbing the crime could end up hurting Kenya given the long period it has existed and its contribution to the economy.

After appealing to foreign governments to help Kenya recover the money stolen from Kenya and stashed in banks overseas, the government announced in 2012 that it was receiving cooperation from Switzerland, Japan, the UK and Jersey.

Money laundering is a world-wide phenomenon not restricted to Kenya or the developing world. In fact, the WB believes bribery, corruption, and money laundering, are inextricably linked, with the latter being the last in a long chain of corrupt acts.[528] It is estimated that 2% to 5% of global GDP amounting between US$.800 billion (KES.83 trillion) and US$.2 trillion (KES.207.5 trillion) is involved in various illegal activities, with an estimated US$.20 billion (KES.2 trillion) to US$.40 billion (KES.4.1 trillion), believed stashed overseas by corrupt African leaders.[529]

Banking fraud

Early in the 1980s, the Bank of Baroda in Nairobi was accused of corruption by allegedly helping more than eight Asian-owned companies evade income taxes amounting to KES.15 million between 1980 and 1981. The matter was raised in Parliament by the outspoken Bumula MP, Sifuna wa Sifuna, who named the eight companies as:

1. Kem Stores KES.101,600 in 1979

2. Kem Stores KES.344,357 in 1980
3. Elgeyo Saw Mills KES.4 million in 1980
4. Vic Textile Agency KES. 450,000 in 1981
5. United Builders KES.1 million in 1981
6. Shah Construction Company KES.2,844.530 in 1981
7. Grain Millers Company KES.5 million in 1980
8. Kenapen Industries Ltd. KES.360,000 in 1981
9. M/s A to Z Emporium KES.1,400,000

"It is very serious for the government to lose more than KES.15 million on tax evasion," [530] Sifuna told Parliament.

In 1998, an Assistant Minister of Finance, Christopher Lomada, MP for East Pokot, told Parliament that a company by the name Desbro Ploymers Limited had evaded paying taxes to the government between April 1993 and March 1998, amounting to KES.224,172,834. Following on a tip from a whistleblower, it was discovered the company kept two sets of records, information that was unknown to tax authorities. A demand letter was dispatched to the company to pay, but the Ministry of Finance could not explain why the company was not prosecuted. Machakos Town MP Jonesmus Mwanza Kikuyu, who wanted answers on what the government planned to do about the company, had claimed the tax evasion involved KES.233,836,450.

Oil and Goldenberg

In the late 1990s, Total Oil Company was awarded a certificate to prospect petroleum in a highly promising block in Lamu. Soon thereafter, the license was cancelled and in October 1994, an exploration agreement was signed with a British petroleum company called Star Petroleum International (Kenya). The company was given three blocks in Lamu and Kwale, south of Mombasa, covering both inshore and offshore areas. No reasons were given to explain the cancellation of contract with Total Oil Company, fueling speculation that Star Petroleum had links to high ranking government officials. MP Mukhisa Kituyi claimed in Parliament in 2001 that Star Petroleum did not have competence or resources to prospect for petroleum and had been trying to sell the license back to Total. "How can a government be trusted if, even the prospect of exploiting petroleum resources at a time when we are so economically desperate, is being used to stroke the greed and appetite of the mighty and powerful?[531] he asked.

And in 2001, a South African petroleum company Engen – which later became a major oil retailer in Kenya – almost pulled out of the country after being bombarded with requests for *harambee* contributions from senior members of the government in the form of bribes.[532] Apparently, when the company thought of investing in Kenya, they did not know they had to pay an informal tax "through emissaries and pseudo-emissaries"[533] of President Moi.

However, none of the corruption cases cited above superseded the multi-million-shilling Goldenberg scandal – described as "the biggest government scandal in Kenya' history[534] – which rocked the country between 1990 and 1993. The principal player was Kamlesh Pattni, a shrewd schemer who owned Goldenberg International Limited (GIL); who together with Ketan Somaia, now a convicted fraudster and owner of the defunct Delphis Bank, took advantage of a pre-export finance scheme to milk and defraud the government of billions of shillings.

Author Charles Hornsby says in his book, *Kenya: A History Since Independence*, that it was Special Branch director James Kanyotu who introduced Pattni to Moi who then agreed to increase the level of a gold export compensation arrangement between the government and GI from 20% to 35%. Moi also reportedly approved an arrangement in which the government would pay in advance for the actual export and await repayment after shipment.[535] Among those named in the scheme other than Pattni were senior government officials: Central Bank Governor Eric Kotut, Treasury PS Wilfred Karuga Koinange, and his deputy, Eliphaz Riungu, as well as Finance Minister George Saitoti.

More intriguing was that the Cabinet neither considered nor approved the project.[536] The crooked deal involved fake exports of gold and diamond which Kenya did not mine. Officials also ignored the law that required the Ministry of Finance to confirm that exports of eligible goods had taken place and foreign currency payment had been received before forwarding the claim to the commissioner of customs and exercise for compensation payment.[537] Once received, the money was dispatched to foreign banks in Western capitals including New York, London, and Geneva.

It was later discovered some of the money was returned to Kenya and banked in the Goldenberg accounts in Nairobi from where it was exchanged into Kenya shillings at special rates. The shillings were used "to pay thugs, bribe officials and buy votes in the December (1992) elections…" it was claimed.[538]

Every sign pointed to corruption in the Ministry of finance and the Central Bank which issued the license to Goldenberg to deal in foreign currency. The Finance Minister (George Saitoti) did disassociate himself from blame in the scandal, but several officials of both institutions together with the masterminds of Goldenberg, were charged in court on various charges of defrauding the government. It was the biggest scandal in Kenya's history.

Graft at City Hall

The 1980s recorded the worst cases of looting and corruption in City Hall. In 1983, the Nairobi City Council was disbanded due to excessive corruption. Several chief officers were suspended, and a Commission was appointed under the chairmanship of former Managing Director of Kenya Railways, Patrick Mwangola, to run the city. However, the Commission did not keep a record of its meetings, so no one knew exactly what was going on within the seat of power. City politicians and members of business cartels took advantage of that and went around intimidating officials into signing documents to turn over land belonging to the city. Grabbers used names of prominent citizens to have land allocated to them before selling the same to private developers. In 1993, for example, Juja MP Stephen Ndicho was "allocated" 1.6 acres of land in Kilimani, Nairobi, without his knowledge. The perpetrator then quickly sold the piece for KES.50 million and pocketed the money before the legislator got wind of the transaction.

On the outskirts of the city, slums continued to grow as moneyed politicians built residential structures for the low-income families. The land for the construction of such structures was often government land acquired through connivance with officials or local chiefs. The 'owners' would build rooms for rent, and families would be squeezed into tiny spaces that lacked sanitary facilities. They would use persuasive or violent means to collect the rent and pocket the whole amount."[539]

In 1993, when John King'ori was elected Mayor, Nairobi was virtually bankrupt. It had no money to buy trucks for collection of garbage which was piling everywhere in the city. Nairobi stunk as mountains of fly-infested waste remained uncollected for weeks on end. Daily garbage collection was estimated at 400 tons, but the City had neither the logistics nor the financial capacity to deal with the mounds. The Council also did not have money to repair craters that had formed in city streets; and the water supply was erratic, forcing residents in some estates to go for days without seeing a drop of water. When it rained, the sewage system collapsed occasioning torrential floods and loss of business for traders. Part of the problem was caused by illegal structures tapping into public resources.

That was also the period of “unparalled scramble for public plots, which were grabbed with the approval of chief officers and councillors. Away went plots meant for clinics, schools, playgrounds, recreation and other public utilities.”[540] At the end, the Commission’s attempt to clean the city came a cropper.

One morning in 1994, a former Nairobi City Commissioner, Francis Karani, walked into the Westlands open market and told stallholders to vacate the space claiming it had been sold to “a private developer.” A letter purportedly signed by the Town Clerk, Zipporah Wandera, dated 15 April 1994, had given Karani a 99-year lease under what were described as highly favorable conditions. But what drew increased suspicion about the letter was that Wandera had asked Karani to pay KES.1 million to the Nairobi City Commission,[541] plus an annual rent of KES.100,000. The check for the plot was made to the Nairobi City Council while the receipt was from the Nairobi City Commission. That caused speculation that something was amiss. It emerged that Karani was acting as a broker for a company called Salima Enterprises owned by an Asian family and part-owned by a Canadian and a British citizen. Efforts by the stallholders to buy the land were thwarted, and they had to be evicted.[542] Vice President George Saitoti who visited the market in 1996 promised to have the sale annulled but nothing happened thereafter. The plot worth KES.60 million was sold for only KES.38 million.[543]

In November 1999, Wandera was sent on forced leave and investigations launched into financial irregularities in the Council including in revenue collection, spending controls, the rationalization of staffing and delivery of services.

In June 2002, she was charged in court for corruption involving a

KES.141-million fraud. Also charged with her was the wife of a Minister, Elizabeth Wangari, former City Treasurer Peter Gathimba, former Kisii KANU branch chairman, Geoffrey Asanyo, former City official Lawrence Musyoka, and a businessman Philip Munyao. They denied the charges claiming KACA was not in existence when the alleged offences were committed, and therefore had no authority to prefer charges against them. Six years later, the case was dismissed. Wandera died in 2015.

One method through which city officials made money from kickbacks was by raiding makeshift stalls, rounding up hawkers – even those licensed – and confiscating their goods. They would swoop in with their vehicles, arrest people, and then drive off. Those who parted with a bribe of as little as KES.200 were set free. Those who didn't have money were driven to the basement cell at the City Hall to await court charges. One MP complained that corruption within that force was not only "endemic but pandemic."[544]

In 1987, hawkers along River Road in Nairobi complained that the City Council *askaris* were carrying out up to six raids a day. They blamed the swoops on shop owners who allegedly paid the *askaris* KES.1,000 each to have hawkers removed from outside their establishments. In 1986 in Mathare Valley slums across town, hawkers had to pay KES.5 per month as protection money to KANU youth wingers so that they were not harassed by the council personnel.[545] At Gikomba market in March 1999 two truckloads of *askaris* pulled up at the market and demolished stalls ostensibly to pave way for "modern" stalls. The hawkers demonstrated on the streets and petitioned the town clerk. The matter was resolved but the damage was extensive, and stallholders had to incur expenses of moving their belongings back to the market from the Dagoretti police station where they had been dumped.

Council officials were also notorious for fraudulently grabbing and selling City Council property. Virtually every open space or public institution including parks, bus stations, mortuaries and road reserves, were 'privatized' often without payment of any sort.[546] An estimated 60% of the council's land in Nairobi was 'privatized' leaving the council with only 5%.

In 1997 Kisumu Town MP, Prof Anyang' Nyong'o claimed in Parliament that a former deputy Mayor owned 25 plots in the city. "If you go down the names of the people who have been mayors in this city, you will find[547] they have used those positions to '*nyakua,*' grab, plots. This is very sad. This has meant that we do not have a greenbelt and playgrounds in this city. We do not have space for future development of schools and kindergartens in this city. That is why schooling has become too expensive in this city."

The MP for Embakasi, a densely-populated neighborhood east of Nairobi, David Mwenje, called for Mayor Sammy Mbugua to be investigated alleging he had amassed a lot of wealth "in dubious ways."[548] The legislator claimed in June 1999 that Mbugua bought a house in Ruiru worth KES.46 million with money whose origins were questionable. Mbugua did not survive the onslaught and served for only one year from 1998. He was ousted in 1999 after which John Ndirangu took over.

Ndirangu's performance was lackluster, and his name was soiled in June 2001 by the mysterious disappearance from the Council's strong-room of the mayoral gold chain estimated to be worth KES.100 million. The chain was bought for the city in 1963 as a symbol of the office of Mayor who must wear it during all official functions. It was Ndirangu himself who reported the theft at the central police station after which two of his secretaries, a bodyguard, and three other people were picked up for questioning. Parts of the chain were found by the Interpol in Paris, France, eleven months later when a woman tried to sell them. Ndirangu lost his seat in 2001. When he stood for the Embakasi Central parliamentary seat in March 2013 general elections, Ndirangu faced headwinds when the ombudsman sought to bar him from holding public office due to his past record, including charges of colluding with others to defraud the Council of a mayoral house. However, the Independent Electoral and Boundaries Commission (IEBC) cleared him.

In 1999, Parliament was told the Council had spent KES.85 million on refurbishing the City Hall an amount that could not be matched with the work done.[549] More rot was exposed in the extra-ordinary inspection report of the Council conducted by a 14-member committee chaired by John Mbugua. Local Government Minister Joseph Kamotho received the report on 27 March 2000 but did not make it public until 26 October. There was a litany of corruption accusations including conflict of interest, irregular business transactions, land grabbing, forgery, illegal allotment of services, and abuse of office.

It named former Local Government Cabinet Minister Francis Lotodo, councillors and city officers, as having taken advantage of Council assets to enrich themselves.

What crippled the Council for the most part, however, were the poor methods used for revenue collection. Workers went around collecting revenue, but that revenue never reached city coffers. “If you go to your market place, you will find most of the revenue collection officers moving around with two receipt books: one for themselves and their masters, and the other for the council. We should stop this practice.”[550] In the 1990s, the council began using private lawyers to collect money from defaulters but that system too failed because the lawyers, like the council workers, withheld the money for their own use.

In 1996, the Minister for Local Government, William ole Ntimama, read in Parliament a list of 26 legal firms that had collected money on behalf of the Council but had failed to surrender it to the city. The amount totaled KES.716 million. Kikuyu MP Paul Muite who stood on a point of order said the firms were owned by “politically-correct KANU lawyers” and wondered why they had not been prosecuted. Igembe South MP, Richard Maoka Maore said the lawyers never went to court but sat in their offices and collected money which they used “to corrupt our Judiciary.” Other MPs claimed the lawyers were “looting” the money for KANU to use in elections. The Minister said the matter was very serious and promised to consult the Attorney General to ensure the money was remitted to the City authority.[551] It is not known if that was done.

Chapter 16

Corruption and Human Rights: "The get-rich cartel"

TWO THINGS BEST known about Moi's 24 years in power were: corruption and human rights abuses. No write-up on Kenya's history can be complete without a narrative of those two topics. Billions of shillings were lost, and dozens of Kenyans were jailed, exiled, and subjected to torture as Moi amassed personal wealth and used despotic means to curtail opposition.

International organizations such as TI believe corruption violates human rights because through it, people, especially the marginalized groups, are deprived of sustainable development. Human rights abuses are also a major catalyst for migration and provide a fertile ground for radicalization to terrorism. During the crackdown on political dissent in Kenya in the 1980s, for example, University lecturers such as Micere Mugo, Mukaru Ng'ang'a, and Ngugi wa Thiong'o – who opposed human rights abuses and political corruption – fled the country. It is not the intention of this book to go deep into the human rights violations that Moi carried out with impunity in this narrative, as this subject has been widely covered by political historians. However, it is necessary to highlight some of the events surrounding the oppressive nature of his regime and the way he treated those who opposed his policies.

After taking over the government, Moi gradually revived colonial statutes that had long been buried, all aimed at interfering with individual rights guaranteed by the Constitution, among them the Chief's Authority Act of 1912, the Public Order Act of 1960, and the Preservation of Public Security Act of 1967.[552] He got Parliament to pass legislation giving police powers to detain suspect for 14 days during which time every means was used to get a confession. A secret torture chamber was opened in the basement of Nyayo House, an imposing building overlooking Uhuru Park in downtown Nairobi. There, political dissidents were immersed in cold water, hang upside down, and subjected to many forms of inhuman treatment.

Magistrates meted long-term sentences for a variety of bogus charges including possession of seditious material. Where evidence could not be manufactured or in case a suspect refused to plead guilty to false charges, he would be taken straight to Kamiti Maximum Security Prison outside Nairobi on detention orders. Victims were treated like criminals "and criminals aren't treated very sweetly in Kenya,"[553] said one foreign envoy.

US visit

February 1980, Moi became the first President of Kenya to make an official visit to the US. At that time relations were good, and the visit was cordial. In his audience with President Jimmy Carter, the two leaders discussed developments in southern Africa including the need for peaceful settlement in Zimbabwe-Rhodesia. But Carter also showered praises on Moi describing him as a good friend. "We share moral values," he said, "we share religious faith, and we share political values as well, not only on a personal basis but among the people of our two countries."

In his welcoming address, Moi assured the Americans of his personal commitment to safeguarding human rights. "My country Kenya, shares with you the commitment you have for constitutional and democratic form of government. But above all, we share a common reverence for individual freedoms and human rights."[554]

Moi reiterated similar sentiments at a meeting with the US Deputy Secretary of State Warren Christopher: "When any person is deprived of freedom, I am deprived of freedom," to which Christopher responded: "We admire leaders like this, and we honor them when they come to our country, and we cherish their friendship with us."[555]

In additional remarks, Moi drew a parallel between the ideals of the United States and those of Kenya: "If there is one thing which can unite us all and which makes ideological arguments truly relevant," he told his hosts, "it is the subject of human rights and dignity. This is so important to the human race."[556] He was applauded. That was the most patronizing speech ever made by the Kenyan leader to its close ally. But that did not mean the Americans were in support of his draconian rule. They continued to use diplomatic means to get Moi to reform both economy and political structures.

While that visit was successful in cementing relations between the two countries, the one he made on 12 March 1987 yielded rather embarrassing results. It was the time when Moi's government was under sharp criticisms for human rights violations. On arrival, he was met by a hostile press with the *Washington Post* carrying a banner headline: "Police torture is charged in Kenya." It went on to say:

> According to court documents here and well-placed Kenyan sources, Kenyan police, who report to the office of the president, have used torture repeatedly in the past 12 months to coerce confessions from accused political dissidents…Torture technics… involve confinement of naked suspects in dark cells partially filled with water, as well as beatings with whips, pieces of wood, rulers and rubber straps fashioned from car tires.[557]

That article was devastating for Kenya's reputation in the US. Although Moi was warmly welcomed by President Ronald Reagan, the meetings that took place behind closed doors with Secretary of State George P. Shultz and other officials were heated and blunt. The Americans reiterated their demand made a week earlier for investigations on torture claims made by political detainees. "The allegations of torture, apparently supported by signed affidavits from those in Kenya who claim to have been tortured, raise serious questions of human rights abuses," said a US State Department spokesman, Charles Redman.[558] The affidavits filed in February 25 with the Kenya Attorney General claimed suspects were forced to stay naked for extended periods in cells partially filled with water.

Though Moi tried to explain to his citizens on his return to Kenya that the eight-day tour was a success, *The Times of London*, characterized the visit as "a diplomatic disaster," claiming that Moi was behaving like a petty dictator; and that "Kenya can no longer be regarded as the jewel in the crown of Britain's former African colonies."[559] Moi had skipped Norway and Sweden accusing the two countries of discrediting his government. "They cannot continue insulting us every day,"[560] he said on his return to Nairobi from Finland, Italy and Romania.

He was furious about Amnesty International criticizing him about political detentions, torture and trials of dissidents, but the state of the Kenya nation had reached a point where foreign powers were actively trying to influence the direction of the country. Moi told them to stop interfering in his country’s internal affairs. His patience was running out and he made it clear during the first East Africa-America Trade Expo in Nairobi in 1991.

> Today, we hear voices urging us to follow other paths. We are being asked to risk that which we have so painstakingly built to live up to some generalized prescriptions of political behavior. And we are threatened that unless we do as we are told, we risk losing friends and their financial aid. Let me say emphatically that we do not fear taking risks on behalf of our people.[561]

Moi did not travel to the US again until the National Prayer Breakfast meeting in Washington DC on 1 February 1990 accompanied by an entourage of 84 officials. The event was essentially a private affair, but Kenyan authorities touted it as an official visit. Nevertheless, Moi was warned by Foreign Minister Robert Ouko that the visit, which the US government and the Kenyan Ambassador in Washington Dennis Afande had recommended against, could trigger a backlash from human rights activists among them Kenyans living in America, but Moi brushed aside the advice. From a diplomatic point of view, the Americans had no choice but to extend the usual protocol arrangements to the Kenyan Head of State. Nevertheless, the host government denied Moi’s request for a meeting with President George H. W. Bush, agreeing instead to have Ouko meet with the US President in private. That decision infuriated Minister Biwott who reportedly had a verbal exchange with Ouko afterwards.

It was at a scheduled press conference the following day that the Kenyan President was outdone by his Foreign Minister on issues that had to do with political persecution. Moi choked and could not give reasonable answers to media questions probing his authoritarian rule. That gave Ouko an opportunity to shine. He dominated the conference with his clear responses to a wide variety of subjects including wildlife conservation. With that he was a marked man.

Ouko disappears

On return to Kenya, Ouko went to his rural home in Nyanza, and that was the last time he was seen alive. He was reported missing from his Koru home on 13 February 1990. For three days, investigators and family members searched for him everywhere. On 16 February, his body was found in a thicket near his home partly burnt. However, the fact that the search teams failed to find the remains which sat on a small hill in plain sight could not be explained.

Ouko's two briefcases and a pile of files which were taken away from the sitting room by unknown people believed to be intelligence officers were never recovered, heightening speculation that they contained documents relating to a corruption scandal linking Moi's close aides. All fingers pointed to complicity within the Moi government.

What was suspicious is that more than one hundred witnesses including police officers and civilian witnesses who appeared before numerous committees died one by one in mysterious ways. The actual motive for Ouko's killing was never known, although reports said he was probing corruption involving two of Moi's closest allies in government, at the time of his murder. Some reports alleged Ouko was killed in Moi's State House in Nakuru and his body transported to the scene where it was charred.[562] However, Moi's biographer, Andrew Morton, quotes Moi as saying: "How could I kill my Minister who was so trusted."[563]

Ouko's killing took place at a time when the international media was still obsessed with the brutal murder of a British girl, Julie Ward, at Maasai Mara Game Reserve. The 28-year old wildlife photographer was reportedly gang raped before being murdered, and her body left next to her jeep in a deep gully. Conflicting reports about the circumstances of her death pointed to a sinister cover-up by some senior officials in Moi's government. A close Moi relative was mentioned as a possible conspirator. Despite years of official and private investigations by her father John Ward, the killer or killers had not been found by the end of 2017 and the murder, like that of several prominent Kenyans, remains a mystery.

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The attempted coup by the Kenya Air Force in 1982 ended the populist phase of Moi's rule and intensified the personalization of power and ethnicization of the provincial administration and bureaucracy"[564] and culminated in the introduction in Parliament of a Bill to make Kenya a *de jure* one party state. The coup attempt, engineered by a little-known group calling itself the People's Redemption Council, lasted for only a few hours, and the country was back in Moi's hands after loyalists were rounded up. After that, Moi became even more repressive and dictatorial. Throughout the 1980s and 1990s, security forces were used to suppress critics of his regime.[565] When

Oginga Odinga and George Anyona tried to form a party called the Kenya Socialist Party (KSP) in 1982 to rival KANU, the government rushed legislation through Parliament making Kenya a one-party state.

In 1986, a clandestine organization called *Mwakenya* began printing and distributing leaflets adversarial to the government. State operatives claimed the group was run by intellectuals and funded by foreign interests to destabilize the regime but showed no proof. On the other hand, Odinga doubted the existence of *Mwakenya* saying "it is probably just a pen name used by people afraid to use their own names in leaflets."[566] Nevertheless, Moi responded by arresting dozens of people allegedly associated with the organization. They were swiftly taken to court and given lengthy prison sentences. Amnesty International and foreign governments chastised the government for waging a deliberate war to silence and intimidate its political opponents, but Moi was unrelenting.

In November the following year, he banned the University of Nairobi Students Organization (SONU) and arrested university staff including Edward Oyugi of the department of education psychology; Maina Kinyatti of the history department; Willy Mutunga of the faculty of law; Alamin Mazrui of the linguistics department; Mukaru Ng'ang'a of the institute of African studies; Katana Mkangi of the sociology department; and Kamoji Wachira of the geography department. Politicians like Kenneth Matiba, Martin Shikuku and George Anyona, writers, and lawyers were also targeted.

If there was a trophy on how badly politicians treated their opponents in Kenya that trophy wouldn't go to Kenyatta but to Moi. The former brutalized Odinga and his supporters, but the latter destroyed the last vestiges of civil liberties and concentrated power in his hands in a manner "that would have made both Kenyatta and the colonial authorities envious."[567]

As Moi continued to violate basic rules of governance, foreign governments – including the USA, Germany, Britain, and Denmark – intervened, threatening sanctions and covertly supporting underground political movements against his rule. Smith Hempstone, the US Ambassador who had arrived in 1989 was the most vocal on democracy and human rights issues, and once boasted to the British High Commissioner, Sir John Johnson: "I intend to get rid of Moi."[568]He didn't, but he did help to restore common sense in the Kenyan leadership.

The envoy left a distasteful impression on Moi the first day he went to

State House to present his credentials on 7 December 1989. Instead of following a protocol brief befitting of the occasion, Hempstone walked straight to Moi as if to embrace him. The security staff, the Ministers and staffers froze. Moi recoiled. The envoy with his eyes half closed blurted: "You and I are going to get along wonderfully, Mr. President, because we can talk together man-to-man, and solve a lot of the world's problems…He tried again to shake hands and grip Moi, who kept backing off. Finally, Moi turned and left…"[569]

Hempstone was known as the "*nyama choma*" Ambassador because of random visits to dingy food kiosks in the slums to savor roast meat with locals. He was a chain smoking, beer-guzzling eccentric who behaved more like a journalist of which he was than a diplomat. He was haggard with scruffy hairy face. At the *Washington Times* where he formerly worked as a columnist, Hempstone was fired because 'he couldn't stay sober or awake.'[570]

Hempstone despised Moi and seized every opportunity to annoy him. During one visit to State House Hempstone rudely told Moi: "You can't run this country like your personal fiefdom," to which Moi shouted back: "This is not your country, Mr. Ambassador."[571]

At the Mombasa agricultural fair, Hempstone, seated at the grandstand turned to an American colleague and said: "Look at those clowns," nodding at President Moi a few feet away, "acting like friends of the people while they steal the treasury bare." The colleague admitted he was taken aback by the scorn in the Ambassador's tone and his willingness to speak so bluntly when he could have been overheard by any number of Moi's Ministers just a few feet away.[572]

It was not Moi and officials at the Kenya foreign office who were embarrassed and annoyed about Hempstone's lack of diplomacy. George G. B. Griffin who was second in command at the American embassy admitted later in an interview that he didn't like the way the Ambassador bullied everybody including President Moi. "I tried to advise him, but he didn't want to hear it; certainly, not from me. When I told him that his approach wasn't going to work, that there was a better way, he ignored me."[573]

Hempstone always appeared drunk during official meetings. By 1990, reports had already reached home about his over-indulgence in alcohol. During a brief visit to Washington he was confronted by his superiors about his misbehavior.

“Are you or are you not an alcoholic? He was asked. “Do you have a problem with liquor?”

“No…I am not alcoholic. The only problem I have with booze is obtaining sufficient quantities of Jack Daniels,” he responded in his usually careless way.

No immediate action was taken against him by his government, but he was told not to “take a drink in public while you’re an ambassador to Kenya.”[574]

The KANU-owned *Kenya Times* newspaper ridiculed the envoy and caricatured him as an alcoholic. One headline in 1990 shouted on the front page: “Shut up, Mr. Ambassador” when he persisted on his criticisms of the government. Some MPs demanded his expulsion for what they said was “arrogant and contemptuous behavior” toward the Kenyan Head of State. The Foreign Minister excoriated him for having a “slave owner mentality” to the country of his accreditation.[575]

Relations between Kenya and the United States dipped to its lowest ebb during Hempstone’s tour of duty. The disrespect the Ambassador showed Moi was matched by Moi’s resistance to everything American. The Kenyan leader was particularly livid about Washington’s interference in the internal affairs of the country. Unable to take any action against Hempstone, Kenyan authorities turned their anger at American journalists stationed in Nairobi. In January 1987, the *Washington Post* correspondent, Blaine Harden, was bundled and taken to the airport for deportation only for the order – issued by the Principal Immigration Officer, Nelson ole Ncharo – to be cancelled following protests from the American Embassy. Moi called the correspondent to claim the action was “a bureaucratic error.”[576]

Moi also went after the local media banning critical publications such as *Beyond* and *Financial Review*. Its owners were either jailed or fled the country. He also barred his opponents from travelling abroad by impounding their passports. He used the public broadcaster, the *Voice of Kenya*, to spread fear through terse announcements during lunch time news; appointing and firing people without any notice whatsoever. The 1 pm bulletin became the most important source of changes in government and therefore the most popular especially to politicians and bureaucrats.

Always suspicious of people around him, Moi also created a disciplinary committee within KANU and punished with suspensions and denial of party nomination certificates those who went against party policies or loyalty pledges. The common charges included “trouble-making,” “retarding development,” “not substantiating claims made in Parliament,” and “causing divisions among people.”[577] The committee known only as KDC became a powerful entity of the ruling party – more powerful than Parliament – and sent shivers through the membership. One MP, Assistant Minister Clement Lubembe, broke down in tears when he was summoned to appear before the committee in April 1987. And when he was exonerated, he made a statement that amazed Kenyans. “I have been loyal to the President, the government and the party,” he said. “I have been loyal including my children, my chicken and my cows.”[578] The 19-member KDC under the chairmanship of MP Okiki Amayo was formed by Moi in November 1986 and operated until he dissolved it in September 1987. During that one year, several members were suspended from the party for different periods, including MPs Nahashon Njuno, Joseph Munyao, and Kimani Nyoike; and others like Peter Okondo were reprimanded. As a further means to control the lives of his citizens, Moi ordered everyone to enroll as a party member; those who declined were marked and denied services in public facilities.

Parliament which was supposed to be independent from the executive became a toothless watchdog and its committees inoperable. MPs were expected to toe the line and not criticize the government and were choreographed by KANU to pass amendments whose only aim was to strengthen the powers of the executive at the expense of Parliament and the Judiciary.[579]

In and around Parliament Buildings, Intelligence officers kept their ears open to everything said by MPs and reported back to their headquarters at Nyati House, a grim building in downtown Nairobi whose curtains were always drawn, and armed, suited individuals watched guardedly at anyone approaching the heavily-secured compound.

In a move that surprised even his detractors, Moi ordered the amendment to the constitution allowing multi-partyism, something he had said repeatedly would divide the country on ethnic lines. The decision to scrap Section 2A of the constitution to allow pluralism was made at a hurriedly-arranged meeting of the KANU governing council attended by 3,000 delegates from all over the country. The move was partly due to the fiscal sanctions that had been imposed by donors and partly because of internal dynamics that made it difficult for Moi to effectively rule. However, American officials described the move as insufficient for Washington to restore aid and said other laws including those on detention without trial had to be abolished.

In the meantime, police brutality continued under the same oppressive laws Moi had used all along to subjugate his people.

US Ambassador Bushnell: "Why are you yelling at me?"

When he left Kenya in February 1993, US Ambassador Smith Hempstone was replaced by a woman, Aurelia E. Brazeal, who served until September 1996 after which another woman, Prudence Bushnell, was posted to Nairobi and served for three years until May 1999. Moi was not happy that Washington was sending women to Kenya, viewing that as a signal of America's disregard for the country.

"Moi was convinced that the US government was intentionally sending him women as a message that he was just not good enough to merit a white male," said Bushnell who had a turbulent time with the Kenyan leader. "He would fly into tantrums sometimes, or just get mad and cranky. I'd bring him up straight by asking him point blank, "Why are you yelling at me?"

Records show Moi was at odds with virtually every American envoy posted to Nairobi during his tenure: from Wilbert John LeMelle who was appointed a year before Kenyatta died to Johnnie Carson who came in July 1999 to July 2003 a few months after Kibaki took over. Each one of them had different views of the Kenyan leader and on the state of corruption under Moi which often got the President angry and frustrated.

During a farewell meeting with Moi in September 1989, Ambassador Elinor Greer Constable had a tasty confrontation with the Kenyan leader, and it wasn't the first one.

> I told Moi I was for Kenya, but I was very worried about Kenya because too many of his close associates were corrupt. I had never put it that boldly to him. I mentioned to him particularly the Energy Minister [Biwott] who was the worst, and the security fellow (Oyugi). I said you need to know what we know. We know where the money is. We know how they get it. We know how much they get. We know where they take it. We know what the deals are. We

know all of it. And it's getting worse, and you have just got to stop it. It's leading Kenya down the garden path.

"And he said, 'Oh, my political opponents tell you all this.' And I said, no, that's not what it is. It's true and you know it's true. Then we said a cordial goodbye. He was livid. I think he would have declared me *persona-non-grata* on the spot if I hadn't been on my way out of the country. He sent instructions to the embassy in Washington to not have any communication with me."[580]

During another incident, Ambassador Constable remembers: "Once I stopped an argument in mid-stream and asked if he enjoyed fighting with me."

"Yes," he responded. "I am a democrat."[581]

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There is one secret Moi kept away from Kenyans which Americans later revealed. The country was a strong supporter of the Organization of African Union (OAU), now African Union (AU), but in the early 1990s Kenya allowed itself to be caught up in a diplomatic fiasco that could have ruined its standing as a member of the organization. At that time, a civil war was raging in the North African country of Chad. The neighboring Libya under Colonel Muammar Gaddafi was supporting the Northern Muslims against President Hissen Habre.

In Chad were hundreds of Libyan refugees who had been captured by Chad in the late 1980s when Libya joined the war. Reports said the Americans trained and equipped them to be used to destabilize Libya. After Habre's government fell to rebels supported by Gaddafi, the refugees turned to America for help for fear of being returned to Libya. From camps near N'Djamena, the Chadian capital, the refugees were first flown to Nigeria, but the government there refused to accept them. The following day they were airlifted to a US-run camp near the Zaire-Angola border, but President Mobutu Sese Seko ordered them out after the US denied him US$.4 million (KES.400 million), in military aid because of bad governance.[582] Another group of 250 decided to return home.

In Nairobi, Ambassador Hempstone and the Chief of Mission, Michael Southwick, accompanied by the Permanent Secretary of Foreign Affairs, Bethuel Kiplagat, rushed to Moi to ask if Kenya could temporarily shelter the

Prisoners of War (POW). Moi reluctantly agreed even though Kenya had broken diplomatic relations with Libya in 1987 following allegations of espionage on the part of the North African nation.

In February 1991, two US Air Forces C-141 cargo planes rumbled into Jomo Kenyatta International Airport in the dark and taxied close to where buses were waiting to pick up 354 Libyan POWs for transportation to a youth camp upcountry – under tight military protection – for processing as refugees in the United States."[583] Initially, US officials denied Kenya's decision was in exchange for US$.5 million (KES.500 million) in military which had been cut because of human rights violation, but later, Washington admitted the link.[584]

"The reason we released the US$.5 million (KES 500 million) for Kenya were basically twofold…The first was to acknowledge limited steps that had occurred in the area of human rights; and second was to recognize the Kenyan government's helpfulness in several areas that seem important to us,"[585] a US official explained.

One early morning a few months later when it was still dark, the Libyans were whisked to the Airport to board nine Swiss Air 747s on their way to Detroit where most of them were settled amidst a large Muslim population.

Although the matter caused consternation in Washington with Libya describing it "as a breach of international law and human rights,"[586] the presence of Libyan refugees in Kenyan soil remained Moi's biggest secret. If the Kenyan media knew about the transfer, they did not report it fearing retribution from the Kenyan strongman. The news however was covered by the *Newsweek*, the *Washington Post*, and other major media organizations. It was not until 26 May 1998 that relations between Nairobi and Tripoli were restored.

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In 1999, corruption in Kenya went a notch too far when Kenyans woke to bewildering news that the Kenya intelligence service had captured a Kurdish rebel leader, Abdullah Ocalan, and handed him over to Turkish officials at the airport on 15 February 1999, "shackled, gagged and blindfolded before being flown to Turkey."[587] Ocalan who was wanted back home on charges of carrying out atrocities had arrived in Kenya on 2 February 1999 reportedly from Greece. Reports said Kenya and Turkey were tipped by the Israel intelligence apparatus about his presence in Kenya, kicking off rumors that a "delivery fee" of KES.270 million had been delivered to State House and to some intelligence officials to facilitate Ocalan's transfer.[588] Kenya neither admitted nor denied that some money was paid to accomplish the arrest.

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Enter the new British High Commissioner, Edward Clay in 2001, "wailing louder than the bereaved about government accountability."[589] His often-bellicose remarks about Kenya marked a significant departure from the traditional British diplomatic norms. Until then, London was careful about how to deal with its most important partner in East Africa by avoiding open criticism of the government even though the envoy before him, Sir Jeffrey James, occasionally took snipes at the government. When Sir Jeffrey went to State House to bid Moi goodbye at the end of his tour in 2011, Moi bluntly told him he had failed as an envoy, saying after four and half years of stay in Kenya, there had been no progress in the relations between the two countries.

When he arrived, Clay had on top of his agenda, a mission to take on Moi on corruption using whatever tactics. He believed removal of graft would "promote (Kenya's) development more efficiently and save British taxpayers' money,"[590]

But his presence in Kenya was as undiplomatic as any could be. He confronted Moi on aid and corruption issues and sometimes went overboard with comments that endangered the smooth historical relations between the two countries. He mobilized other diplomats in Nairobi to tongue-lash Moi and accused the President of lacking the "fire in the belly" to deal with corruption.

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On 26 November 1991 during the World Bank-chaired consultative meeting in Paris, the World Bank and other donors decided to suspend aid to Kenya amounting to US$.350 million (KES.36.3 billion) out of approximately US$.1 billion (KES.103.7 billion) to force economic and political reforms in Kenya.[591] During the previous two years, Kenya had received US$.800 million (KES.83 billion) in development aid from the World Bank and other donors.

While shutting down its support, the Danish government, one of

Kenya's biggest donors in rural development for 17 years, complained that US$.40 million (KES.4.1 billion) of its total aid to Kenya over the years had "disappeared because of corruption." The previous year, private investment to Kenya had fallen by 12%, the sharpest drop since the attempted coup of 1982.[592] That was partly due to demands for kickbacks and a share of business by Kenyan government officials.

Then the following month, despite a strong campaign by the opposition FORD to convince countries to halt development assistance to Kenya, 12 donor nations among them the US, Britain, France, Germany, Canada, Japan, warned the Kenyan leader to introduce economic and political reforms or face major cuts in six months. Specifically, the donors insisted on the liberalization of the economy, ending of officially-sanctioned corruption, and respecting human rights such as the right to free expression and association.[593]

"We sent a very strong message. I don't think it has happened before – no performance, no money in certain areas,"[594] John R. Westley, an American head of the Nairobi office of the [United States] Agency for International Development [USAID] said.

Moi had all along emphasized that Kenya was not ready for multi-party democracy.

With fears straddling the political, academic and civil society terrain, religious organizations were the only ones left to champion the people's cause. In April 1991 after repeated unsuccessful efforts to get Moi to change, Bishops Henry Okullu of the Maseno Diocese of the Anglican Church of Kenya and David Gitari issued a stinging indictment of Moi's policies, and for the first time stridently told people to stand up and fight for multi-partyism and government accountability. Another fierce religious critic of the government was Rev. Timothy Njoya of Saint Andrew's Church in Nairobi who repeatedly taunted Moi to "establish a clean and accountable government,"[595]

Gitari often cited the story of Naboth, a peasant farmer who said no to King Ahab's demand to give up his plot of land, and emphasized the idea that one must know one's rights and defend them at all costs. He fashioned Naboth as a model for ordinary Kenyans to follow, and explicitly compared Ahab to Moi, and his evil wife Jezebel to Moi's counsellors.[596]

By July, things were looking gloomy. "Kenya's economy was teetered on the point of collapse…there was a shortage of basic foods such as maize, flour and cooking oil…and for the first time in years, people had to queue for food while the black market thrived. The government could not cover its expenditure, and the budget deficit was ballooning, while the public service was on the verge of collapse. The donors wanted a functioning anti-corruption body and the enactment of a code of ethics bill for civil servants and an economic crimes bill to deal with various malpractices in the public sector**.**

Finally, after much coaxing, the Kenyan leader grudgingly agreed to work with the World Bank (WB) on a formula to revive the economy in which a team of technocrats would be appointed on a pay package to be funded through a loan arrangement with the WB. Five top Kenyans were identified to spearhead the so-called “dream team” under the leadership of Richard Leakey, a one-time Moi foe, as head of the civil service.

Mwanghazi Mwachofi was pulled out of the International Finance Corporation (IFC) in South Africa where he was a resident representative to become Financial Secretary; Martin Oduor-Otieno, Finance Director at Barclays Bank was made Permanent Secretary (PS), Ministry of Finance; Dr. Shem Migot Adhola, a WB Specialist in rural development in Africa became PS in the Ministry of Agriculture; and Dr. Wilfred Mwangi from the International Maize and Wheat Improvement Center (IMWIC) was appointed Dr. Adhola’s deputy.

Also in the team was Titus Naikuni, the Managing Director of Magadi Soda Company who became PS, Ministry of Transport and Communication; Prof Julius Meme, the Director of Medical Services who became PS, Ministry of Health, and a banker, Kitili Mbathi, the Investment Secretary. Dr. Leakey’s team was to tackle “corruption and inefficiency” and to restore donor trust and confidence in Kenya.[597]

But what was termed the “dream team” soon earned the name the “nightmare team.”[598] It instituted strict financial controls, strengthened procurement processes, and sacked some heads of parastatals seen to be non-performing. Following months of negotiations, the team managed to reschedule some pressing foreign debts and the release of US$.340 million (KES 34 billion) in aid. It also trimmed the civil service by retrenching 25,700 people and rewarding most of them with a paltry KES.40,000 as compensation. Among those sent home were top officials including some PSs.

One would think such far-reaching measures were appropriate in dealing with the mess at hand, but in 2000 parliamentarians blamed the group for increasing the Value-Added Tax (VAT) in the budget, warning that Kenyans would be impoverished if the team continued to serve. They also complained about the technocrats' high salaries, estimated at KES.10.8 million per month. Dr. Leakey and Mwachofi reportedly earned the most, KES.2.4 million each per month even though one report said Leakey paid himself only US$.342 (KES 34,200) per month because "he could live comfortably by independent means."[599] Although the money came from a US$.27 million (KES.2.7 billion) public sector management technical assistance, it was a loan which Kenyans were to repay.

While relations between Kenya and the donor community improved in the short term, noises from politicians against Dr. Leakey and his colleagues prompted Moi to do what he had wanted to do for a while: dispose of the group. From a political point of view, Moi was hurt by the radical actions of the team and ordered that its contracts not be renewed under existing terms. He knew by doing so, Leakey and his colleagues would leave. And that is exactly what happened. In March 2001, Leakey, Naikuni and Oduor-Otieno resigned leaving the country with a deep financial wound in spent salaries and allowances. Those who remained were either let go or resigned on their own. Once again corruption won over accountability and Moi continued from where he had left before the dream team.

It was obvious the achievements of the team were not appreciated by the elites. As a matter of fact, they saw the activities of Leakey's group as a threat to their interests. Whether the "dream team" improved lives were a matter for historians to Judge.

Resorting to PR Power

To clean up the mess that was ruining Kenya's image everywhere, Moi hired foreign firms to undertake public relations work on his behalf. He chose a group of Washington lobbyists and paid them US$.1.5 million (KES.1.5 billion) in fees during 1991-1992 to dampen criticisms and persuade the US government not to cut off financial aid. A company called Black, Manafort, Stone, and Kelly, owned by Paul Manafort and Roger Stone, whose clients included the Nigerian government, Jonas Savimbi, leader of the National Union for the Total Independence of Angola (UNITA) and Congo dictator Mobutu Sese Seko.

Manafort who collected US$.660,000 (KES.66 million) from Kenya in 1992-1993 had strong ties with both the Republican and Democratic Parties. In the 2016 US elections, he was Donald Trump's campaign manager during the mid-part of the campaign. Both Manafort and Stone had strong ties in Russia.

Manafort's intervention on behalf of Kenya included telephoning senior officials in the US government to persuade them to go easy on human rights abuses in Kenya. Among those called were Al Cyllah of Amnesty International; Alex Arriafga, majority staff director of the Congressional Human Rights Caucus; Lisa Heyes, legislative aide, House Foreign Affairs Sub-Committee on Human Rights; and Gary Fuller, a State Department official in the Office of Human Rights and Humanitarian Affairs.

The firm also talked to legislators in Washington including Paul Simon, Patrick J. Leahy, Barbara Mikulski and Representative Robert J. Lagomarsino, among others.[600]

The US Congress and the Bush Sr. government were unrelenting about their criticism of Moi's bad human rights record. They were also not convinced that any PR action could persuade authorities to change their mind on future aid allocations.

> The government annually pleads poverty before the US Congress and asks the US taxpayer to bail out its economy with millions of dollars in foreign aid. Yet the Kenyan government has enough money to spread its cash around in Washington to high well-connected Washington lobbyists paying them nearly US$.1.5 million (KES.1.5 billion) in fees in 1991-1992 to increase the flow of US aid and to blunt criticism.[601]

It was the Manafort's company too which organized the burning of 12 tons of poached elephant tusks worth US$.3 million (KES.300 million) at the Nairobi National Park in 1989 precipitating a ban of trade in Endangered Species by the Convention on International Trade. The firm flew in journalists from various parts of the world to cover the event. The torching of the ivory wasn't without controversial overtones between those who thought it would send a message to poachers and traders about the government's seriousness in ending illicit trading, and those who felt the government should have sold the tusks and use the money for conservation purposes. Rumors spread that the government had been paid either US$.200 million (KES.20 billion) or US$.450 million (KES 45 billion) in return for the destruction. Officials denied.

Manafort and Stone were also responsible for organizing Moi's private visit to the US a few days before Foreign Minister Ouko was brutally murdered in his rural home.[602] In November 2017, Manafort was charged in the US on numerous corruption and money-laundering charges related to his past activities in Russia.

In London, Kenya went for the PR agency of Raitt Orr Associates. The company was owned by a past Kenyan resident, Patrick Orr, whose one task was to advise on the transition following the December 2002 elections, the last for Moi.

It could not be quantified if Kenya received any direct benefits from the lobbyist's interventions.

By 1998, Moi was prepared to patch up relations with the US, destroyed by Hempstone, and for the first time, the Kenyan leader personally showed up for the US Independence Day celebrations at Ambassador Bushnell's residence.

Chapter 17

Parastatals I: "I eat, you eat"

UNTIL THE ENACTMENT of the State Corporations Act of 1986, State enterprises as known today, did not exist in Kenya. However, the government had shares in several commercial ventures as early as 1963 in enterprises carried over from the colonial times. At independence, Kenya believed its direct involvement in commercial and industrial sectors would attract foreign capital, achieve diversified growth and ensure Kenyanization of the economy which was then controlled by Asians and Europeans. Over the years, the number of parastatals multiplied compelling the government to come up with a better management structure.[603]

With the Act, the government set up the Inspectorate of Statutory Boards to advise Ministries on the operations of government enterprises and created the Office of the Auditor General, State Corporations, to audit all accounts of such firms. An Advisory Committee composed of senior government officials and representatives of the private sector was also formed to keep the President up to speed on the activities of the Corporations. The parastatals were to run on a commercial basis, generate income and pay yearly dividends to the treasury.

While organizations like the KPLC performed well and gave proceeds to the exchequer, others like the NCPB, KMC, Kenya Cooperative Creameries (KCC) and CBK became guzzlers of public funds. By 1987, for example, NCPB had accumulated a debt equivalent to 5% of the GDP and relied on government subsidies to survive.[604] Losses at KCC spiraled from KES.2.8 million in 1988/1989 to KES.74 million in 1994/1995, while the KMC was in the red as far back as 1968, and ten years later faced bankruptcy and required an infusion of KES.15 million.

Overall, the government injected a lot of money into parastatals since the 1970s, but financial returns have been poor. In 1979, a committee on statutory boards appointed by Moi under the Chairmanship of Philip Ndegwa, cautioned the government about the participation of the State in private ventures and asked for better monitoring of the companies. Many of the firms were failing because of poor management and misappropriation of funds. That year, only six parastatals paid dividends amounting to K£.4.5 million (KES.9 million), while 56 paid nothing.[605]

To worsen the situation, all the four presidents have used parastatals as a dumping ground for political losers and as a soft-landing for retired military and diplomatic officers. In return, those appointed have felt indebted to the President and have allowed him to use the firms to enrich his friends and relatives through government tenders.

In 1992, the government put in place a comprehensive public enterprise reform program to enhance the role of the public sector and reduce government participation in public-owned companies. A total of 240 firms were either owned directly or indirectly by the public through such organizations as the ICDC, IDB, KTDA, and KTDC, among others. Among them were 33 'strategic enterprises' which were to be retained. The remaining 'non-strategic enterprises' were to be sold or liquidated. The process was to be undertaken in phases with the first phase involving 45 public enterprises (PEs).[606]

The plan to privatize Kenya's money guzzling PEs was agreed at the donor consultative meeting in Paris the previous year. It was a comprehensive process which also mandated that top management executives be appointed on merit and not on political considerations; that they be approved by international development organizations; and that the management of the Corporations be taken over by external consultants who would rehabilitate them for future privatization.[607] All major parastatals including the IDB, the NCPB, the Agricultural Finance Corporation(AFC) the Coffee Board of Kenya (CBK), and the KTDA were obliged to sign performance contracts. [608]

The government and the World Bank agreed that all transactions would be conducted in an open and transparent manner with equitable bidding procedures and that all offers will be placed in the public domain. A tender and evaluation committee was to publicly open all bids and that interested parties would be invited to witness the official opening. But as it happened, most tenders were not advertised, and bids were single-sourced breaking laid down agreements.

Through such irregularities, top civil servants and politically-correct individuals and companies became rich. The common practice was for officials to manipulate the procurement process and buy off government entities cheaply then sell them off at a premium. Several state-owned firms were disposed of that way.

The Kericho Tea Hotel, a partly-owned government facility in the scenic tea plantations of the Rift Valley is a good example. In 1993, shadowy hands interested in grabbing the 21-acre property exerted pressure on the State through KTDC to sell its 60% shareholding. The remaining shares were held by two companies and about 300 local farmers.

Initially, one of the two shareholding companies accepted an offer of KES.3 million to buy the property but failed to provide funds for three years and the offer was withdrawn and given to the other shareholding company which agreed to buy it for KES.15 million against a valuation of KES.25 million. It paid a 10% deposit of KES.1.5 million on 11 September 1991 and the balance on 28 October 1991 although the sale agreement between KTDC and the company was not signed until 22 September 1993 when the PIC had already begun investigations into the questionable transactions. The government was under pressure from politically-connected individuals to sell the property at whatever cost. Open tenders were not invited, and the valuation could not be verified.

After investigations, the PIC concluded the sale was irregular and null and void and asked the attorney general to investigate the matter further with a view to instituting criminal proceedings against those involved. No action was taken against anyone for the loss of the KES.10 million being the difference between the sale price and the valuation.[609]

Similar irregularities were reported on the sale of the Golf Hotel in Kakamega in which the government owned 80% shares; Kisumu Sunset Hotel, 95.4%; Homa Bay Hotel, 93.33%; and Marsabit Hotel.

MCK/NCPB cash

The Milling Corporation of Kenya (MCK), a wholly state-owned Corporation under the National Cereals and Produce Board (NCPB) and the Industrial and Commercial Development Corporation (ICDC) was among the first parastatals to be sold in mid-1994 under the World Bank-inspired arrangement. As soon as the announcement was made, scammers came calling. Twelve bids were received for the grain-distributing company, the highest coming from Kitale Industries at KES.195 million, and the lowest from Songoiywo Holdings which offered KES.36 million. In 1995, its net value was KES.550 million, but crafty officials sold it off for KES.150 million, thus pocketing the difference. The PIC was informed in November 1995 that the firm was sold without a tender evaluation committee report as stipulated in the guidelines of the Executive Secretariat and Technical Unit (ESTU), an arm of the Parastatal Reform Program Committee (PRPC) headed by Lawi Kiplagat. The two main shareholders, NCPB and ICDC, were also not aware of the sale, although on record it was said that: “The board of the National Milling Corporation of Kenya met and decided,” MP Peter Anyang’ Nyong’o told Parliament.[610]

Eventually, the company was sold to Premier Flour Mills (PFM) for KES.150 million, substantially below the valued price, raising suspicion that officials at ESTU benefitted from the sale. Several things happened that made the deal even more suspicious. First, while PFM was to pay NCPB a 10% deposit within seven days after the sale agreement; that was not done until 60 days later. Second, the balance of KES.135 million was supposed to be paid after 60 days. It wasn’t paid until May 1994 when the Auditor General’s office was completing its audit of the process, meaning the company took possession of MCK and benefited for almost half a year from profits of a company it had not yet purchased.

When the ESTU realized this anomaly, it decided to write to PFM on 26 January 1994, directing it to accept the co-management of the firm by the shareholders – NCPB and ICDC. This was an irregular procedure whose aim was to buttress the corrupt manner PFM had acquired the assets.[611]

There was an element of corruption even in the disposal of the company vehicles. Twenty-eight motor vehicles which cost the Corporation KES.25.3 million were valued at only KES.11.4 million, some of them sold for far less than the cost price. For example, a vehicle worth KES.2 million was sold for KES.130,000. A special audit report by the Auditor General and the PIC confirmed that the sale of the company and the vehicles was improper and should be nullified. It made three findings: that the sale was irregular; that the irregularity led to tremendous loss of money by the exchequer; and that PFM took possession of the mills without paying for it, and made money from a public asset in a way that was improper.

Several MPs joined the controversy by condemning the way the plant was sold. “It should have been done transparently, and the people buying it should have been accountable to the people of Kenya,”[612] said one legislator.

The issue of MCK led to a bitter exchange of words in Parliament in 1996 between MPs and Ministers with one clearly suggesting it was looted. “Kenyans are not stupid,” remarked Prof Anyang’ Nyong’o angrily.[613] But Lawi Kiplagat of PRPC said allegations that the price was inflated were false. It was commonly known that a senior Minister in Moi’s government was connected to the PFM allowing it to get away with the irregularities.

In a dramatic turn of events, the NCPB was in 2010 accused of awarding a KES.6 million-contract through single sourcing to a company associated with an executive of the Cereal Millers Association (CMA). The company, Polysack Limited, was to supply 485,000 90-kilograms bags – for maize flour to be used by six biggest millers. Its director, Diamond Hasham Lalji, admitted getting the contract but said he had lobbied for it at a meeting at the Treasury in December 2008 attended by NCPB officials as well as senior government Ministers. It was suspected that Lalji was favored because of his influence in CMA and the business possibilities to be obtained from CMA member companies. No questions were raised over why NCPB broke the law and single-sourced for a contract of such magnitude.

The Kombo anti-corruption Committee

In July 1998, Parliament appointed a Select Committee on anti-corruption under the Chairmanship of MP Musikari Kombo and gave it the mandate to study and investigate the causes, nature, extent and impact of corruption in Kenya; identify the key perpetrators and beneficiaries of corruption; recommend immediate and effective measures to be taken against such individuals involved in corruption, recover public property corruptly appropriated by them; and enact a Bill to provide stiff penalties for no corruption related offences.

The motion led to the enactment of the Anti-Corruption and Economic Crimes Bill (2000) which established the Kenya Anti-Corruption Commission (KACC) with responsibilities to investigate corrupt cases and institute civil proceedings for recovery of corruptly obtained assets; and the formation of the Kenya anti-corruption advisory board to be responsible for appointing commissioners, and advise the commission on the performance of its functions.

The definition of the Bill included bribery, fraud, embezzlement, misappropriation of public funds, abuse of office, breach of trust, offences involving dishonesty like tax evasion, or dishonesty involving written laws relating to election of persons to public office. The definition was broad and included also election offences.

The term “economic crime” on the other hand applied to public property or revenue and covered land grabbing in all its forms and manifestations and offences under any written public law such as tax evasion.

Nothing came out of those efforts until Moi handed over the government to Kibaki in December 2002.

KP&TC

Corruption in state Corporations has existed since the early years of independence. To minimize theft and provide a more rigid control over parastatals, the government through sessional paper no. 10 of 1965, attempted to provide safeguards and recommended reforms aimed not only at the indigenization of the economy but at making them more answerable to the aspirations of the country.

The objective of the Corporations was to reduce government participation in productive activities; and although working quasi-independently from the ministries concerned, they were to receive guidance from the government. Over the years, Corporations became useful engines in the promotion of development.[614]

The Kenya Posts and Telecommunications Corporation (KP&TC) was the country’s oldest formal government institution, having been established in the 17th century. It controlled 67% of all public investments and was the largest employer in the country.[615] The Corporation has been embroiled in numerous controversies over the years.

In 1985, the Corporation lost KES.9 million after making payments to a firm of advocates in the winding up the former Kenya External Telecommunications Corporation (KETC) even though the two firms were about to merge.[616] In his report of 1990-91, the Auditor General named Kipng’eno arap Ng’eny, the KP&TC Managing Director, in several fraudulent dealings.

In 1960, the KP&TC irregularly banked KES.161 million belonging to the Corporation in local financial institutions. The institutions later collapsed. The officers involved “did not assess the viability of the financial institutions before placing public funds with them” and there was suspicion of kick-backs being involved.[617] The same year, KP&TC under Ng’eny’s management was cited for failing to remit KES.176.4 million to the income tax department and employee contributions to the NSSF.

The 7th report of PIC debated in Parliament in 1998 also found the Corporation had incurred an expenditure of KES.482.8 million on professional fees for projects that were later abandoned or became dormant.[618] In July 2000, KACA took Ng’eny to court and charged him with fraud but he was exonerated and set free. He retired in 1993 and was appointed to head the Kerio Valley Development Authority (KVDA), another government parastatal, a typical Kenyan practice of shifting disgraced executives from one parastatal to another.

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The Post office Savings Bank, popularly known as Postbank, was established in 1910 to encourage Africans to save. After independence it expanded its services and entered into collaborative arrangements with several international money institutions. Postbank has gone through turbulent times and has been involved in countless cases of misappropriation of money, forgery, and manipulation of savings bank accounts.

The bank lost close to KES.7 million in one year partly attributable to the weak qualifications of the bank chairman and some of his board members. For an institution that required a high level of financial skills, the chairman and his managing director possessed only ‘O’ level school certificate.[619]

NSSF

The National Social Security Fund (NSSF) was created in 1965 to manage workers’ pension scheme and through workers’ and employers’ contributions, to provide social security protection for employees in formal and informal sectors in retirement. Engaging in buying or speculative and unwarranted property deals was not one of its core activities, yet between 1990 and 1995, the organization spent KES.30 million to purchase illegally – sometimes useless – land. For example, it spent millions to buy two quarries in Nairobi for no reason other than for people to benefit financially from the deal. The Fund paid KES.70 million to a real estate developer for land which turned out to be an ungazetted government-owned forest. It came back to demand refund after questions were asked.

In 1989, the NSSF spent KES.139.6 million on four pieces of land under questionable circumstances. The Auditor General (Corporations) could not ascertain how the parcels were identified and the reasons the organization bought the land. When the PIC delved into the matter it found the land originally belonged to the government and was sold to individuals or companies which in turn convinced the NSSF to buy their allotment letters.[620] The Fund's valuers, M/s Town Properties assessed the four parcels of land measuring 10.2 acres at KES.142 million while the commissioner of lands estimated it at only KES.53 million. The plots were eventually sold for KES.139.6 million indicating an overpayment of KES.76 million.

NSSF was of the view that by speculating on land it would be in a better position to increase the workers' financial portfolio instead of investing the money in Treasury bills and bonds of equities. Those land deals were executed to benefit corrupt individuals. Cartels working in cahoots with the organization bought swampy land and quarries at unreasonable prices – useless land that was of no benefit to workers. One of the better examples involved 839.7 acres in Mavoko Municipality, eastern region, which was part of the holding ground of the Kenya Meat Commission (KMC). In June 1994, Moi ordered the NSSF to purchase 136.07 of that land at a cost of KES.268 million, a price that was 8.5 times more than the professionally assessed value. The purchase was done but the land remained idle for years. From that sale, politically-correct people profited.

There were more purchases by the NSSF in 1990 including a Nairobi city center plot which was over-valued by KES.10 million. Between 1991 and 1993, the organization purchased eight properties in Nairobi at a cost of KES.1.3 billion. And in Mombasa, three plots that were bought for less than KES.1 million were sold to NSSF for half a billion shillings.[621] In another transaction, the Fund paid KES.50 million instead of KES.35 million incurring a loss of KES.15 million. The PIC reported between May 1989 and May 1991, the organization bought eight plots at a loss of KES.109 million.[622] In October 1996, MP Anyang' Nyong'o told Parliament that NSSF had spent an escalated KES.18 billion on 48 pieces of land – representing

60% of the Fund's total investment. The NSSF Act permitted the organization to spend no more than 20% of its investments on land.[623] The Ndung'u report however reported that between 1990 and 1995, NSSF spent KES.32 billion for land throughout the country, most of it grossly overpriced.[624]

Over-valuing of properties by the Fund was a common practice during Moi's rule. In 1992, a top official approved expenditure for the development of a housing estate in Nairobi, South B. After KES.1.2 billion had been spent, the project was abandoned. When a new contractor was given the tender to complete the project, the process was not subjected to competitive bidding.

In another transaction, tax payers lost KES.52.5 million on two plots at Lenana road in Nairobi. Plots 209/324/2 and 209/324/3 were owned by H. P. Dawada and N. P. Dawada who wanted KES.15 million and KES.65 million respectively. The valuation of the Fund's valuers was KES.15 million and KES.65 million respectively totaling KES.80 million. The Commissioner of Lands, however, assessed the plots at KES.7.5 million and KES.15 million. The NSSF ended up buying the properties for KES.13 million and KES.63 million totaling KES.76 million, resulting in a loss to the government.

Then there is the issue of plots LR209/9101 and LR209/9103 at Nairobi South B measuring 19.5 and 2.5 acres respectively. The Fund paid KES.600 million in advance before a formal agreement was signed which was in violation of the NSSF Act. In February 1993, an agreement was signed for KES.960 million and lawyers who facilitated the transfer were paid KES.31,860,000 without reference to the Advocates Act. The transactions and advance payments totaling KES.900 million as well as the lawyers' fees were questioned by the Auditor General who said they were irregular and amounted to fraud. The Fund's project manager had valued the property at KES.606 million, resulting in a loss of KES.294 million in the land purchase.[625]

In another case, the NSSF paid KES.976 million for 225 acres in 1995 to a company called Nokin Investments instead of a sum of KES.300 million which valuers had recommended. On 31 January 1996, the NSSF bought land on Ojijo Road in Nairobi for KES.178 million from a company which had illegally acquired it from the Kenya Railways a few days earlier for KES.77 million. The beneficiaries walked away with KES.101 million in easy profit.[626] The same year, Parliament was told that the commissioner of lands bought an undeveloped plot LR No. MM/111089 measuring eight acres at Mtwapa, Kilifi from a company owned by a Cabinet Minister for KES.46,000. The plot was then sold to the NSSF for KES.425 million.[627]

In addition, over KES.117 million of NSSF funds were also lost in illegal deals and money laundering during the extension of the casualty department at Kenyatta National Hospital by a construction company.

There was also a case of the extension of the NSSF House in Nairobi. The initial contract cost was listed as KES.467.7 million but it was varied to KES.2.7 billion. Eventually, the project cost changed to KES.3 billion, thus depriving the NSSF of over KES.2.5 billion. It was alleged KES.18 million was paid to a firm of lawyers without regard to the advocates remuneration order which sets prices for lawyers' fees. Plot No. LR 209/10662 at South B with a value of KES.17.5 million was bought by NSSF for KES.35.2 million; while another plot, LR No. 209/1066 valued at KES.7 million, was bought for KES.30 million. Another plot LR No. 209/7634 which was supposed to go for KES.800 million was bought for KES.4.4 billion. All these examples and many more point to gross misappropriation of funds by the organization.

If there was one scam that left a trail of bad blood within the organization and sent a Minister home on allegations of graft, it was the KES.5 billion Tassia project. It was an infrastructural development in the lower part of Nairobi that included housing, drainage and waste water facilities, 90.4 km of tarmac road reserves, street lighting and 124 km of culverts and storm water drainage. NSSF owned the land which it acquired in 1994-1995 from Tassia coffee farm and Nokin Investment Ltd at a cost of KES.2.2 billion but owners were being charged KES.920,000 per plot for development in an arrangement with the Nairobi County government.

The project which was approved by the NSSF board was dogged by controversies including allegations it was imposed on the organization by the County government. A final decision was made by the NSSF, the office of the President and the provincial administration, to sell the 1,760 one-eighth plots to the occupiers at KES.650,000 each.

The tender was issued to China Jiangxi at KES.4.6 billion but disagreements surrounded the project. The cost was revised from KES.3.304 billion to KES.5.053 billion causing contentions within the board with some members contending it was against procurement laws. Early in 2014, the Minister suspended the project after corruption allegations were made against some of the board members. A senior officer of NSSF was suspended after his name came up in the probe. It was not clear whether the NSSF lost any money in the convoluted deal.

But NSSF did lose US$.3 billion (KES.311 billion) awarded as treats including cars and special allowances to its directors and top executives between 1996 and 1988. The matter was revealed by the PIC.

In its financial year report of 2008/2009 to 2011/2012, the PIC derided the Corporation for paying KES.324.3 million to a construction company to complete phase 2 of Nyayo estate, Embakasi, without a collateral security. The contractor did not complete the project and the Fund had to appoint another company to finish the job. NSSF never recovered the advance. In a twist of events, the first company sued the Corporation for KES.7 billion while the Fund filed a counter-claim of KES.9.8 billion on non-liquidated claims. By 2015, the matter was still in court.

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It was not until 2003 after Kibaki took over the government that NSSF was stopped from engaging in any further land transactions. Reports say by that time, the organization had invested billions of shillings of workers' retirement money in public forests,[628] apart from being used as a slush-fund for politicians during elections.

However, the NSSF continued to acquire properties. It spent KES.450 million to purchase LR No. 209/12274 in New Muthaiga measuring 18.41 hectares which is part of the Karura Forest; KES.100 million in Ngong Forest, LR No. 20840 and 20841; and KES.350 million, LR No. 209/6439, next to Parklands Sports Club, which was valued at KES.450 million, meaning the government lost KES.100 million in the process. All the three plots were issued with titles by the Ministry of Lands even though allocation of forest land was illegal. The matter ended in court.

In the meantime, the Auditor General Edward Ouko, said in 2013 that NSSF had no authority to purchase land in gazetted areas which, as per the law, "cannot be owned, possessed, utilized or accessed" and that any development on such land would be illegal. Because of such dubious transactions, workers lost billions of shillings.

KPA

“The port of Mombasa,” said a leading Kenyan economist Robert Shaw way back in 1996 when Moi was at the helm, “is a huge gravy train.”[629]

“All illicit business happens here,” said Njuguna Mutonya, a journalist, “…it is controlled by traders supported by customs personnel and powerful people in government. “Mombasa is like a tunnel. Whoever controls the port controls the illicit business in Kenya.”[630]

Known historically as Kilindini, the port has always had a deplorable history of smuggling, tax evasion and sleaze. It is a den of corruption and all sorts of malfeasance; a cash cow for politicians and top civil servants who have used it to enrich themselves and maintain power.

Kenyatta’s wife, Mama Ngina, his daughter Margaret, and some of his Ministers, used it to transport illegally obtained animal parts to Asia in the 1960s and 1970s. Moi’s cronies and relatives too found the port useful in their quest to amass wealth. Similarly, underground cartels of smugglers, thieves, and fraudsters; have made billions of shillings working in cahoots with crooked civil servants and politicians in schemes that have deprived the country of huge revenues in customs duty and tax.

By the end of 1979, there were 47 high-ranking officers of the Kenya Wildlife Conservation and Management Department (KWCMD) who were under investigations for corruption or trafficking of ivory through the port.

When in 1996, 1,200 vehicles scheduled for auction disappeared at the port, the Head of the Civil Service, Prof Philip Mbithi, sent home 21 senior officials from KRA, KPA, Customs and Excise Department, and the Registrar of Motor Vehicles. They were charged with conspiring to defraud the government of revenue and failing to charge import duty on the vehicles.

But within weeks, Prof Mbithi himself was fired apparently because he had stepped on the toes of Moi’s allies who were doing illegal business at the port. Also fired was the Transport and Communications Minister, Dalmas Otieno, who had criticized Moi for lifting a ban on importation of sugar. In February 1996, Moi appointed a Swiss national, Robert Brenneisen, as the Chief Executive of KPA, perhaps to shield Kenyans from what was happening at the port.

Another dramatic change of leadership at the KPA was when the much-respected Brown Ondego was arrested on 6 January 2005 on suspicion of drug smuggling involving a consignment of cocaine worth US$.85 million (KES.8.8 billion). However, some inferred he was arrested for interfering with corruption perpetrated by the Kenya Police.[631] He was released after spending one night in a police cell allegedly after intervention by top government officials.

As the police conducted investigations on the seizure, they stumbled on information about additional corruption allegations related to a computer installation that led to a loss of US$.12 million (KES.1.2 billion).[632] Ondego was suspended on 18 January but reinstated on February 9. Others who were netted with him were the harbor master, Twalib Khamis, container terminal manager Charles Mgeta and verification officer Jeriman Akinda. No further action was taken against Ondego.

Early in 2015, a small team of foreign undercover investigators from the WildLeaks – a wildlife crime whistleblower - and the Elephant Action League (EAL) in collaboration with an unnamed “key partner” penetrated the sometimes, tight security at the port of Mombasa posing as mining executives and spent hours observing the scanning procedures and how relevant port authorities interact with clients. What they found was shocking: they discovered serious vulnerabilities and weaknesses in shipping security procedures and confirmed the port to be a major hub of ivory trafficking that was posing serious national and international security implications.[633]

Between 2009 and 2015, ivory from an estimated 25,000 elephants disguised as peanuts and tea leaves transited through the port.[634] Elephants killed through poaching in Kenya increased sevenfold between 2006 and 2009.[635] The illicit trade through the port of Mombasa “involves networks of organized dealers, financiers, suppliers, brokers and merchants.”[636] Several times, Kenyan ivory has been seized in Asian ports. In 2015, there were two major seizures. Three and half tons of ivory was seized in Thailand and four tons in Singapore all valued at US$.8 million (KES.830 million).

The situation is “so grave that conservationists and security agencies say Mombasa has become a key intersection of supply, demand and corruption that fuels the ivory trade and a major battleground in the rush to save Africa’s elephant population.”[637]

Like Moi did in 1989, Uhuru resorted to burning recovered ivory to send a message to poachers and dealers about the government’s determination to protect the elephant. On 3 March 2015, accompanied by politicians, diplomats and conservationists, he torched 15 tons of ivory at the Nairobi

National Park, and on 30 April 2016, he burnt another 105 tons of elephant ivory and 450 rhino horns.

Another commodity smuggled through the port is rosewood, a type of richly hued timbers used for making a variety of items including guitars, billiard cues, furniture, and many others. In May 2014, Kenyan custom officers seized 34 containers with 640 tons of illegally logged rosewood from Madagascar estimated at US$.13 million (KES.1.3 billion). The rosewood loaded at Zanzibar was on its way to Hongkong and most likely destined for China.[638]

The port is also a conduit for counterfeit goods mainly coming from India and China. The World Customs Organization (WCO) says pharmaceutical medicines are shipped to Mombasa first before being reshipped to other countries because of the law risks.[639] Estimates of the annual revenue losses for Kenya, through trade in counterfeit goods, ranges from US$.84 million (KES.8.7 billion) to US$.490 million (KES.50.8 billion).[640] All malaria drugs in the Kenyan market are said to be counterfeits and therefore harmful to users.[641]

In November 2016, authorities seized 24 containers of contraband clothes and powdered milk with a value of KES.150 million, thanks to the use of scanners. The goods were destined to both Kenya and Uganda.

A wide-range of other counterfeit products are cleared every year through the port ranging from electronic goods, cosmetics, mobile phones, batteries, alcoholic spirits, pens, shoes, cigarettes, and almost every item one can think of. Fake goods worth millions of shillings have been destroyed in Mombasa upon seizure. There are also reports of owners of such counterfeit items being arrested and taken to court.

The Kenya Bureau of Standards (KBS) whose responsibility is to govern and maintain standards of goods are unable to keep up with the constant flow of fake goods through the port of Mombasa; only a small fraction of such goods is detected and impounded. Officials say Kenya loses KES.70 billion yearly from fake goods.

Luxury vehicles stolen from Europe are also smuggled through Mombasa port. In March 2016, a British detective who travelled to Kenya to trace a stolen car stumbled on 24 other cars – mostly high-end models – worth an estimated GBP.1 million (KES.135.6 million) that had been stolen in England. The vehicles were all shipped back to Britain. In the aftermath of this discovery, the government ordered owners of 124 luxury vehicles to surrender them to the KRA for verification if they were genuinely imported and whether they paid import duty. KRA published a list of car registration numbers of suspected vehicles which included Mercedes Benzes, Jaguars, Toyota Land Cruisers, BMWs and Range Rovers. KRA said the tax and penalties due for the vehicles was worth KES.500 million.[642] Most of the owners did not respond to the government directive. One Range Rover which was eventually impounded by KRA over tax issues belonged to a Cabinet Minister in Kenyatta's government. In the importation documents, it was listed as a lorry.

Two weeks later, another three top-of-the-range vehicles disguised as personal effects were busted at the port on their way to Uganda. They were hidden in piles of baby walkers and covered with used mattresses. It was clear that a highly-protected cartel comprising crafty businessmen and crooked policemen and officials was operating at the port and depriving the government of millions of shillings in tax revenue.

Large quantities of illicit drugs including heroin and cocaine have also been seized at the port. In 2014, an Iranian-registered vessel, MV Bushehr Amin Darya, loaded with heroin worth KES.1.3 billion was ordered destroyed at sea by President Uhuru.

In April and November 2015, two consignments of heroin amounting to 787 kg and worth US$.278 million (KES.28.8 billion) were seized by the Australian Navy off the coast of Kenya. A third consignment was seized in July totalling 342 kg in the tank of a ship docked at Kilindini port in Mombasa. The quantity of the three consignments roughly equaled the amount captured by 11 East African countries with a coastline, between 1990 and 2009, says the UN Office on Drug and Crime.[643] In August, a Singaporean-registered luxury yacht with heroin worth KES.22 million was also blown out at sea. In July 2016, 45-kg bags of cocaine disguised as lactose sugar worth KES.400 million were found hidden in four containers.

In December 2015, ethanol worth KES.288 million and contraband sugar worth KES.56 million were apprehended at the port. Three Range Rovers were also nabbed in the crack-down. The Director of Public Prosecutions (DDP) recommended the prosecution of four companies and five individuals said to have been involved.

Before a contraband seizure, the 2015 Wildleaks undercover report said, the owner of the cargo is presented with an opportunity to pay a bribe – often amounting to tens of thousands of dollars depending on the value of the cargo – to powerful government officials. The report obtained the name of one such individual – but did not want to name – who was involved in the smuggling of ivory from Uganda to Mombasa, and in dealing in narcotics trafficking through the port.[644]

In February 2016, several top KPA officials including a managing director were sacked over corruption allegations. The officials included an officer in charge of operations; of legal services; of corporate services, and of security. A report prepared by EACC and the National Intelligence Service (NIS) revealed malpractices in procurement procedures that had led to the loss of huge sums of money. They were accused of allowing dozens of containers suspected to contain smuggled goods to leave the port without proper authority.

One customs official who identified himself only as Khalfan admitted he regularly received up to KES.500,000 to ensure containers pass without inspection. Khalfan earns only about KES.40,000 in salary per month, but drives a BMW and has beach property.[645]

Subsequently, 14 transport companies including Siginon Freight, belonging to President Moi's family, were barred from entering the port and all customs areas belonging to KPA. The following day however, the ban on Siginon was lifted without any explanation. Trucks belonging to the companies were caught on CCTV ferrying out the 104 containers which left a financial hole in government coffers amounting to KES.100 million. The containers, whose contents were unknown, were removed from the port between June and July 2016.

In August, 13 officials from KPA and KRA were charged in court for allowing goods to pass through the port without payment of customs duties amounting to KES.9 million between 21 June and 23 June 2016. Their arrest was made possible by a combined team of officials from the two organizations, the NIS and the Directorate of Criminal Investigations (DCI). It was alleged that the arrested officials were part of a cartel engaged in smuggling of goods through the port. Mombasa principal magistrate, Douglas Ogoti, released them on a bond of KES.300,000 each. The case was still pending by the end of 2017.

The situation had deteriorated so much that by September 2016, President Uhuru formed a special unit to deal with the grave situation at the port at which businessmen were colluding with KPA and KRA to smuggle contraband goods including illicit drugs. In addition, the government requested the help of the Interpol to help investigate graft at the port.

And it is not only Kenyan officials who are alleged to be involved in underhand dealings at the port. Officials from the government of South Sudan stationed at the port were also accused of undervaluing goods for the sake of depriving the Kenya government of revenue. They conspired with Kenyan importers to evade taxes by falsely stating that goods were destined for South Sudan when they were headed to the Kenyan market. In August 2017, two South Sudanese customs officials were named for allowing 67 luxury vehicles and 24 cars – older that the mandatory eight years-old -limit – to enter the country. Though known to Kenyan authorities, no action has been taken against them allegedly because of their close association with top Sudanese officials in Juba.

Because of the mixture of conflicting ethnic interests, political interference, and high-level corruption at the port, KPA is one organization with one of the highest turn-overs of chief executives in the country. In just ten years, it had three Managing Directors – Brown Ondego, Abdalla Mwaruwa and James Mulewa, who served six, three and one-and-half years respectively.[646] The longest serving Chief Executive was Philip Okundi who served from 1984 to 1993.

For a big organization like KPA, some may argue, that is too short a time for a managing director to execute the mandate given to him. Even the World Bank seemed worried about the high turn-over at the port. In a status report in June 2016, it said instability at the top of KPA was not a recipe for good planning and reform. Often politicians influenced the appointment of the chief executive to gain leverage at the port.

Corruption at the managerial level of the port and ethnic considerations have meant less qualified candidates are selected to fill jobs that require special skills. An audit in 2015 found 136 employees who had been hired in 2011 did not have any requisite certificates for the jobs they were holding. Many of them were middle level managers in-charge of important functions of port operations. Most of them got jobs through political connections. They were all fired.

A good example of how corruption works at the port was seen in 2015 after the government called for bids for the concession of a second container terminal. The facility was meant to double the capacity of the port to accommodate much bigger container vessels and out-compete other regional ports. One of the conditions of the international tender was for the winner to cede 15% of the shareholding to a local entity. That is when the problem started.

Excessive jostling prompted the government to change part of the tender midway, sparking confusion among the bidders who wondered why seven addendums that drastically altered the contents of the original documents were introduced, leading to "accusations of vested interests and corruption flying around Kenyan shipping circles."[647] KPA said that was a new requirement but some bidders – both local and international – saw that as a mischievous way of courting corruption.

Several companies linked to top government officials were involved in the battle for the tender to build the new terminal.

Corruption was also blamed for the slow movement of goods from the port, with complaints coming from Uganda, Burundi and Rwanda. At one time in 2005, an average of between 6,000 and 10,000 containers were stuck at the port for over six months awaiting loading and unloading as ships waited. Huge costs in surcharges were incurred. A container's average dwell time at the port of Mombasa is approximately 14 days.[648] One report said workers usually demanded up to KES.172,000 as bonus per vessel to load or unloaded containers.[649]

KMC

In 1938, colonialists felt the need to establish a meat processing company to offer a ready market for livestock products produced by the settler farming community. A company named Liebig Brooke Bond (later Brooke Bond Kenya, now Unilever Tea Kenya Ltd.) began operations in Athi River, 41 km from Nairobi. A few years later, the government took over the plant and formed a meat marketing board to supply products to British troops during World War II. In 1950, the Kenya Meat Commission (KMC) was born through Act No. 8 of Parliament and its services were expanded to include the export of meat and its products. European and afterwards African farmers sold cattle to the company for slaughter and the company processed, canned and refrigerated the products for marketing.

Later in 1958, a canning section began operating and KMC products became popular for their high-quality. KMC established business ties with shoe manufacturing industries and commercial feed manufacturers who were producing dairy and animal meal, surgical threads, table tennis nets, flywhisks, wigs and brushes, and became a successful company.

But after independence, the board and the top management of KMC, were taken over by Africans who were appointed more for their connections than for their managerial experience. The Europeans who remained were rendered virtually inactive as the Africans took over the leadership of the organization. As a result, profits declined while costs skyrocketed during the first decade. A few foreigners were brought in to revamp the company and in the second decade, things improved. The company made a profit of K £.190,406 (KES.3.8 million) in 1970; K£.336,442 (KES.6.7 million) in 1971, K£.522,819 (KES.10.4 million) in 1975, and K£.784,316 (KES.15.6 million) in 1976, all before tax. Then, financial mismanagement cropped in and the company started to go under. In 1979, KMC recorded a loss of K£.1.6 million (KES.32 million).[650]

Because politically-connected individuals were licensed to slaughter animals in competition to KMC, the firm's business suffered, and profits declined. In addition, government institutions like the Defense Ministry and public universities which initially bought products from KMC diverted their businesses to individual abattoirs, leaving the firm to be insolvent and unable to pay farmers. As they departed, those institutions also left huge outstanding debts with KMC.

In 1987, with most of its domestic business taken over by influential Kenyans, and its export market virtually extinguished, the commission became insolvent and most of its employees were sent home. A caretaker committee was appointed to manage the Commission's day to day affairs and oversee its assets which were valued at only KES.257.7 million against liabilities of KES.590.78 million.

KMC's operations were heavily influenced by politics and patronage. In 1981, four Managing Commissioners were appointed by the Head of State but were sacked on different occasions during the same year under unclear circumstances. Only one, M. N. M'Muthi served the complete term of three years between January 1983 and October 1987 when it became insolvent and was closed.[651] Nevertheless, the Managing Commissioner - because of his direct link to the President - became extremely powerful and made crucial policy decisions which generally was the purview of the board. But as someone said, the board was “as powerless as a toothless dog.”[652] Mismanagement and theft led to the closure of the factory again in 1992 during Moi’s rule.

In 2003/2004 financial year, the government gave KMC KES.247 million to pay off unsecured creditors, including utilities, merchants, statutory deductions, and final dues for former employees, as part of efforts to re-open the plant. That disbursement was followed the same year by another KES.107 million. In 2004, a further KES.500 million was provided for plant repairs and operations. The plant remained closed until Kibaki reopened it on 26 June 2006 through financial aid and technical support from Mitsubishi Corporation (UK) Limited. In the meantime, sacked workers were demanding KES.7 million in severance pay and suppliers were knocking at the door demanding millions in unpaid supplies. The plant was operating at 30% below capacity and registering losses averaging KES.300 million per year.

In January 2012, Livestock Minister, Mohamed Kuti, publicly warned the incoming Managing Commissioner of KMC, Dr. Isaak Haji, and his team of Commissioners, that he would sack them if they did not improve the performance of the organization. During the first year, 2011/2012, Dr. Haji clocked a profit amounting to KES.51 million and declared a KES.31-million dividend, according to the *Business Daily*.[653]

Other than management problems, KMC also faced problems of land-grabbing of its properties in different parts of the country. Almost 18,000 acres of its land in Nairobi, Mavoko, Nakuru, Mombasa and Nanyuki, were grabbed. That did not include 840 hectares irregularly allocated in January 1994 to the Numerical Machining Complex Limited (NMCL) owned by the Kenya Railways (KR) and the University of Nairobi (UoN). Formerly known as the Nyayo Motor Corporation, the NMCL produced the Nyayo car, a project of the KR and UoN whose prototype was displayed publicly in 1990. Five prototypes were built, but no further production was undertaken because of lack of funds.

Within a few weeks after the irregular allocation of the KMC land, according to the Ndung’u Report, the Head of Public Service at the time, Prof Philip Mbithi, who was a Director of the NMCL, wrote to the Director of the

NSSF informing him that the President had suggested that the NSSF purchase the land at market value. In February 1995, the NSSF purchased 136 hectares of the land at a cost of KES.268 million which was eight times more than the professionally assessed value. “Today, the land purchased by the NSSF remains largely undeveloped, as does that of NMCL.[654]

A frequent change of guard at the top reflected the dilemma facing KMC. The position of managing commissioner changed hands frequently beginning 2008 from James Kamonye who lasted for only 18 months; to Vincent Kipyebei within a year; to Ali Hassan Mohammed who was fired after less than two years, before Ibrahim Haji Isaac was moved from the Agriculture Ministry headquarters to head organization.

All those problems notwithstanding, some KMC officials did not find it awkward to supply 22 tons of frozen primal cut of beef to a South Sudan meat company on partial payment which was against policy guidelines. The meat was worth KES.4.5 million but the SSMC paid only KES.2.5 million in three instalments leaving a balance of KES.1.9 million. Senior KMC officials led by the acting Managing Commissioner James Tendwa who were summoned before PAC on 14 April 2015 were hard-pressed to explain why full delivery was done without pre-payment. They admitted they could not trace the company.

The committee felt the Managing Commissioner was negligent and had to be held accountable and surcharged to the tune of the lost amount. It could not be ascertained if the money was recovered.

In 2014, the government released KES.157 million to KMC to settle its debts and a further KES.700 million to upgrade its facilities. And on October 30, another KES.650 million was given to the firm for its modernization program.

As the government was busy revitalizing the company, KMC’s former Managing Commissioner, Ibrahim Haji Isaac, and others appeared in court in June 2015 charged with allegedly embezzling KES.11.5 million from the firm. With him in court were deputy Commissioner and Finance Manager, Patrick Musau Mutemi, Esther Njeri Ngari, Francis Musau Mutuse, and Ruth Muthoni Mwangi. They pleaded not guilty and were released on cash bail. They were charged with conspiring to commit an economic crime and conspiracy relating to KES.11.5 million which had been allegedly withdrawn from the First Community Bank and not accounted for. The offense was committed between 27 April 2012 and 10 May 2012. They all pleaded not guilty. The case was heard before the anti-corruption court.

A policy analyst at the Kenya Institute of Public Policy Research and Analysis (KIPPRA), Mathew Muma, blamed corruption, mismanagement, and political decisions, as the main problems be-deviling the meat processor.[655] The organization was being “eaten” from within as officials stole, misused and wasted resources provided to KMC by the government.

KMC reported its first profit of KES.51 million in 2012 but improvement was slow. By March 2016, the Managing Commissioner, Joseph Learamo, while reporting good progress in the turn-around effort said the Commission was still struggling to stay afloat because of financial constraints. He said while the company had a capacity of processing 20,000 cases of corned beef, only 5,000 cases were being produced. During better days, KMC’s main customers were government parastatals and institutions, but those bodies sought supplies elsewhere, and by early 2016 only, the department of defense was sourcing its corned beef from the company. In addition to local buyers, the company was also trying to court suppliers from the United Arab Emirates (UAE) and Hongkong, but those efforts had not borne fruits by end of 2017.

Raiding the sweet sugar away

One commodity that has aroused furious debate in and outside Kenya Parliament is sugar. The sweet stuff has generated controversy leading to collapse of companies and farms and the sacking of thousands of workers in the sugar belt of western Kenya as sleazy businessmen smuggled in the commodity to take advantage of shortages in the region.

Kenya produced 390,000 metric tons of sugar in 1996 against the consumption of 570,000 metric tons that year, allowing sugar importers to cash in with cheap imports.

In the 1990s, sugar barons comprised mainly of close friends and companies associated with President Moi. One of the companies was headed by a senior State House official and Moi’s close associate. Such people and companies colluded with corrupt officials at the NCPB and in sugar companies, to create artificial shortages to entice the government to import cheap sugar from Brazil and the Far East and then sell the commodity at a premium, thus, minting huge profits. To avoid detection, the unscrupulous dealers re-packaged the illegal commodities into small bags to obliterate the identity of the country of origin. The flooding of the cheap sugar has often left local manufacturers with huge piles of the commodity. Changes to the provisions of the Customs and Excise Act in mid-1990 to stop dumping and protect the local industry did not help much.In 2014, for example, a 50-kg bag of sugar was selling at KES.3,200 against the average price of KES.3,800. The unauthorized imports were not usually inspected by the Kenya Bureau of Standards (KEBS) as required by law, and entered the country without paying taxes. Such was the situation in 2012 when an official of Mumias Sugar Company (MSC) – one of the largest sugar producing firms in the country – contracted a company that had never imported a grain of sugar, to supply the company with 100,000 tons of sugar worth KES.1.2 billion starting from January 2013. The official signed the lucrative deal without approval from the MSC board which was in contravention of procurement rules.

Then there is the issue of fraud associated with importation and exportation of sugar. An audit report on Mumias by KPMG raised serious management shortfalls that may have caused a loss of KES.250 million in VAT to the government. Glaring discrepancies were discovered on sugar allegedly exported by MSC. In one case, an Ethiopian exporter asked for permission to export 5,000 metric tons of sugar. The summary of that export indicated a total export of 5,882 metric tons while on the detailed export item list the amount shown was 117,641 metric tons. Investigations on this and the overall total summary of exports by Mumias concluded there was “a ploy to defraud the government of VAT.”[656]

With such discrepancies, it could not be determined exactly how much sugar left the country through Mumias. The damning report, which followed one by another accounting firm, Deloitte & Touché, which had exonerated the management of MSC from accusations of hiding flaws in the company, was not released to the public.

Over the years, a brisk illegal sugar business worth US$.400 million (KES.41.5 billion), annually has also existed across the border with Somalia controlled by Somali dealers, the Kenya Police Service and members of the Kenya Defense Forces (KDF). A report in 2014 said two to three lorries arrived every night at Ifo’s refugee camp at Daadab in northern Kenya carrying 250 bags of smuggled sugar from Somalia.

For each lorry, the report claimed, police officers received a bribe payoff of KES.100,000, approximately 15% of the value of the shipment. “So, lucrative are the illicit gains that branches of Kenya security forces compete against one another for bribes.”[657] These lorries also ferry into Kenya contraband cigarettes, powdered milk, oil, rice and clothing material, says the report.

It is surprising the Kenya government pretends not to be aware of this line of smuggling especially given the fact that the business is conducted at a government-controlled refugee camp. Kenyan security forces based in the north to guard against infiltration of Al-Shabaab terrorists have been implicated in smuggling activities for years. The charcoal trade, for example, is a multi-million business in which Kenyan security forces are the main players. They charge “taxes” for every consignment that leaves the Kismayo port, the Dhobley-Liboi border crossing, and the Dadaab refugee camp, reaping an estimated US$.30 million (KES.3.1 billion) annually. The money is shared between the Kenya military, the government of Jubaland and Al-Shabaab, which demands payment from every driver passing through the territory it controls.[658]

In 2013, the UN found that the Kenya Defense Forces under Amisom was “acting as a broker in the vast illegal charcoal trade in agreement with Al-Shabaab.” Between 4.5 million and 6 million bags of charcoal are exported to the United Arab Emirates (UAE) yearly from the port of Kismayo, and Kenyan security forces receive US$.2 (KES.207) for every bag that leaves the port. The income, an estimated US$.135 million (KES.14 billion) to US$.180 million (KES.18.6 billion) makes its way to Al-Shabaab and is used to launch terrorist attacks like the one at Westgate Mall in Nairobi on 21 September 2013. Kenyan officials have vehemently and repeatedly denied any connection to the smuggling operations.

Nevertheless, the UN reaffirmed its position when it issued another report in November 2017 indicting the KDF for failing to enforce a ban on charcoal exports by Al-Shaabab.

Pillaging in sports

On 24 January 1999, the headquarters of the International Olympic Committee (IOC) in Switzerland was a no-go zone. Barricades were pitched around the building and security officials kept watch, stopping everyone, including journalists, from accessing the three-storey structure on the shores of Lake Geneva. Arriving officials were directed to the underground parking space from where they sneaked through a private entrance to take the elevator to the top floors. It was a surrealistic scene.

Inside, the IOC president, Juan Antonio Samaranch, and a small group of top officials, were getting poised for a crisis meeting, the most extraordinary in the organization's long history.

A few years earlier, Salt Lake City in the American State of Utah had won the bid for the 2002 Winter Olympic games. Since then, allegations had emerged that the bid may have been compromised. A Commission led by the IOC vice president, Dick Pound, was formed to investigate the allegations and reported serious violations of the organization's code of conduct. Top IOC officials involved in approving the bid had not only received cash payments but had been showered with gifts and favors including scholarships, free medical care and even free land. The allegations were so serious that two officials had already resigned, and 11 others were on the chopping board. Among them was Kenya's Charles Nderitu Mukora, Chairman of the Kenya Olympics Association (KOA). A Belgian member of the investigative panel, Jacques Rogge, called what had transpired "brutal corruption."[659]

The Salt Lake City debacle was not the only one on the spot. One day before the IOC meeting, new revelations showed the 2000 Sydney Olympics too had been compromised. Australian officials admitted they paid US$.70,000 (KES.7.2 million) to two African officials to secure their votes in a contest it won against Beijing by 45-43 votes. It was reported a Kenyan official allegedly pocketed US$.34,650 (KES.3.5 million) "for his own benefit," which was incompatible with the duties and obligations pertaining to his membership in the committee.[660]

Documents provided by the Australian Olympic Committee Chairman, John Coates, showed the Kenyan and a Ugandan had received an annual stipend of US$.5,000 (KES.518,750) each between 1994 and 2000 to help Australia win the bid. However, Coates claimed the money was not intended to be a bribe but only to finance sports in the two countries.

Following that conference on a dreary wintry Saturday in Lausanne, several IOC officials were removed while others left on their own volition to save the organization from a crisis of integrity. On arrival in Nairobi, the 64-

year old Charles Mukora – while denying any wrongdoing – resigned from the committee he had served since 1990.

Mukora was a well-known figure in East African sports. Before becoming an administrator, he was a competitor, a coach and a promoter and had represented Kenya in many championships in the region including long jump, triple jump and decathlon. He was then involved in managing the Kenyan team to the Olympics in Mexico City in 1968 and at Munich in 1972. His dramatic fall from the top of the Olympic Committee mirrored the extent of corruption pervading in the Kenyan sporting arena.

In April 2016, a leading sportswear company, Nike, was alleged to have bribed Kenyan officials to maintain a contract with the Athletics Kenya (AK) for fear of losing it to a Chinese company, Li-Ning, which had offered better terms. Nike was alleged to have offered honoraria and a one-time payment of US$.500,000 (KES.51.8 million) as "commitment fees" to officials to save its long ties with Kenya.

Nike had been a supplier of shoes and gear to the Kenyan team for over 20 years, in addition to paying up to US$.1.5 million (KES.155.6 million) for training athletes; US$.100,000 (KES.10.3 million) honoraria each year; and a one-time "commitment bonus" of US$.500,000 (KES.51.8 million). However, the money was siphoned prompting the government to launch investigations and to order home three officials suspected of involvement. The US based company denied paying any bribes and refused to cooperate with local investigators. 'Whenever I see the words 'commitment fees,' 'commitment bonuses,' 'access fees,' 'access bonuses,' that for me raises a red flag," said John Githongo, former TI official who became Kenya's anti-corruption czar under President Kibaki.[661]

To smoothen its way into the Kenyan sporting scene, the Chinese company reportedly paid US$.200,000 (KES.20.7 million) to AK, but the money was swiftly withdrawn from the bank by a senior official. The president of AK, Isaiah Kiplagat and two of his top officials were suspended by the IAAF ethics commission for allegedly diverting more than US$.700,000 (KES.72.6 million) in sponsorship money from Nike for personal gain.[662] Kiplagat who had served the organization for more than 20 years died in September 2016 before the conclusion of investigation into his links with Nike.

Over the years, mismanagement and corruption at KOA has resulted in dozens of Kenyan athletes fleeing overseas and taking convenient citizenship status in countries such as Qatar and Bahrain in the Gulf. Those who chose not to defect protested the rot but could not find recourse anywhere.

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There was no corruption or doping in 1962 when the Kenyan team went to the Commonwealth games in Perth, Australia, and Serafino Antao, a Goan sprinter from Mombasa, won the 100m and 220m gold medals. There was no corruption in sports in 1968 when Kipchoge Keino won his first gold medal at the Mexico olympics in the 1500-metres race. The reason is that Kenyans were competing for glory, not greed. There was no corruption in sports during Jomo Kenyatta's rule, period. Corruption began during Moi's time and continued through Kibaki and Uhuru regimes, and involved cases of international bribery, fraud, theft, doping and match fixing.

Sponsorship money from international organizations such as the IAAF, IOC and FIFA to Kenyan sporting bodies was regularly stolen or misused to benefit a small clique of officials. There were also reports of athletes bribing coaches to avoid doping bans and of IAAF officials blackmailing athletes who had failed doping tests.[663]

One notable example is the allegation in April 2016 by two athletes, Joy Sakari and Francisca Koki Manunga, that a KOA official had asked them for bribes amounting to US$.24,000 (KES.2.4 million) each to reduce their four-year doping bans. The two young girls had failed doping tests during the 2015 Beijing world championships and had been banned from sporting events. They tested positive for furosemide – a diuretic that masks the use of performance enhancers – which they bought from a chemist in Nairobi "to alleviate side effects of supplements they were taking."[664] The official they accused, Isaac Mwangi, denied any private meetings with the two. He was nevertheless suspended pending investigations by the IAAF. Athletics Kenya (AK) too denied that there was a conversation about any payment.

Sakari and Manunga both 400 m runners joined the elite multi-marathon athlete Rita Jeptoo at the bench when tests showed evidence of performance enhancing drugs in her specimen. A total of 40 athletes were banned by 2012, according to a report by Reuters.[665] Blame was placed at the door of AK which reportedly failed to tackle the problem despite appeals from the World Anti-Doping Agency (WADA).

If there was one place that corruption played before an international theatre it was at the Rio de Janeiro Olympics in 2016. Apart from bungled travel and accommodation arrangements, two management officials were recalled home for mischief. The track team manager, Michael Rotich, was dismissed and returned to Nairobi for allegedly seeking to obtain US$.13,000 (KES.1.3 million) to warn runners about a "surprise" drug test; while John Anzhah, was said to have allegedly attempted to pass himself as one of the runners and giving a urine sample to dupe officials.

On arrival in Nairobi, several officials were arrested and charged. Francis Paul, the secretary general of the National Olympic Committee of Kenya (NOCK) and his deputy, James Chicha, were arraigned in court for stealing kit; and Stephen Soi who was the *chef de mission*, for allegedly stealing US$.250,000 (KES.25 million) earmarked for travel. The government also disbanded the country's Olympic organizing committee.

It also emerged that uniforms offered by Nike did not reach the athletes in a sufficient manner forcing some of them to appear with mismatch gear. Investigators probing into the matter in Nairobi stumbled upon bales of uniforms hidden in the house allegedly belonging to a top official of the Kenya Swimming Federation (KSF). He was swiftly arrested and charged. He denied the allegations.

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In another bizarre case of misappropriation of money, NOCK officials booked two rooms for 18 days on the Othon Palace luxury cruise ship for use by President Uhuru, his Deputy William Ruto, and the Sports Minister, Hassan Wario during the 2016 Rio Olympics at a cost of KES.2.2 million. That was done even though President Uhuru had declared he would not be going to the games. Stephen arap Sio, the *chief de mission* to the games, told the Parliamentary Labor and Social Welfare Committee, that the decision to book the three rooms was made at a meeting attended by Hassan Wario, the Cabinet Secretary for Sports. However, the money went to waste because Uhuru did not travel to Brazil for the games and Wario was accommodated elsewhere. Uhuru denied NOCK could have booked for him since his accommodation arrangements overseas were always made by the Foreign Affairs Ministry. The taxpayer also paid millions of shillings to accommodate senior government officials and MPs in rooms that cost as much as KES.89,000 per day even though the officials were paid per diem.

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In addition, there have been cases where officials have fielded over-aged players to cheat in U17 tournaments; referees have been bribed to favor one side; and players have been forced to bribe officials for inclusion in international tournaments. Club elections have been rigged, rules and regulations have been manipulated to suit individuals and gate collections have been stolen. At the same time, recurrent costs of running stadiums almost tripled from US$.10,066 (KES. 1 million) in 1999 to over US$.29,487 (KES.3 million) although 150 less matches were played.[666]

A report by the EACC in 2015 showed that US$.410,146 (KES.42 million) received by the Kenya Football Federation (KFF) between November 2011 and December 2012 could not be accounted for.[667]

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The sorry story of corruption has roped in more than officials in football and athletics. Even more conservative games like cricket have not been spared. There had been lingering suspicion that all was not well in cricket particularly in international competitions held between July 1999 and June 2000.

It all simmered following revelations by Katherine Maloney, the estranged wife of Kenyan captain Maurice Odumbe, who claimed – for reasons that could only be guessed – that she had collected thousands of dollars on behalf of Odumbe following deals with bookmakers to fix matches. The revelations kicked off a major investigation by the Kenyan cricket association in 2004 which found Odumbe guilty of 12 counts of accepting money illegally, and banned him from playing for five years. One of the fixed matches was reportedly played in Zimbabwe after which he was allegedly paid US$.5,000 (KES.500,000). The International Cricket Commission (ICC) endorsed the findings against the man who captained Kenya to victory in the crucial game against West Indies in Pune, India in 1996.

In words that sealed his fate and washed him out completely from the game, the inquiry described Odumbe as, “dishonest and devious and callous and greedy in the way he conducted himself.”

After that, the once most admired cricketer with a fleet of luxury cars and a white wife, Katherine Maloney, fell into bad times. In 2016, friends and well-wishers joined hands to give him a second chance in sports. Early in

2017, he was appointed the batting coach for the Kenyan team in preparation for the ICC world cup league qualifiers against Nepal in March.

Match-fixing and corruption have been part of international sports for years. According to one report, 1,000 sports events, ranging from top-level soccer games to Olympic competitions and international cricket competitions were fixed,[668] during the period of five years ending 2017. Money has changed hands at various tournaments among them the Africa Cup of Nations and regional competition such as CECAFA. There is also a culture engrained in the people that it is okay to bribe the referee or match officials…"[669]

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Rugby is one game that has been growing steadily during the past few decades in Kenya. Along with its growth was an infusion of millions of shillings in sponsorship money from large commercial organizations in the country, among them Kenya Airways, East African Breweries and Safaricom. In 2011 alone, the Kenya Rugby Union (KRU) attracted KES.320 million in sponsorship over the following two years.

Amidst the flowing money, allegations of mismanagement, vested interests and allegations of improper procurement activities abounded involving some KRU officials. Air tickets for the team's international travels were procured irregularly and officials were purchasing merchandise from companies they had interest in. No one could explain the state of corruption in KRU than Richard Omwela, the chairman of the organization.

> "You get elected today and arrive in a *matatu* (minibus taxi) and in three months you are driving a car when you actually don't have a day job. So, where did that money come from? Your guess is as good as mine."[670]

Some of the sponsors of the game temporarily left. Others left and returned. It was becoming real in 2015 that Kenya rugby was on its way to recovery. By 2016, it was trending again in international tournaments after a spell of dismal failures. In Singapore in April, it won its first ever world title in seventeen years by defeating Fiji 30-7 in the HSBC Singapore Sevens World Series. Finally, despite the rot in the organization, Kenya rugby was back, hopefully to stay.

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In the meantime, Kenya's most popular spectator sport, football, has been going through its own crises. From match fixing, to bribery of referees, to corruption at the top level of the organization, sleaze has been part of football in Kenya from as early as the 1990s. Money has been changing hands in competitions involving not only international tournaments but also local leagues. On 28 November 1999, a top side Mumias Sugar played Kisumu All-Stars at Mumias stadium in the Tusker premier league. Nothing was suspicious as the two teams entered the field for the title game. The challenge for Mumias was that it needed to win seven goals to side-kick Tusker FC from qualifying for the African championship league. After Mumias Sugar scored its first goal in the first ten minutes of the game, it became clear the evening was not going to favor the all-stars. The goal hungry Mumias went to score nine more goals before the 90 minutes ended. The result was 10-0.

Immediately after the game ended, revelations began to sprout that money had changed hands. The KFF launched a probe and concluded that All-Stars had received KES.40,000 in the stadium's changing rooms prior to the game to give away the match. That decision was upheld by the National League Competitions Committee (NLCC) and the Independent Discipline and Appeals Committee (IDAC). Mumias Sugar was suspended from KFF tournaments but appealed to the Kenya National Sports Council (KNSC). Before a decision was reached, Mumias went to court, but the case was dismissed. Consequently, Mumias was stripped of the league title and the Moi Golden Cup title; they were further denied the KES.1-million cash prize; and banned from participating in the Africa Cup championships and CECAFA in Rwanda in June 2000. Tusker FC was declared the runners-up and awarded the KES.1 million.

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In 2002, Transparency International exposed Kenya to global disrepute when it accused the Kenya Football Federation (KFF) of misusing millions of shillings in the pretext of sports development. TI was reacting to KFF's own audited accounts for 2000 which showed glaring discrepancies between the number of tournaments played and the amount collected from gate fees. KES.2.1 million was collected from gate collections in 2000 against 300 league tournaments – both regional and international – while stadium expenses tripled from KES.785,225 in 1999 to over KES.2.3 million in 2000.[671]

According to *The Guardian*, an investigation into corruption in the KFF in 2005 found that from the first eight matches played by the national team following the arrival of a new president (of the Federation) “there wasn’t a single penny banked by the treasurer as proceeds from gate receipts.”

In November 2006, the world football controlling association, FIFA, banned three former Kenyan football officials after finding them guilty of unethical behavior and bribery for varied periods of time from taking part in all football-related activities. Daniel Omino, former general secretary of KFF, and Wycliffe Ogutu, former chairman of the Kenya Football Referees Association (KFRA), were each banned for five years; while Samson Kawa, former KFRA treasurer received a two-year ban. Alfred Ndinya, then the most celebrated referee, was given a caution for allegedly having been marginally involved in the scam. They were all punished for participating in a sham selection of Kenya referees and their assistants for the 2007 list of international referees. FIFA withdrew the list and launched an investigation. It was alleged that recruiting agents were asking for as much as KES.60,000 from those who wanted to be included in the list although the exercise had been paid for.

Nefarious activities have precipitated several changes in the management of soccer in Kenya. Two governing organizations, KFF and Kenya Football Kenya Limited (KFK) were disbanded in 2011 and replaced by the Federation of Kenya Football (FKF) in an exercise that was supervised by FIFA and the Kenya government.

Allegations that KFF officials had pocketed US$.410,000 (KES.42.5 million) of the federation money in 2013 caused a stir in the football fraternity and prompted EACC to launch an investigation. The allegations were made by the KFF representative at the Coast, Hussein Terry, who claimed the federation received the money from various sources including FIFA’s Financial Assistance Program meant for the national team; from the World Cup qualifier with Nigeria; and from television sponsorship for a match scheduled against Jamaica, but which did not take place. Sammy Nyamweya, the KFF chairman dismissed the documentary evidence produced by Terry as fake. EACC’s probe did not result in prosecution of anyone.[672]

Nevertheless, Nyamweya got his revenge the following year when he slapped a six-year ban on Terry and FKF vice chairman, Sammy Shollei, allegedly for violating rules and regulations of the federation. The officials were Nyamweya's fiercest critics over the way he managed soccer.

Corruption and bribery have also been seen in KFF elections. Ahead of the 13 November 2015 elections, for example, Nyamweya warned those with integrity issues to stay away from the elections. "Bribing is a serious integrity offence;" he said "…and those involved in acts of corruption must face the law and be barred from participating in the election."[673]

Prowling under the mosquito net

Financial scandals were so rampant during Moi's time that some of them went unnoticed. Such was the case with the KES.7.2 billion-shilling purchase of mosquito control products including nets and chemicals between 1993 and 1995 reported anonymously to the TJRC by a concerned citizen. In normal circumstances, malaria control is managed by the Ministry of Health. But in this case, and for reasons unknown, the purchase of mosquito nets was done by the Ministry of public works.

It was reported that several government officials were involved in cooking up the scam together with a local supply company by inflating the prices and using ineffective chemicals to treat the nets. Chemicals that cost KES.2 per liter on the open market were bought by the government at KES.2,925 per liter. The nets were treated to "a little petroleum product with a little bit of insecticide," meaning they were useless in fighting off mosquitos. Moreover, to gain maximum illegal benefits, the officials ordered quantities to last five years even though what was required was a two-year supply.

The material was supplied to the Ministry as ordered only for the latter to purport to cancel the order. The company filed a suit in court and after the hearing, the government was ordered to pay the company, Equip Agencies Limited, a total of KES.1.8 billion for the mosquito nets and mosquito control chemicals which had been supplied and distributed to various stations in the country. In his judgment of 2 December 2011, Justice Muga Apondi, said the government did not have the right to cancel the contract after goods had been supplied, received and distributed. He ordered that the government pay compensation of KES.2. with interest of 18% since March 1999. In February 2017, Equip Agencies Limited went to court to complain that the Health Ministry had failed to honor the ruling and were demanding the money which had accumulated to KES.35.4 billion. The matter was still pending in court by the end of 2017.

Shame at Kenyatta National Hospital

In the mid-1990s, Kenya obtained funds from donors to modernize critical equipment at the Kenyatta National Hospital (KNH), the biggest referral hospital in East and Central Africa. Some of the equipment was supplied under the World Bank rehabilitation project between 1995 and 1998. The US$.32 million (KES.3.3-million) project was intended to rehabilitate the hospital, improve delivery of health services in the Nairobi area, and support the development of a national household welfare monitoring and evaluation system. However, when the Parliamentary Committee on Health visited the hospital early in 2004, some of the machines ordered through the project were still in the stores, not having been used at all.

Among them was an unused distilled water plant for 90 liters costing KES.460,000, a bottle washing machine costing KES.500,000; and a heavy duty hot-top electric cooker with a price tag of KES.2.4 million. A total of KES.21 million was spent in purchasing machines for KNH under that project[674] but the country received little value for it. No reason was given why the equipment had remained uninstalled for all those years while they were badly needed in the overcrowded facility. However, it was a common practice for corrupt officials to order expensive equipment to earn commissions without any intention to use them.

The KNH formerly known as King George V1 Hospital was named after President Kenyatta at independence. The facility is the flagship of Kenya's health services attracting patients from all over the country for specialized treatment. In 2016, the hospital attracted international attention when it separated two conjoined twins in a 23-hour marathon operation. The hospital is also known for its highly-qualified personnel. Personal physicians of all the four Kenyan Presidents served as consultants at the hospital at one time or another, illustrating the caliber of professionalism at the facility.

Nevertheless, the hospital and its parent Ministry of Health have seen some serious scandals over the years, ranging from unbridled corruption, uncurbed abuse of office, and fraudulent procurement of drugs, to outright theft of money and stores. In 1985, the hospital almost came to a standstill due to an acute shortage of essential drugs particularly antibiotics commonly used for infections. Part of the problem was that staff were raiding shelves and hauling away medicines for sale to private practitioners. Patients had to resort either to buying drugs from commercial pharmacies or go without treatment. At the same time, gauze ordered from China was lying at Jomo Kenyatta International Airport, un-cleared because of bureaucratic hurdles as demurrage costs rose by the day. Patients were sharing beds, and a breakdown of the laundry machines meant hygiene was compromised. It was a hospital of shame.

To make it worse, most of the money allocated to the hospital that year went unused and had to be returned to the treasury as patients died for lack of drugs and attention. Specialists, clinical officers, and nurses, were leaving in hordes for greener pastures due to management frustrations. The situation got so bad that there was a public outcry for the director of medical services to resign.

For a big facility such as KNH with an estimated 10,000 Kenyans in need of kidney treatment, only one dialysis machine was operational between 1978 and 2002.[675] The only C-scan machine available could not cope with high patient demands and often broke down. In the financial year 1994/1995, over KES.11.5 million was lost at KNH through fraudulent clearance of checks credited to unauthorized accounts instead of the intended payees. The PAC recommended recovery of the money from the officer involved and asked the EACC to investigate and prosecute the culprit.

During the same period, a seemingly bogus company called Glotecx secured a tender and was paid KES.13.7 million before even beginning work. When investigations were carried out, the supposedly felonious company could not be traced not even at the registrar of companies where all records of registered firms were kept. Six years down the line, investigators had not made any meaningful progress on the matter.

In 2003, the EACC launched investigations into the loss of KES.421 million which KNH banked in Euro Bank without the authority of the board of directors. The bank eventually collapsed. The anti-graft agency was informed that two top hospital officials had received bribes worth KES.10.7 million and another KES.2.7 million respectively in return for the favor. The two officials were subsequently charged with corruption but claimed in court it was President Moi who adjured them to deposit the money. Moi was not called as a witness, so the claim could not be verified. The case was dropped after the death of a key suspect.

That same year, officials of the Efficiency Monitoring Unit (EMU) moved in to investigate professional misconduct at the hospital after allegations were made that officials were not only pocketing patient fees but manipulating revenue collection systems to avoid capture. That resulted in new systems being put in place to thwart the theft.

In another case on 20 June 2004, KNH paid KES.140 million for a radiography machine but the gadget was not delivered, and no reasons were given. The machine was supposed to replace one that had worked well for ten years processing an average of 30 to 40 patients per day.[676]

In 2005, the hospital was involved in a tax refund scandal implicating an MP whose company was accused of obtaining KES.41.3 million from a tax refund received from the KNH. The politician was arrested and taken to court on nine counts of obtaining money falsely by forging receipts and invoices that allegedly showed he had paid duty for the bedside lockers his company imported from Singapore. He was acquitted of all charges due to lack of evidence.

Procurement fraud

The biggest problem at Kenyatta National Hospital (KNH) revolved around procurement systems. Between 1999 and 2002, KNH lost over US$.12 million (KES.1.2 billion) to procurement fraud. Non-competitive bidding processes, failure to control quality of purchases, and variations in quotations, are the most common criminal activities at the hospital.[677]

Of all the scandals, however, the one that exposed the theft of KES.5 billion at the Ministry of Health in 2017 was the biggest and most embarrassing to President Uhuru given the fact that one of his kin was reportedly involved in some aspects of the fraud. Revelations of the scandal rocked the country due to its scale and depth of involvement by top Ministry officials. The scandal involved payments of large amounts of money to phony companies; double payment of goods; diversion of funds; and manipulation of the Integrated Financial Management System (IFMIS), the seemingly fool-proof system that governs procurement in government.

An estimated KES.889 million meant for maternity care program in the Countieswas diverted to what some described as “phantom” mobile medical clinics for urban slums.[678] The 100 clinics were not delivered for distribution and instead remained at the port of Mombasa gathering dust for reasons that could not be explained. Most of the money was paid to a mysterious company whose details could not be found at the registrar of companies. It was believed the money ended up in private bank accounts of government officials and businessmen. A further shock came when KES.150.1 million of the diverted money was allegedly paid to a company linked to a senior anti-graft official.

The number of voracious senior officials and companies involved in the scandal pointed to serious mismanagement and accountability problems in the Ministry of Health. In 2016, a senior State House official was cited for ordering the Ministry of Health to pay KES.200 million directly to consultants of Nanyuki County hospital – instead of sending the money directly to those facilities. A further KES.100 million was given to Bungoma and Lamu County hospitals for upgrades in the same type of arrangement. An internal auditor at the Ministry, Bernard Muchere, said in his 18 November 2016 report that the disbursements were irregular since only the Controller of Budget (not any other official) had the constitutional mandate to authorize usage of public funds. No action was taken against the official known to be close to President Uhuru.

No one has been jailed for any of the scandals at the Ministry of Health or KNH.

Plundering NCC

As we saw earlier, corruption in the administration of Nairobi city has historical record. The African mayors who took over from British officials did not waste time in plundering available resources. They went into an orgy of grabbing plots and plundering resources that could have benefitted city residents.

The health department of the council was one of the most notorious for corruption. When Nathan Kahara became mayor in 1979, one of the first things he wanted to do was to remove the City Medical Officer of Health, whose name was linked to some malpractices. But he faced a wall of opposition from officials, among them the Minister for Local Government, Charles Rubia, who himself had been a mayor between 1963 and 1969.

Raiding the power lines

In the middle of harsh economic conditions of the 1990s, an ominously strange phenomenon emerged. Electricity poles were tumbling down all over the country. In their wake, they were destroying transformers, triggering outages, and threatening lives. Kenyans were demanding compensation for damaged appliances caused by the surges. The Kenya Power and Lighting Company (KPLC) - the government parastatal responsible for electrification - was under siege especially after the Parliamentary Public Accounts Committee instituted a probe to get answers as to why poles with a projected lifespan of 35 years were suddenly self-destructing.

In its report, the committee noted two things: one, the tender for the supply of the poles was single-sourced from a company owned by one of Moi's closest confidants; and two, the poles were harvested prematurely and poorly treated, and were therefore feeble and could not support heavy transformers. Five thousand poles that were at KPLC yards were deemed useless and were discarded. In 2005, Parliament was told that KPLC had KES.3 billion worth of dead stock in its stores including poles and transformers that were unusable. The report was handed over to KACC for further investigation.

In the meantime, the parastatal began importing poles from Tanzania, again through single-sourcing which was in violation of the law. MPs said that was a source of corruption. "Once you introduce the issue of single-sourcing, you are opening a Pandora's box," one said.[679] In 2006, 40-thousand poles were irregularly bought from Tanzania.

In 2011, Kenya Power was using 500,000 wooden poles annually at a cost of KES.3 billion. An investigation conducted by KACC in 2010, however, showed some KPLC were colluding with businessmen to steal poles from company yards. In 2010, KACC nabbed two businessmen in the process of loading the material in a lorry at Nyeri after agreeing to pay a worker KES.320,000. The businessmen were arraigned in court on charges of corruption.[680] In another case in 2015, an Israeli national was charged in court for the theft of KES.1.8 million worth of 11 wooden poles, 2,000 meters of aluminum cable and 50 meters of underground cables from KPLC at Kitengela.

In 2016, KPLC resorted to concrete poles for new transmission lines which were said to be cost effective. And guess who got the tender for the supply of the new poles? Not an established pole manufacturing company but a firm dealing in processing of macadamia nuts. The contract was worth KES.1 billion. The use of concrete poles reportedly deprived 500 commercial farmers of blue gum and eucalyptus trees revenue and forced the closure of at least four wood processing factories.

But corruption at the KPLC goes beyond shady deals in acquisition of wooden poles. In 2016, the Public Procurement Administrative Review Board (PPARB) suspended a KES.6 billion-tender to a Chinese company for the supply of pre-paid meters after suspicion of corruption surfaced. Hexing Technologies Ltd was given the contract even though it did not meet one of the conditions, that bidders must submit audited accounts of at least 18 months. The company had operated for only 11 months and should therefore have been disqualified. It was also found that the cost of the meters was inflated from KES.5.3 billion to KES.6.6 billion, occasioning a loss of KES.1.2 billion. There were also no guarantees that the Chinese firm had the financial capability to supply the meters. PPARB described the process as "a mockery of the tendering process" in the country.[681]

There was also a systematic trend of vandalism involving theft of transformers and cables, illegal electricity connections, and theft of electricity, with the help of KPLC workers. Because these components had to be replaced, KPLC and in effect the taxpayers, were losing billions of shillings. Overall, 222 transformers were vandalized in 2015 resulting in a loss of KES.86 million, up from 268 transformers in the previous year costing KES.100 million.

In 2016, KPLC was forced to introduce new specifications in its transformers to discourage destruction. Instead of using copper – which is the component most attractive to vandals because of its monetary value – the company now uses aluminum windings, which are not only durable, but less of interest to criminals. The new transformers are also meant to enhance efficiency and reduce outages.

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KPLC Pipeline construction

Kenyans reportedly stood to lose KES.40 billion in 2017 from a pipeline construction deal entered in 2013 between the Kenya Power and Lighting Company (KPLC) and a Lebanese company Zakhem. KPLC was accused of building a pipeline with a much higher capacity than required in a scam to earn kickbacks. The idea was to build a fuel pipeline from Mombasa to Nairobi, a stretch of 450 kilometers. Between 2008 and 2013, the Kenya Pipeline Corporation (KPC) bought pipes and other equipment for a 16-inch pipeline. But soon thereafter, the management abandoned the 16-inch pipeline after spending hundreds of millions of shillings for a 20-inch pipeline. The former cost KES.16 billion while the latter had a price tag of KES.53 billion.

"If the numbers are confirmed," the *Daily Nation* reported, "that decision will cost the public a loss that easily dwarfs Anglo Leasing's KES.18 billion, and make the KES.1.8 billion stolen from the National Youth Service look [NYS] like pocket change." The upgrading was conceived during President Moi's administration but was delayed due to financial problems at KPLC and was revived after President Kibaki took power in 2002. (*Daily Nation*, 29 March 2017).

"Tendering fraud is the fastest growing economic crime in Kenya. One in every three companies reported experiencing fraud in procurement during the past two years," according to PriceWaterhouseCoopers (PwC) 2016 global economic crime survey report.

Chapter 18

Public Works, Judiciary and the Legislature

THE TRANSPARENCY INTERNATIONAL Bribery Index reported in 2011 that globally construction and public works were two sectors with the highest level of bribery, higher than both the arms industry and the oil and gas sectors. The World Bank estimated that world-wide corruption in the transport projects accounted for between 5% and 2% of transaction costs.[682]

In Kenya every year, billions of shillings are lost to infrastructure corruption. The Ministry of roads, which oversees the construction of all major roads in the country, has been named as one the departments most prone to corruption. Most of the highways and major arteries built since independence have had a share of corrupt dealings instigated by government officials, engineers, contractors, and lawyers.

In the early 1970s, the bitumization of Nyeri-Mathari-Ihururu road caused a stir when a firm of contractors, Mauladad and Rose suddenly stopped work. The contract had to be re-issued to another firm. Also, the Narok-Mau-Narok "had been in the drawing books for the last 36 years"[683] and a "notice to acquire land" for the construction of the project was gazetted in 1992[684] but by 2000, MPs were still complaining about the delay in its completion. The project was approved by President Kenyatta during a meeting at the Nakuru State House in 1968. Large amounts of money allocated to that road – a key artery for farmers transporting wheat, barley and potatoes – just vanished and no questions were raised. The job was contracted to Kuldan Singh in the late 1990s, but ten years later, only 12 kilometers out of the 52 kilometers contracted, had been completed. Additional money had to be released to complete the road.

In 1997, an MP raised the issue of the Mombasa-Nairobi highway and questioned the continuous construction of the road with no end in sight.[685] No credible explanation was given. The level of deterioration of the road has led to many deaths due to road accidents and heavy traffic jams caused by derailed trucks. Some figures show the number of deaths on the roads increased by 4.7% from 1,882 in 2014 to 1,971 in 2016.[686]

A 2007 KACA report said corruption in road construction thrived due to weaknesses and loopholes in the entire project cycle from planning and design to the tendering and implementation process; poor project planning and implementation, poor service delivery, inefficiencies, breach of procedures, soliciting for bribes, questionable dealings, outright theft, fraud; and other corruption related activities. Most of the beneficiaries of road contracts were politically-correct either through party affiliation or ethnic consideration.

Costs of contracts and materials were also usually inflated; contract terms varied, contract awards granted non-competitively, and unqualified contractors employed. All those irregularities led to poor work, non-completion, or late completion of jobs. For example, by the time the Narok-Sotik road was completed, large potholes had already emerged because of poor construction work.[687] The same applied to the critical 485 kilometers Mombasa-Nairobi highway which has seen many improvements since it was first tarmacked with a World Bank loan in 1968.

Many Kenyan roads are washed away during rainy seasons creating potholes requiring additional expenditure for maintenance. During the *El Nino* rains of 1998, the entire road network in the country collapsed. Kenya's bad roads have tickled the imagination of jobless youths who camp around poorly constructed stretches filling potholes with sand and demanding a few coins from passing motorists. "If this is a reflection of the maintenance of standards in Kenya, then it is a sorry state," [688] the MP for Kandara, Joshua Toro, told Parliament in 2002.

The MP for Naivasha, John Mututho claimed in 2008 he was certain out of the KES.65 billion set aside for roads that year, KES.35 billion would be gulped by corruption.[689] Reports indicated contractors were prepared to pay up to KES.100,000 to officials to fast-track payments, side-stepping procurement regulations and engaging in other fraudulent activities for their gain.[690]

Allegations have also been made in Parliament of road contracts being awarded to more than one contractor such as was the case with the Kisii-Chemosit road.[691] Politicians began rooting for the tarmacking of that road in 1965, and in subsequent general elections the road became a political matter as every candidate promised to tarmac it if elected. In 1986, Soleh Boney International Ltd, was given the contract to build the road for KES.146.5 million, but two years later, the work stopped due to non-performance after only six kilometers had been tarmacked.

In 1988, Zakhem international construction company was given the tender. However, four years later, the job was terminated due to non-payment. New terms were negotiated in January 1997 for KES.557.8 million. A few months later, the government terminated the contract prompting the company to go to court where it was compensated with a sum of KES.178.5 million for work not done. Finally, a third contract was issued in July 1997 to HZ and Company for KES.798.9 million. It worked on the road until June 1998 when the work was suspended and in 2000 the contract was cancelled altogether. The fourth contract was awarded to Sarajevo Engineering Contractors in October 2001 for a pricey amount of KES.896 million. At the same time, an individual was contracted to supervise the project at a fee of KES.26.4 million. A project which was originally projected to cost KES.146 million ended consuming almost one billion shillings of public money. The PAC which investigated the matter was convinced the increases in costs and variations were done deliberately “to siphon off taxpayers’ money.”

“The committee, therefore, recommends that the KACC investigates this project, from inception to completion, with a view to establishing whether the government got value for money and prosecute…any persons who were involved in the embezzlement of public funds,”[692] the committee said. It could not be established if anyone was arrested and prosecuted.

In 2016, a WikiLeaks document leaked from the American embassy in Nairobi described Kenyan roads as “a national disgrace” and a major drag on the economies of both Kenya and the broader region. Reference was made on the Mombasa-Nairobi road and a stretch of 25 miles nearest to Mombasa which was described as a bone jarring nightmare, a safety disaster and a civil engineering disgrace.[693]

Investigations have also showed that contractors use inferior materials such as murram instead of silt and red soil for gravelling; and instead of putting, for example, eight inches of tar they put only three.

Sometimes, contractors abandon projects before they are completed. This happened to the Murang’a-Gituri road in 1992 and the Masii-Kitui road in 2008 either due to mismanagement of funds or non-continuation of allocations. Another project which saw delays was the KES.38 billion double decker road project stretching 6.5 kilometers from Jomo Kenyatta International Airport to Likoni Road on the fringes of the industrial area. The road, funded by the WB, was supposed to have started in 2011 but by early 2017, the groundbreaking ceremony had not been done. It was claimed the WB declined to release the money because of "lack of credibility" of some of the government contract firms.[694]

Also, a 5.4-kilometer KES.2-billion project in Nairobi's upper hill area linking key arteries was delayed for more than three years and missed four deadlines leaving traffic chaos in the city. Difficulties in funding, sewerage, water, and electricity provision, were blamed for the long delays. The 60 kilometers Mariakani-Kaloleni-Mavueni road was another one. It was designated in 2006 but was not finalized until 2016. With every financial year, dozens of road projects are left uncompleted throughout the country and many are re-tendered.

The construction of two bridges near Nairobi CBD raised queries from the anti-corruption agency in 2005 after it was suspected the cost of KES.185.5 million for the General Motors facility and KES.177.3 million for the Bellevue site on the Thika superhighway were inflated. The bridges were financed by the Kenya Roads Board (KRB) using funds from the road maintenance fuel levy, but the tendering process from design to specifications to the awarding of the tender was found wanting. Experts contended that the cost of such footbridges was usually in the range of KES.100 million, meaning a lot of money was gobbled up by corrupt people.

Kenyan contractors were not the only ones defrauding the government through road contracts. Two Swedish businessmen, Claes Fjellner and Ejie Karlsson, were jailed in their country early 2004 for involvement in a corruption syndicate which torpedoed a US$.115 million (KES.11.9 billion) plan to improve 25 urban roads under the Kenya Urban Transportation Improvement Project (Kutip). They were charged for bribing World Bank officials and jailed for 18 months and 12 months respectively. Conversely, the Kenya government did not prosecute a Kenyan engineer who in 2002 corruptly obtained US$.100,000 (KES.10.3 million) from a firm involved in a World Bank project.[695]

In the year 2001/2002 financial year, KES.7.8 billion from the fuel levy funds was allocated to road construction. Six years later in the 2008/209 financial year, the disbursement increased almost three times to KES.19.8 billion. Of all that money, an estimated 40% was lost to corruption.[696]

A one-time Minister for Roads and Public Works, Raila Odinga blamed what he called "cowboy contractors" with political connections "who were operating like a cartel" for masterminding the malfeasance. He noted that some of the top Ministry officials had construction and material supplies companies which earned contracts in a conflict of interest situation. The individuals awarded tenders to their firms, issued certificates, inspected, approved the projects, and arranged for quick payments.[697] Through such tricks, the "cowboy contractors" created a reflex on the part of the client who is the government by raising supervision and staffing costs substantially resulting in huge losses to the public.[698]

In 2005, five engineers in the Ministry of Roads were dismissed on allegations of corrupt activities. "They were signing the contracts on the 12th floor in the morning, and picking up their checks on the 3rd floor on their way home," it was claimed by one European Union (EU) official.[699]

The Judiciary, "A haven of thieves"

Under Moi, nothing exemplified the state of corruption in the Judiciary than the murder case of twenty-nine-year old Monica Njeri by Frank Sundstrom, a 19-year old American sailor on *USS La Salle* in July 1983. The two met in Mombasa when the ship was on a port call. After drinks they had sex and Sundstrom agreed to pay Njeri US$.41 (KES.4257) for the service. High on marijuana, the sailor stole the money from her purse leading to a physical fight. Sundstrom smashed Njeri's head with a beer bottle and slashed her with broken pieces. "I went completely berserk," he told the court in defense. "When I finally stopped, and realized what I had done I was almost crying."[700] He pleaded guilty to a reduced charge of manslaughter from a charge of murder and robbery which carried a mandatory death sentence.

L. G. E. Harris, the 74-year-old British Judge fined him only KES.500, equivalent to US$.50, and put him on probation for two years knowing very well that the accused would not be present to carry out the terms of the probation. The verdict immediately raised questions of judicial manipulation. A representative of the American embassy paid the fine, and that same night Sundstrom was escorted out of the country. The verdict elicited shock and questions about corruption in the Judiciary. It was rumored that the Judge, prosecutor Nicholas Harwood also British, and the lawyer, an Asian, colluded to get the American off the hook through some dubious arrangement. In fact, many Kenyans believed money had changed hands between the Americans, the bench and the prosecution.

The Attorney General James Karugu remarked – amidst public outcry – that justice had not been done and admitted he was "legally impotent" to do anything about the verdict. Sundstrom's mother, Anna, on the other hand was elated: "God is great. Justice has been done."[701] Kenyans believed the Americans put pressure on Moi to clear the case as quickly as possible to avoid embarrassing Washington. Not too long after that Karugu was fired. It is not known whether the US government compensated the family of Njeri who left behind two daughters aged one and four.

At the time, Kenya was receiving huge supplies of food aid from America to mitigate against the worst drought in the country in one hundred years due to failure of short rains in northern and northeastern Kenya.[702]

Kenya and the US also had a defense agreement which allowed American ships to patrol the Kenyan side of the Indian Ocean and to use the country's air and port facilities to develop a rapid deployment force. It was around that time too that the number of American embassy officials in Kenya increased exponentially. Various American organizations took residence in Nairobi and a consulate was opened in Mombasa to coordinate military efforts and supervise the drenching of the port to allow US military ships to dock at the Kilindini port. So, the case became a sensitive political and military matter for both countries.

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Sundstrom's case was not the only one to cast doubt about Judiciary impartiality. In April 1983, a fleet of six American ships carrying 9,000 sailors docked at Mombasa port for a six-day re-supply visit. The sailors fanned out to visit parks and other places of interest. Twenty-one-year old James William Tyson and others decided to hit the night spots, and there Taylor met Lucy Kabura, a barmaid. The next day in a cheap lodging house, Lucy's body was found sprawled across a bed, naked and bloody. A night watchman identified Taylor as the suspect.

After eight days of hearing tinged with racial overtones before High Court Judge Zacchaeus Chesoni, the trial ended in an acquittal. When the not guilty verdict was pronounced, the accused burst into a hearty laughter and shouted. “This is fine. I never did it.”[703] The prosecution and Kabura’s relatives present gasped in shock. The excited sailor was immediately whisked out and flown home by his embassy leaving a trail of rumors about how the bench may have been compromised.

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Judge Zacchaeus Chesoni served as Chairman of the Electoral Commission of Kenya (ECK) between 1992 and 1997. He was then appointed Chief Justice in 1997 after six non-African Judges had been brought in by Moi: Sir Alfred Henry Simson in 1982; Chunilal Bhagwandas Madan in 1985; Cecil Henry Ethelwood in 1986; Alan Robin Hancox in 1989; Cecil Miller, and Abdul Majid Cockar in 1994. As can be seen, Moi had little confidence in African Judges preferring foreign Judges whom he hired on an arrangement bankrolled by the British government.

Chesoni was hired as Chief Justice under a cloud of allegations of corruption and financial troubles when he was a High Court Judge and Chairman of ECK. He was also known to be addicted to gambling and was a familiar face in casinos in Nairobi. It was during his tenure that corruption took hold in the Judiciary and became so prevalent that those who resorted to courts for resolution of matters stood a strong chance of ending up before a corrupt Judge.[704]

After Chesoni died in 1999 on health grounds, Bernard Chunga, a former deputy public prosecutor, replaced him and served for four years before resigning on 26 February 2003 following allegations of misconduct. Chunga’s role as a prosecutor of numerous political trials in the 1990s came to haunt him when Kibaki decided to open to the public the notorious Nyayo chambers which were used by Moi to torture political suspects. There were calls for an investigation and his resignation. Chunga was to face a tribunal to investigate him for planning, condoning and carrying out torture of suspects during Moi’s rule, but he left in February 2003 rather than be subjected to the inquiry.

It was Chunga who a year earlier had rubbished a report of a five-member panel of Commonwealth Judges who had reported evidence of nepotism, favoritism, political interference and incompetence at all levels of the Judiciary. He stridently defended the system saying then than the Judiciary was “not weak, not at the cross-roads and suffers no rot.”[705]

Corruption in the corridors of justice escalated in 1988 when Parliament amended the constitution and removed the security of tenure for judicial officers and gave the President unrestricted powers to appoint and discuss Judges. Emboldened by that action, members of the Judiciary began making rulings that were governed more by politics and patronage than by law. That was when dissidents were sentenced to long prison terms for cases lacking sufficient evidence. With Guyana-born Cecil Ethelwood Miller as the Chief Justice, the Judiciary became an active participant in the crackdown of human rights activists. Magistrates were deployed to handle political and human rights cases while other cases piled up in the registry. Like many of Moi's friends, Justice Miller - a former British Air Forces pilot - was rewarded with beach plots at the Coast.

Because of corruption, only litigants prepared to bribe Judges and magistrates had their cases heard. And often, Judges ruled in favor of the highest bidder. Courts also deliberately misinformed litigants about upcoming cases so that they miss court and force dismissal of cases.[706] Genuine evidence was discarded and files and exhibits often disappeared rendering justice impotent.

How Judges delivered their rulings was also puzzling. In one incident cited by MP M. Kariuki in Parliament in 2003, a Court of Appeal Judge, whom he did not name, delivered two contradictory judgments on the same case. In one of the judgments he agreed with his Judge colleague, and in the other, he dissented. Inexplicably, he signed both judgments. "There is no greater evidence of corruption than this,"[707] lamented an MP in Parliament. High Court Lady Justice Mary Ang'awa remembered a time when the Judiciary reached a point where corruption was crippling it, and the Judiciary no longer had the moral standing to deliver justice.[708]

It did not take long, however, before Ang'awa met her own waterloo. Along with several other Judges, she was suspended for a series of actions deemed unbecoming of a Judge. The actions were not related to corruption but rather to her alleged brush manners towards litigants and rigidity in her rulings. She appealed but her appeal was dismissed thus ending her more than 30 years of exemplary service in the Kenya Judiciary.

The magistrates vetting board which recommended her suspension was established to vet Judges and magistrates appointed under the previous constitutional dispensation to determine their suitability to serve in accordance with the rule of law, human rights and other values enshrined in the new constitution.[709] The Judicial Service Commission (JSC) which has the mandate to employ and fire judicial officers, also looked at complaints lodged against its employees, and consequently suspended more Judges and magistrates than any time before.

One of those sent home was allegedly suspended for mishandling cases against accused persons implicated in the 1982 attempted coup; two were linked to the Goldenberg scandal; another was allegedly involved in a KES.200-million bribery scam; while others were sacked for impropriety and misconduct. Most of them appealed to the Court of Appeal claiming a violation of their fundamental rights. A few were cleared but many were let go together with dozens of magistrates.

Also affected was the East African Court of Justice which was formed to adjudicate trans-border disputes between Kenya, Uganda and Tanzania. Its Kenyan presiding Judge, Moijo ole Keiwua, and another Judge Kassanga Mulwa were suspended. The purge was the most comprehensive in Kenya's Judiciary history and underscored Kibaki's determination to deal with Judiciary ills.

For judicial officials, that was the darkest period, but one that marked a reversal of the disreputable practices of the past. Lawyer Sharad Rao who chaired the vetting board turned into an attack dog against colleagues most of whom he had trained and worked with for years.

High Court Judge Samuel Oguk was the first Judge ever in independence history to appear in a criminal court to face corruption charges in January 2003. He resigned with full benefits. In April 2016, he died after a broken hip operation.

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A survey carried out by the Institute for Development Studies of the University of Nairobi in September 2005 showed that 40% of Kenyans believed most or all MPs were corrupt, 43% believed some were shady and only 6% thought their legislators were clean from corruption. In terms of perception, the percentage for MPs rose from 15% in 2003 to 40% in 2005 making them second only to the police in corruption perception.[710]

In December 2009, the former Minister of Justice and Constitutional Affairs, Martha Karua, said Parliament was "like an auction house where the highest bidder won crucial battles, even if not in the interest of Kenyans." She alleged massive corruption in the Parliament, saying "everywhere you turn to in that House, money is always changing hands."[711]

Kenyan MPs have also demonstrated a penchant for greed. Since Moi left in 2002, the legislators have periodically been increasing their emoluments against public outcry. In 2003 hiked their perks by 700% propelling them to the list of some of the best paid legislators in the world, beating legislators in the US, Britain and Japan, according to the UK-based independent parliamentary standards authority (IPSA).[712] A month later, they blackmailed the government by refusing to approve funds for free primary education and healthcare unless the government agreed to add to the budget US$.9.2 million (KES.954.5 million) for a car allowance scheme. Finance Minister David Mwiraria who had opposed the increases had to buckle down. When the public protested, an opposition MP Justice Muturi retorted: "Who said democracy was cheap."

In 2007, Parliament successfully enacted a code of conduct and ethics in which MPs, as public officers, were barred from improperly enriching themselves, improperly using their offices to acquire land or other property for themselves, and avoiding conflict of interest. MPs were also required to declare their wealth and deposit that information with the Speaker of the National Assembly.

That was all semantics. Legislators have continued to break all integrity provisions including engaging in fraudulent activities, receiving bribes, exchanging fistfights within Parliament Buildings, as well as immoral behavior such as sexual and physical abuse. Some MPs have used their positions to coerce parliamentary staff into hiring relatives and friends in violation of recruitment regulations.

In 2010, Uhuru Kenyatta, who was Finance Minister shot down a request by MPs to increase their salaries from KES.851,000 to KES.1.2 million, claiming budgetary constraints. At the time, the legislators themselves were excoriating the government for excessive borrowing. Uhuru told them the increases could only be met through additional borrowing or higher taxes, something the government was unwilling to do. The MPs' demand for increase in perks was highly criticized and triggered demonstrations outside Parliament by outraged groups shouting "thieves, thieves."

A governance watchdog, Mars Group, issued a statement accusing the already highly-paid MPs of “abusing their privileges and disregarding all rules of decency and conflict of interest to purport to enact increases to their personal remuneration and allowances.”[713]

MPs have also been singled out for drug trafficking. On 22 December 2010, Internal Security Minister, George Saitoti, named in Parliament four legislators he claimed were dealing in illicit drugs. The names including that of a prominent local Asian businessman were contained in a dossier submitted to the Kenya Anti-Corruption Commission (KACC) by US Ambassador Michael Ranneberger a month earlier.

Prime Minister Raila informed parliament he had set up a task force to investigate the allegations, but the named individuals said in their defense that the dossier was meant “to kill others politically.” They denied dealing in drugs.[714]

In 2011, the Minister for Planning and National Development, Wycliffe Oparanya, lashed out at MPs for misusing money allocated through the Constituency Development Fund (CDF). About KES.41 billion was allocated to 210 constituencies in 2010 but some of it was not used as intended to develop their constituencies. “It is shocking,” he said, “that we still have mud classrooms in some constituencies despite enough funds being allocated for permanent structures and for projects to improve living standards.”

Hinting at an impending arrest of some MPs, Oparanya added: “We have seen MPs gang up in Parliament to crucify members of Cabinet over graft allegations; now it is their turn to face the music.”[715]

Way back in 2000, when he was in the opposition, Mwai Kibaki, had fought back charges that he was paid allowances for meetings of the Public Accounts Committee (PAC), which he had not attended. He was under so much pressure that he had to make a personal statement in Parliament dismissing the charges. He laid before the House a list of meetings he had attended and the amount he had been paid, the normal allowance of KES.3,000. “I did not claim anything for meetings I didn’t attend,” he said furiously. He suggested that reporters of newspapers which carried the story should not be allowed into Parliament’s press gallery if they persisted because Parliament was a place of truth and honesty, he added.[716]

Chapter 19

Phantom Projects: “Hands of greed”

ONE OF THE projects that showcased Moi’s acquisitiveness was the intended construction of the 60-storey Times complex at Uhuru Park in 1989 at a staggering cost of US$.200 million (KES.20.7 billion). The structure was to feature a large statue of Moi on its grounds, a conference center and offices of the KANU newspaper, the *Kenya Times*, and a yet-to-be-established party-owned television station.

The project was to be financed by foreign loans guaranteed by the government. It was carefully designed to enrich establishment elites through tenders. In 1989, the Kenyan economic growth was relatively healthy at around of 5% GDP, but for a country to borrow such a huge amount of money for a project that was destined to destroy the city’s landscape and take away recreational space from the public, was an idea most Kenya could not understand. “It is impossible to persuade environmentalists, Nairobi residents and interested observers,” said the *Weekly Review*, “that the 60-storey Times Complex is a service they ought to appreciate.”[717]

Prof. Wangari Maathai of the Green Belt movement led the opposition to the project and was joined by foreign Non-Governmental Organizations (NGOs). The government media was not swayed. The *Kenya Times*, a leading beneficiary carried a banner headline that said: “Shut up, Moi tells critics of complex.” But shutting up protesters didn’t work, and they continued with advocacy until the idea of the complex was dropped in early 1992. That was a big victory for environmentalists and activists

However, some say the problem with Kenya was not Moi as a person but a political culture which was basically corrupt. Even the most optimistic people believe Kenyans are generally corrupt and no regime change can reverse the situation. What people need to ask themselves is “whether a change would necessarily bring in a new regime which would be any different from the other one except that it would have a different name and face."[718]

Karura forest

When grabbers delved into forest land they did not anticipate the extent of public reaction. Forest land is protected land and cannot be bought or developed, but greedy individuals entered and excised the scenic Karura and Ngong Forests outside Nairobi. Government parastatals like the NSSF were coerced into using public funds to purchase plots from middlemen as a way of funding the elites' coffers.[719] The invasion of forest land caused a huge uproar and led to one of the largest demonstrations in Nairobi against land theft.

Led by Wangari Maathai of the green belt movement demonstrators swarmed into the forest on 7 October 1998 and began planting trees and burning down the construction equipment. They were joined by hundreds of chanting youths who took advantage of the situation and looted corrugated iron sheets and fencing material. Demonstrators sang religious songs asking God to protect them "from the hands of the corrupt and greedy."[720] The movement later discovered the land had been subdivided and allocated to dozens of companies whose directors could not be identified.

In Parliament, an MP warned Karura Forest was "being dished out on a scale that boggles the mind," saying after the deforestation Nairobi would no longer be the "City in the Sun."[721]

The struggle for Karura Forest demonstrated the determination of the elite to grab everything in their path. But if they thought it would be easy to get away with that forest land, they were gravely mistaken. On 8 January 1999, Maathai and her supporters returned to Karura to plant more trees but found 200 private security guards armed with clubs waiting for them. A confrontation ensued and Maathai and some of her supporters were injured. The matter attracted the attention of the UN Secretary General Kofi Annan who condemned the attack. The matter did not end there.

On 28 January 1999, thousands of University of Nairobi students who marched to Karura to plant more trees were met by a contingent of riot police who clobbered them scattering them into the streets of Nairobi where they attacked motorists. In three days of demonstrations two people were killed and at least 200 were injured.

The democratic development group of donors, composed of all major donors except Japan, issued a strong statement supporting freedom of assembly and called on all parties to "strive for legal and democratic solutions to the present problems to assure transparency and respect for the law in the allocation of public lands in Kenya, including Karura Forest."[722]

A week later, seeing how the matter had aroused international furor, Moi broke his silence and told off the demonstrators. He blamed Maathai for fueling "hatred and tribalism,"[723] and insisted the allocations were lawful. "Those who want to march to Karura forest," he warned, "will have themselves to blame for any consequences."[724]

By that time, the matter had sucked in religious groups and major trade unions which accused the government of "killing the nation" by condoning illegal allocations of land.

In 1998, the *TIME* magazine named Maathai "Hero of the Week" in recognition of her fight to protect the forest.[725] And in 2004, she was awarded the Nobel Peace Prize for her contribution in "sustainable development, democracy and peace."

At Karura Forest, private developers had fenced part of the land and were preparing to build. The TJRC noted that in 1997, 85 hectares of the forest was illegally excised and allocated to a leading media owner, a former Permanent Secretary and a member of the Kenyatta family. The beneficiaries immediately sold the land to the Kenya Re-Insurance Corporation (Ke-Re) for KES.550 million.[726] Other grabbers included a former bank chairman, a former police commissioner; and a senior army officer who played a role in suppressing the 1982 attempted coup attempt against Moi.

At the end though, the people were the victors at least in that fight. The so-called developers moved out and the forest was left to flourish. A fence was installed to protect the forest from interference, and it is now being used as a tourist attraction with nature trails, a 50-foot water-fall, a soccer field and caves. An area that was once used as a "dumping site for hijackers and murderers and illegal private developers,"[727] is now an environmentally safe-haven for posterity, thanks to Maathai who died from ovarian cancer on 25 September 2011 at the age of 71.

Suspect transactions at Kenya-Re

The Kenya-Reinsurance Corporation (Kenya-Re), a government parastatal providing reinsurance to insurance companies in Kenya and other parts of the world, was involved in several controversial high-profile sagas bordering on corruption.

But nothing matched the one involving a plot of land on Kiambu road in which the Corporation paid KES.550 million for land that technically didn't exist. The plot at the center of the strange debacle is No. LR12236/LR73796 and featured some big names including Presidents Jomo Kenyatta, Daniel arap Moi, and a band of top notch lawyers, prominent businessmen and a Kenyatta relative. It is a convoluted story of intrigues, corruption, and outright theft.

At the end, Kenya-Re was left holding a fake tittle deed and customers' money it could not collect. A mysterious company which Kenya-Re paid KES.270 million out of the initially-agreed price of KES.550 million vanished and could not be traced. And two individuals who were squabbling over the land ended up in court charged with fraud, even though the matter was dismissed on a technicality.

According to reports, the saga of the Kiambu plot began in 1975, and the land, an expansive portion, once belonged to Kenyatta before the family sold it in 1982 to a company owned by six people who though "hooked by a common investment…were politically opposed to each other." As others opted out, only three officials remained, businessman Samuel Macharia, Joseph Kibe and politician Ngegi Muigai.[728]

"It is not clear why Kenya-Re wanted this land, but we now know from the transaction records that it paid KES.550 million for property LR216/8 which included a parcel that was identified in records as LR No. 12236/LR. No. 73976."[729] The scramble for the land among the partners ended at the National Land Commission which ruled that Macharia and Kibe forfeit their share of the company; that Muigai receives 23.7 acres; and Joreth Limited gets LR No. 12261.[730] That decision is now being contested in court.

Also unsettled is the issue of the money paid to the mysterious company by Kenya-Re. "That is the million-dollar question which Kenya-Re has to grapple with for years."[731]

In another incident in 2006, two senior officials of the Corporation diverted checks worth KES.6.7 million meant for Kenya-Re into a mortgage account of an officer, while some of it was used to purchase stocks at the Nairobi Stock Exchange for another officer and his wife. In April 2007, Finance Minister Amos Kimunya announced forensic investigations had found suspect transactions in the Corporation amounting to KES.35 million.

In 2008, the KACC reported it was investigating procurement irregularities and conflict of interest involving the Corporation ’s former Managing Director and the Finance Director. The investigations centered on the diversion of KES.13.9 million of insurance checks to pay mortgages and purchase houses for the officers as well as fraudulent transfer of Corporation property worth KES.21 million. The former matter was concluded, and the two executives were prosecuted.

Immigration scams

On 24 May 2001, a group of employees from Africa Online (AoL) went to the Department of Immigration and handed over a letter of complaint alleging that a newly-hired expatriate employee from Zimbabwe, Mike Ralston, had neither a passport nor a work permit to work as the organization’s chief financial officer. They also questioned the authenticity of his university degree. Ralston was charged in court for being in Kenya illegally.

The case was set for hearing on 30 May but was further postponed until 4 July. In between, Ralston got his Zimbabwean passport and was issued with a work permit allowing him to continue working. In the meantime, he fired a Kenyan trainer and brought in another Zimbabwean expatriate, Julie Mathewman, who too was found to be working without a work permit and was charged in court. But before the hearing date, the immigration department issued her with a work permit and the case was dropped.

In June, MP Dr. Mukhisa Kituyi raised the matter in Parliament and asked on whose interest the Immigration Department was serving. “Is it serving the interests of expatriates who can bribe and take jobs from Kenyans or that of Kenyans who are qualified and have the competence to do those jobs…I would like the government to take up the challenge to fire the officers in the Immigration Department or any other officers who are responsible for illegally giving work permits to these Rhodesians.”[732]

The case of the AoL illustrates the depth of corruption which has existed in the Department of Immigration from the early days of Africanization. When the Department was run by whites in the first decade of independence there were persistent calls to Africanize the Department. But soon after changes began, there was a marked difference; services slowed resulting in long queues; officers demanded bribes; and Kenyans found it extremely difficult to obtain travel documents. Foreigners, especially Somalis and local Indians were subjected to excessive demands for additional documents that were outside normal regulations, and those from Europe, America, and Asia desiring to obtain residency permits and work permits were kept waiting for weeks and months until they parted with *kitu kidogo*. Large numbers of applications from locals and foreigners were routinely rejected.

"That office is a corridor of corruption," Shinyalu MP Daniel Khamasi, said in Parliament on 30 June 1999, after visiting the immigration offices at Nyayo House. "Getting a passport is a nightmare…and Somalis of Kenyan origin are being swindled of money to get a passport and that is a shame to this country."[733]

In 2001, a Transparency International urban bribery survey showed the Immigration Department was among ten top most corrupt government bodies. In 2006, 77% of those seeking services at the department encountered corruption.

The department was also embroiled in the famous Anglo Leasing scandal. In March 2004, the Department awarded a contract to an unknown company called the Anglo Leasing and Finance Company and paid a 3% down payment of around KES.90 million to produce tamper proof passports for a total of KES.2.7 million. As it turned out, that company did not exist in the UK where it was supposed to be located. The deal was part of the wider Anglo Leasing scandal which cost the government millions of shillings during Kibaki's government and led to the resignation of John Githongo, the official anti-corruption czar who unveiled the scam.

Immigration officials in conjunction with the police have also been linked to the smuggling of migrants into the country as well as human trafficking. It has been noted that Kenya is a source, transit, and destination country, for trafficking of men, women and children. At one time, an American citizen was arrested at Jomo Kenyatta International Airport on suspicion of trafficking Asian women to Eastern Europe via Nairobi. Working with cartels of human traffickers, immigration and police officers at the airport have continued to hamper efforts to catch the culprits. Equally, the government has done little to prosecute officials suspected of involvement in the criminal rings.[734]

After the American embassy bombing in 1998, and reports that officials in the Immigration Department may have issued passports to members of terrorist organizations, US FBI teams interrogated Department staff over procedures used for issuing passports. Reports had indicated that a suspected terrorist, Mohammed Sadeek Odeh, had illegally acquired a Kenyan birth certificate and a national identity card allowing him to apply for a Kenyan passport at the Mombasa immigration office. The Principal Immigration Officer, Francis Kwinga, denied the reports, but it was established that Odeh used a copy of a Jordanian passport while in Kenya and tried to obtain a Kenyan passport, but his application was ultimately rejected by “security intelligence.”[735]

KACC found in 2006 that the Immigration Department was “weak and vulnerable” to corruption, and noted officials and politicians extorted from foreigners amounts of up to KES.500,000 for facilitation of work permits. In addition, it was found applicants for work permits were not properly scrutinized so much so that some of the foreigners held permits as investors and missionaries while they were employed as shop assistants. Even *dukawallas*, cooks and ordinary drivers have been “smuggled” into the country with the help of immigration officers.[736]

Bribes were paid to immigration officials for citizenship papers, permanent residency permits, passports, and visas at ports of entry. Foreigners caught violating Kenyan laws were threatened with prosecution and deportation unless they parted with money. An MP told Parliament in 1999 that immigration officers “literally live beyond their salaries,”[737] because of the huge bribes they received outside their salaries.

NHC

By the end of the year ending 1981, accounts of the National Housing Corporation (NHC) showed a healthy balance sheet among government parastatals in the business of lending money to *wananchi.* It had recorded a profit base of KES.19.4 million. It was among four successful parastatals. The others were ICDC KES.73.6 million; ADC KES.19.4 million; and Kenya Tourist Development Corporation (KTDC) KES.21.1 million. The NHC beat IDB which incurred a loss of KES.51 million; National Construction Corporation (NCC) KES.34.2 million; and Kenya Industrial Estate (KIE) KES.51.1 million.[738] That was before corruption seeped into the organization and saw theft of millions of shillings meant to assist Kenyans own affordable homes.

The NHC, formed in 1967 by an Act of Parliament, replaced the Central Housing Board which was established by the colonial government in 1953 to promote the development of affordable accommodation for Africans. It had schemes like the tenant purchase, outright sale, rural and peri-urban housing loans, and rental housing.[739]

The Corporation was very active during the first three decades of its existence. It built 42,000 houses between 1966 and 1989 either directly or through local authorities and spent an estimated K£.67 million (KES.134 million).[740] However, the auditor-general was not convinced the money used by the NHC to build houses in local authorities was properly applied, and he said so:

> Assuming that these (housing) schemes are intended to assist various categories of residents to buy their own houses and that funds are voted for the Ministry of housing for this purpose, I am doubtful if the money made available to the National Housing Corporation by the Ministry of housing for eventual lending to councils has in all cases served the purpose for which it was originally made available.[741]

By 1998, the NHC’s financial position had weakened due to lack of funds caused by arrears owed by local authorities which had climbed from KES.89.6 million in 1983 to KES.775.1 million by June 1992. Nairobi, Mombasa, and Kisumu Municipalities were the main defaulters. Most of the money were in the form of loans given to the authorities for drainage systems, tarmacking of roads and expanding toilet facilities. However, some of it was stolen by officials, and the burden of repayment was left on municipal councils. There was also a high level of delinquency of government loans and foreign exchange losses on a loan contracted in the mid-1970s.[742] Consequently, the Corporation was unable to actively fulfil its core obligation of providing houses to the lower and middle sectors of the market, and at the same time, pay dividends to the government.

Many of its houses across the country were in a state of disrepair even though the Corporation was receiving rent money from tenants. Consequently, a special project called the Rural Housing Development project that allowed people like teachers, church leaders and ordinary Kenyans, to build houses in the countryside was suspended due to lack of funds. However, as soon as the financial situation improved through successful recovery of outstanding debt and injection of new funds, officials lined up to milk the organization.

In 1992, say records provided to Parliament, the NHC sold plot LR No. 209/7148 comprising 62 flats, two bungalows, and 27 staff quarters, at the Kibera Highrise Phase 1, 2 and 3, for KES.52 million without the authority of the parent Ministry and without inviting tenders. The property was sold to the Corporation ’s consultant who had resigned from the Corporation barely a week before the deal was made. It was also revealed the KES.52 million was to be offset by consultancy services to be provided by the consultant. The whole transaction smelled of fraud.

In a report, the Auditor General did not go as far as saying the NHC was duped, but it said it could not “determine whether the Corporation obtained the best price in the market for the sale of the property.” MP Anyang’ Nyong’o, a member of PIC – whose report was being debated - did not mince words, however. It was the opinion of the committee, he said, that the officers of the Corporation “deluded the Ministry (housing) and the people of Kenya and acquired this property for themselves under the guise of paying for consultancy…These individuals are walking scot-free in the streets, after pocketing precious money of the taxpayer in this nation to the tune of KES.52 million,”[743] he said angrily.

One MP wondered why the NHC operated so successfully in the 1980s and not in the 1990s. “Is it not because of good management at that time? So, if at all we will save this country, we must address ourselves to the people who run these institutions.”[744]

In another case in 2000, a top NHC official was suspended for allegedly selling the organization’s houses at throwaway prices.[745] The gentleman had been transferred to the NHC from another government organization where acts of impropriety involving huge sums of money had also occurred.

The following year, the NHC management spent KES.319 million to construct a housing project without the knowledge of the board of directors or subjecting it to competitive bidding. The organization lost an additional KES.69 million when it deposited money into Prudential Bank which later collapsed in violation of regulations which required parastatal bodies to invest in treasury bills or bond.[746]

In its 19th report for the financial years 2001/2002 to 2011/2012, the PIC reported serious financial irregularities including abuse of office and single sourcing of computer software worth KES.5.4 million. The PIC called for EAAC to investigate the management. The committee also took the organization to task over KES.55.3 million paid to a contractor and a consultant for the construction of a housing project in Eldoret in 1997 which was not completed. Only 15 out of the proposed 24 units were completed at a cost of KES.127.8 million and leased out, but the remaining were abandoned at various stages.

It is not surprising therefore that NHC recorded a loss of KES.22 million in the year ending 2002 compared to a profit of KES.1.4 million the previous year. It neither could meet its long term maturing loans and interest obligations amounting to KES.3.3 million nor recover loan arrears of KES.2.2 million from local authorities and rural housing loans.

The organization also spent huge amounts of money for three housing projects which remained dormant for five years. At one of them, the Kibera phase 3 tenant purchase scheme, NHC paid KES.113.1 million for consultancy services but the project was cancelled. The management informed the board that the expenditure was a “sunk cost” and should therefore be written off. The empty plot was invaded by squatters which raised issues of evictions.[747]

In 2013, six former and current managers of NHC were hauled to court to face charges of allocating houses to themselves, friends, and family members, worth millions of shillings through illegal means. It was also found the cost of the land on which the houses were built was inflated from KES.493 million to KES.800 million. One of the officials allocated himself seven houses and 14 others for his relatives, while three officers gave themselves between five and six units. Houses were also allocated to senior government officials, politicians, and selected members of NHC, all totaling 209 units without competitive bidding.

Even though the EACC investigator went to court with a bundle of files to prove irregular allocation, the court dismissed the charges and set the officials – James Wagema Ruitha (Managing Director), Elizabeth Wambui (Corporationsecretary), Manaseh Munialo Wandabwa (Finance Manager), Bernard Ogolla Jacob (Technical Manager), William Kimutai Keitany (Senior Legal Manager), and John Washington Otieno (Chief Estates Officer) – free. That was less than a year after the entire board of directors had been suspended to pave way for investigations into the housing scandal. The

EACC which investigated the matter discovered a lot of other misappropriations and irregularities including a transaction of KES.870 million for a piece of land in Kitengela outside Nairobi which was purchased irregularly on behalf of the Corporation. A top official was investigated for abuse of office involving the 150-acre land.

The following year, the Managing Director of NHC was suspended after anomalies were detected in some tenders. He was also accused of financial mismanagement involving the construction of 2,000 housing units for the police in the Ruai area of Nairobi and for keeping the treasury, which oversees public finances, in the dark about the tenders.

It was established that the tender for the Ruai project was single-sourced and "the money set aside as a floating imprest could not be accounted for…" There were also questions about an amount of KES.800 million spent to acquire the 10-acre piece of land for the housing project.[748]

KPCU

If there was one cooperative union which was financially strong and strategically important to both farmers and the economy, that organization was the Kenya Planters Cooperative Union (KPCU). Established by British colonialists before World War II around 1932, the KPCU embodied everything that was good for coffee farmers.

It was Africa's largest farmer-owned coffee mill and had a capacity of 130,000 metric tons in a five-story building overlooking the city center. It had as its members 300 cooperative societies, 2,000 private estates and 700,000 small scale farmers. The union was registered both as a cooperative under the Societies Act and as a limited liability company under the Companies Act, something that created operational problems and attracted interference from the government.

But the organization was also steeped in corruption. Rapacious board directors and managers gave themselves millions of shillings of unsecured loans which they failed to repay, as farmers and cooperative societies went without being paid for their coffee supplies. Some of the loans, estimated at a whooping KES.2 billion, were given out without board approval ratcheting bad debts to uncontrollable levels. There were reports that between April and July 1993, KPCU extended an illegal loan amounting to KES.5.3 billion to

Kamlesh Pattni, the infamous mastermind of the Goldenberg International money scandal.

One analyst described the dealings at the KPCU as “the biggest commercial fraud every carried out in the history of the 83-year old organization.”[749] In 2009, the organization was put in receivership after accumulating a debt of KES.634 million with the Kenya Commercial Bank (KCB) following years of gross mismanagement and non-payment of debts.

KPCU owed a total of up to KES.5 billion to individuals and government agencies including the Coffee Board of Kenya (CBK), KES.200 million; the Coffee Research Station (CRS) and the Road Board Levy (RBL), KES.100 million each; among others. Many of the defaulters were politically-connected wealthy Kenyans, some with huge coffee plantations of their own and some non-coffee farmers.

Strategically placed as Moi’s eye in the board was Ezekiel Barng’etuny; one of the President’s closest confidantes. Moi was therefore fully informed about everything at the KPCU, and influenced decisions as he deemed necessary. Some of the money siphoned off from the parastatal was reportedly used to fund the 1992 general elections and ensure President Moi’s re-election.

There was also massive theft of coffee from KPCU stores with no punitive action being taken. In a period of two months in 2005, for example, 1,900 bags of high quality coffee worth KES.57 million were stolen from KPCU warehouses. But while the big fish went unpunished, junior officials suffered. In one case, a middle-level official working at the KPCU depot at Sagana was arrested and charged for allegedly forging documents and carting away KES.31,320, but a court acquitted him for lack of evidence.

In 1987, soon after the CBK had given KPCU a check for KES.5.9 million, the check disappeared. The CBK immediately alerted the Kenya Commercial Bank (KCB), the receiving bank. Meanwhile, some people had registered a company by the name “Kenya Planters Cooperative Union” and tried to deposit the check into that account. They were arrested.

In 1992, the government “advanced” KPCU KES.125 million to pay farmers but the money never reached the intended recipients. In fact, one board member said the money never arrived at the KPCU presumably pocketed by officials.[750] The whole operation was well-coordinated by people within and outside KPCU who were determined to steal as much as they could.

Corruption was obviously at the top of the list of activities in almost all coffee-related organizations. At one time, one individual was simultaneously the chairman of KPCU, the Coffee Research Foundation (CRF), the Kenya Coffee Marketing Committee (KCMC), and the Kenya Coffee Research Committee (KCRC), underscoring a deep conflict of interest. Coffee audit reports named the man as having stolen millions of shillings belonging to coffee farmers in other organizations.

KPCU also suffered from perennial management changes. Apart from a high turn-over of board members, the organization also suffered from frequent loss of managers. In March 2003, three senior managers were sacked to pave way for investigations into an alleged financial scandal, but coffee farmers disputed the motive and demanded an investigation by the board after it emerged that the managers had run afoul with the general manager.

By 1997, as per the report prepared by Gill and Johnson, KPCU had a deficit of KES.708 million and its liabilities were exceeding assets by KES.181 million. The 2007/2008 government financial report showed the firm – which saw many boardroom battles for power and influence – had recorded a KES.299 million loss much of it gobbled up by wasteful expenditure including visits abroad by board members.

After an internal investigation in 2006, the KPCU Chairman, Evans Gachewa, announced the sacking of the entire management board, including Ruth Mwaniki, the General Manager, on accusations of alleged financial mismanagement, abuse of office and insubordination.

In 2011 – with the organization now ailing financially - President Kibaki offered to pump in KES.1.2 billion to help bail it out, and the firm was ordered to sell its KES.3 billion assets to pay off some of its debts. At the same time, KPCU accused the receiver-managers of embezzling union monies amounting to KES.130 million collected over a period of three years. KPCU lawyers alleged in court that the receiver-managers were enriching themselves instead of banking the money with the KCB.

Similar accusations were made against the managers the following year but this time the receivers were accused of looting or vandalizing assets valued at KES.727 million. Board directors from several rural outposts descended at the headquarters to back the claims made by their chairman, Kimathi Mutuerando, that milling machines, graders and other equipment had been taken away by vandals in all the 14 KPCU branches nationwide.

In the meantime, as her former organization was engulfed in a court dispute with the KCB over outstanding debt, Mwaniki was in 2011 moved to the export promotion council – a body in charge of promoting export trade.

In 2014, the KCB lifted its receivership after a court ruling and following an agreement with KPCU on a new debt repayment schedule. A new board was appointed to take over from a caretaker committee elected in July 2012. By that time, production had declined to 50,000 metric tons.

As the KPCU was struggling to restore its lost image, thieves broke into one of the buildings in 2015 and vandalized the firm's KES.800-million plant. They cut it up in pieces which were taken away and believed sold as scrap. A lorry caught carrying the parts was impounded and both the security officer and the driver were arrested. They were not prosecuted.

Cartels in the coffee industry

The Coffee industry in Kenya has been dominated by cartels of ruthless individuals who have been scamming farmers through price manipulation. Between 2007 and 2015, farmers lost an estimated KES.28 billion to the unscrupulous cartels at the Nairobi Coffee Exchange (NCE) where coffee is auctioned every week. Reserve prices which are the minimum amount each coffee lot is expected to fetch, and which are supposed to be known only to the seller and the management of the NCE, are often leaked to dealers who then "strategize on how much more they will pay for each coffee lot."[751] Through this manipulation, dealers earn millions every week at the expense of farmers.

On top of that, regulators, millers, traders and brokers, conspire to keep coffee prices down through building of "sophisticated structures" that frustrate the entry of any new players not associated with the schemers, and prevent farmers from earning fair prices for their coffee at the NCE. According to one report, the conspiracy is supported by the Coffee Act which favors the top cream of the coffee industry.[752]

The MP for Mathira, Matu Wamae, alleged in Parliament that CBK was corrupt. But while denying the same, the Minister for Agriculture, William Odongo Omamo, narrated a case in which a top official colluded with the CBK representative overseas and sold 18,000 bags of Kenyan coffee by private treaty instead of channeling it through the open auction. The sale realized KES.16 million which was much less than what would have been otherwise realized. In doing so, the CBK had gone "rogue," sold farmers' coffee, and withheld payments.[753] The unidentified official, according to Omamo, was summarily dismissed.[754]

KEMRI

The 1980s and 1990s were terrifying decades for Kenyans as the little-known HIV/Aids epidemic swept through the country like wildfire. The intensity of the killer disease shocked Kenyans. As leaders denied its existence, President Moi in 1989, ordered all infected people to be quarantined.[755] Given the fast-escalating numbers of HIV/Aids infections and the possible challenge in trying to isolate those infected, officials politely ignored the directive. Within eight years, the rate of HIV/Aids-affected persons had risen from 4% in 1984 when it was first detected in Kenya to 10% in 2000.

In 1979, the Kenya Medical Research Institute (KEMRI) began collaborating with the US Center for Disease Control (CDC) on HIV/Aids research in evaluating methods of preventing the spread of the epidemic and improving the lives of those already infected.

Eleven years later, on 27 July 1990, after short clinical trials, President Moi with the institute's director, Davy Kiprotich Koech, and a researcher, Prof. Arthur Obel, and other distinguished guests, gathered in Nairobi to announce the discovery of Kemron, a low dose of *alpha interferon*, a natural body chemical, which Kemri cited as a milestone in the fight against HIV/Aids. Officials claimed 10% of those tested showed negative results. An excited Finance Minister George Saitoti immediately announced plans to build a manufacturing plant to mass produce the drug.

But the scientific community guardedly doubted the efficacy of Kemron. That October Dr. Koech travelled to Geneva for a meeting with officials of the World Health Organization (WHO) to convince them of the effectiveness of the drug, but in a press release, WHO emphasized that Kemron was only an "experimental drug of yet unproved benefit for HIV/Aids infections."[756]

However, Kenyan officials continued to promote the drug as a "cure" for HIV/Aids, a position that turned out to be "damaging to the scientific reputation of Koech and created a scientific landscape "marred by suspicion, corruption and mistrust."[757]

Millions of shillings had already been spent in researching and manufacturing the drug. Doctors were prescribing the drug to patients though it couldn't be found anywhere. It emerged Ministry of Health officials were having second thought about Kemron and wanted more tests administered before distribution. A controversy had also erupted surrounding patent rights between Kemri and Joseph Cummins, a Texan veterinarian, who claimed he was the supplier of *Alpha interferon* and had already patented the therapy. He claimed he developed the compound and licensed Hayashibara Laboratories of Japan to manufacture it, and had even sent some samples to Dr. Koech. However, the Kenyan researcher claimed it to be his, a claim which disturbed the American. In the meantime, fraudsters took advantage of the confusion and were selling fake tablets of Kemron on the streets of Nairobi and making money.

In April 1992, the US National Institute of Health (NIH) looked at 12 clinical trials of the drug done in Canada, Germany, Thailand, and Zambia, among other countries, and concluded that "Koech's claims were wrong and recommended that the NIH pursue no further exploration of Kemron," further advising those already using the drug to find another cure.[758]

The bottom line was that Kemron was a hoax, the biggest medical hoax in Kenya's history. The drug floundered and a plant to manufacture Kemron never materialized. It was an embarrassment to the country but more so to Moi who had staked all hopes of salvaging his image destroyed by years of human rights abuses and misrule. The professional reputation of Dr. Koech, presumed to be one of the most brilliant African researchers, was on line. He was a world-recognized scientist.

However, in 2007, he was suspended after serving Kemri since 1986. In March 2009, Kemri was on the spot again after its board was disbanded following the disappearance of funds amounting to KES.476 million. Of that was KES.444 million of staff pension and KES.19.3 million belonging to the CDC. KACC immediately moved in to investigate.

On 14 July 2009, Koech was arrested by KACC officers and charged, not for duping the public about a dud drug, but for abuse of office through allegedly transferring KES 19 million of Kemri money from an official account to one of his own under the name of African medical services trust. He denied the charges. By March 2016, Koech's case was among 88 other high-profile files still pending at the office of the Director of Public Prosecutions (DPP).

Every year, the Atlanta-based CDC pumps into Kemri millions of US dollars in research money. In 2015, it injected US$.80 million (KES.8.2 billion) into the world-acclaimed organization for a series of research projects including malaria, tuberculosis and HIV/Aids. The CDC "takes its stewardship of government resources very seriously,"[759] and therefore demands proper accountability for every dollar used.

By March 2015, however, the budget which was to carry the organization through the year, was reported depleted. The CDC announced it had launched an investigation to find out why the money had been exhausted with five months left in the budget period and why it had only one month's operating cost left in its budget.[760] The shortfall was believed to have been caused by misappropriation. The matter was serious enough to threaten the future of research projects and even continued employment of hundreds of Kemri staff.

While Kemri insisted that no money was lost, it was discovered KES.8.7 million was paid illegally to 19 staff members. The organization's board demanded that the money be recovered and refunded to CDC. By the end of the year, it became necessary to send home some of Kemri's top officials among them the Chief Executive, Prof. Solomon Mpoke; the Assistant Director, resource development and management, Dr. Gerald Mwadori Mkoji; the Deputy Director in charge of finance and administration; and the Assistant Director in charge of human resources.

Meanwhile, Prof Arthur Obel, who was a Deputy Director at Kemri had in 1996 come up with a concoction he named Pearl Omega. A charismatic and brilliant scientist with a degree from the University of London and said to be Moi's "scientific adviser" claimed the compound was a cure for AIDS. He claimed it had restored seven patients to full health since he began trials in 1991. "I have patients from all around the world…" Obel boasted. Obel said he had administered the drug to 40,000 Kenyans and 27,000 foreigners.[761] Was it a "miracle" cure against HIV/Aids or another scam from the medical elite? For some reason, the Professor would reveal neither the composition nor produce any scientific data to back his claims. The drug was being sold at the professor's offices at KES.30,000 and only in cartons of 12 containers.

Desperate AIDS-infected patients thronged his premises for hours every day hoping to get the medicine, leaving many disappointed customers.

The dean of the faculty of medicine at the University of Nairobi, Prof Peter Odhiambo, told a journalist that one bottle shown to him smelt strongly of alcohol and another smelt strongly herbal. But Obel said the drug was "sweet syrup" distilled from a rare tropical plant introduced to him by his grandfather who was a traditional healer.[762]

"This man" (referring to Obel), said Dr. Richard Barasa, Chairman of the Medical Practitioners and Dentists Board, "is bringing the medical profession into disrepute."[763]

Days after the Assistant Minister of Health, Basil Criticos, assured Parliament that pearl omega was "actually not a collection but a well-defined bio-chemical agent in liquid preparation…which interferes with the replication of the HIV/Aids virus…thus rendering the virus non-infectious…"[764] the government declared the drug illegal and advised Kenyans not to buy it.

Some MPs demanded that Kemri and Prof. Obel apologize to Kenyans for "coming up with concoctions called Kemron and Pearl Omega which they believed could cure HIV/Aids but instead were destroying our country"[765] Reports circulating within the scientific community that pearl omega was bank-rolled using taxpayers' money could not be confirmed. "Philip Mbithi, an old-school friend of Obel's and former Chief Secretary in the Office of the President…is said to have secured extensive research funds for him, one report said."[766] That could not be verified.

Several patients who expected Pearl Omega to cure their ailment but didn't, eventually went to court in May 1996 to seek justice. The fate of the case remains unknown.

However, in a shocking turn of events in July 2003, Prof. Obel appeared in court charged with attempted murder of a matatu driver during a road rage incident in the city at which a gun was used. His firearm was withdrawn, but during a court hearing in September 2005, the Nairobi chief magistrate, Aggrey Muchelule, ordered the weapon returned. The fate of that case was unknown.

White Elephants meant money

It is difficult to assess how much money Kenya has lost to "white elephants"

– huge construction projects started but never completed due to corruption, poor planning and mismanagement.

Fish processing plant

In 1971 during Kenyatta's reign, Norway agreed with Kenya to build a fish processing plant in Turkana, in northern Kenya. The plant was to include a processing unit, storage facilities for frozen fish, refrigeration machinery, ice-making machinery, generators, and other facilities.[767] It was expected that jobs would be created through export of fish. Assessment studies done prior to the construction did not take into consideration the high cost of operating and maintaining freezers as well as the high demand for clean water in the remote, dry area. There was also poor consultation with the local community. The plant did not last but for a few days. An estimated US$.22 million (KES.2.2 billion) was spent on the plant and the road connecting Turkana and Nairobi.

Apart from the above reasons leading to the plant collapse, a diplomatic row erupted between Kenya and Norway and led to severance of relations in 1990 after the latter joined other donor countries in criticizing Moi's human rights record, and Moi blasting Norway for sheltering dissident politicians including Koigi wa Wamwere. Ties were restored four years later, but the project was never revived.

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Another "white elephant" that failed during Kenyatta's term was a fertilizer project planned to ease a serious fertilizer shortage in the 1970s. An American company from Ohio called N-Ren International was to undertake the project, while Kenya was to guarantee KES.14.1 million on behalf of the company out of the KES.428 million allocated by the government for the project. However, a series of contractual and technical blunders led to a major disagreement resulting in the discontinuation of the project which was to be built in Mombasa.

A massive housing project along Thika Road in Nairobi meant for the national youth service and another one off Mbagathi way owned by the Kenya Medical Research Institute were abandoned for years due to contractual issues. "Those houses have been a shame to this country," said one MP. The same long delays applied to many other government projects across the country.

The Ministry of Public Works, which was in-charge of buildings, was one of the most corrupt institutions during Moi's time. Each government structure was a cash cow for officials in the Ministry who manipulated tenders and undertook illegal variations of contracts to increase commissions to themselves. Everyone from political appointees at the top to messengers at the bottom partook of the corruption pill.

There were so many such "white elephants" during Moi's regime that cost the country billions of shillings which could have been put to better use: from the "*Nyayo*" car project which gulped KES 8 million without any positive results; to Kenya Furfural factory which was to use maize cobs to produce furfural, a chemical for refining lubricants and acetic acid used in the food industry.

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In 1986, Moi introduced *Nyayo* buses to offer cheaper means of transportation. The buses were initially for use by the NYS, but the President ordered they be converted to public use under the umbrella of the *Nyayo* bus service. They were donated by the governments of Holland, Belgium and Italy, but huge losses forced the auditor-general to declare the organization insolvent in 1995. It was discovered conductors and drivers were colluding with officials to pocket large amounts of money from fares.

KNAC

In the 1980s, the Kenya National Assurance Company (KNAC) was one of the most successful government parastatals in Kenya.

Enter one of Moi's blue-eyed Kalenjin compatriots and a former Minister who was appointed Executive Chairman in 1989. For three years, the charming KANU official led the organization in a way many said resulted in its demise. During his stewardship, the organization allegedly made illegal loans and paid out fraudulent claims to politically connected individuals, reducing the organization to "an undercapitalized shell" unable to meet its obligations to pensions and life insurance policy holders.[768]

By 1996 when the politician left, and the organization went into receivership, 900 workers were out of employment; US$.13 million (KES.1.3 billion) in life insurance had gone under, depriving beneficiaries of billions of shillings in insurance payments upon death of their relatives. When faced with questions in Parliament, the finance Minister, Musalia Mudavadi, said the organization collapsed “primarily because of mismanagement over a long period of time,”[769] and promised to prosecute anyone found to have contributed to the financial loses of the company. That never happened.

KNAC had invested heavily in prime properties all over the country which were eventually sold to pay off the beneficiaries. However, accusations were made that some of the buildings were irregularly sold to politically connected entities and individuals raising further concerns about corruption in the Corporation . However, the government refuted those allegations saying all buildings were properly valued and sold.

In 2009, the American embassy in a cable to Washington requested that one Henry Kosgey and his family be banned from entering the US because of the KNAC scandal and his involvement on several corruption-related matters including the one surrounding the 4th All Africa Games, allegations of grabbing public lands, alleged involvement in the 2007/2008 post-election violence, and accusations of “speculating in government-subsidized maize designated to feed the hungry…” The embassy said Kosgey’s “diverse activities” over decades had negatively impacted US foreign assistance goals.[770] The last time the MP for Tinderet in Rift Valley applied for a US visa was in 2006.

The 1987 All-Africa games

The 4th All-Africa games took place in Nairobi from 1-12 August 1987 when Henry Kosgey was Minister for Culture and Social Services and in charge of organizing the games. The Ministry gave a marketing contract to an American company owned by Dick Berg. Soon after the games ended, Berg disappeared with millions of shillings in sponsorship money. Kosgey’s name came up but the Minister denied any involvement in the Berg scheme.

In 2011, as the Minister for Industrialization, Kosgey found himself in court, this time charged with 12 counts of abuse of office for irregularly allowing the importation of hundreds of cars older than eight years which are banned by law. Over 450 vehicles were listed as having been sanctioned to enter the country in a six-months period. He said the only car he allowed belonged to his bodyguard’s friend. Nevertheless, he resigned from his Ministerial position and was later exonerated.

Kosgey was among six Kenyans charged with crimes against humanity at the International Criminal Court (ICC) related the 2007/2008 post-election violence. He was subsequently acquitted early in 2012 after Judges ruled the prosecution's evidence had failed to satisfy the evidentiary threshold required for a conviction. The others who were taken to The Hague-based court were Uhuru Kenyatta, William Ruto, Joshua Sang, Francis Muthaura, and Mohammed Hussein Ali. All of them were let go.

KENATCO

Britain has the ubiquitous black London Taxis. In Kenya, it was Kenatco, the flagship of all modern forms of transportation in the 1960s and 1970s. Hundreds of vehicles ranging from regular saloon cars to the prestigious Mercedes Benz to Toyota mini-buses to buses and lorries, plied the tarmacked highways and murram arteries across the nation. The vehicles were hired for private use as well as for use by VIPs during international conferences. There were also heavy-duty trucks hauling goods across African frontiers. By 1974, the company was making profits and declaring dividends.

Started by a small businessman, Simon Peter Mbacia, as an investment for members of the Kenya National Transport Cooperative Society (Kenatco), the company, with 2000 shareholders, grew its fleet from a dozen vehicles to 200 by the end of the 1960s. It had licenses allowing its vehicles to travel anywhere in the country and into Tanzania and Zambia. But in mid-1966, the licenses were mysteriously suspended leaving the company in a precarious situation of closing-down and defaulting on its loans. Using loan default as reason for the take-over, the government incorporated a brand-new company, Kenatco transport company, with ICDC taking 90% ownership, and the rest left to the cooperative society. The take-over was controversial and smelt of corruption. While the government explained it was to "protect the public's faith in cooperatives," many felt it was done to "protect foreign transport companies which were being threatened by the new kid on the block."[771]

What followed is what bedeviled most government-owned institutions. Technocrats with no experience in transportation were appointed to chair the board, and slowly, through mismanagement and incessant labor strikes due to poor working conditions, the company profile began to dwindle. Certain allied businesses such as petrol stations were closed-down, and vehicles, among them buses were sold, even as the company spread its long-distance wings to neighboring countries. Things deteriorated when Tanzania closed its border in 1977 stopping the passage of trucks across frontiers. By that time, many of the vehicles had become unserviceable and expensive to operate.

Eleven buses inherited from the original company were sold to rival companies for a mere K£.13,000 (KES.1.7 million). The government said they were too old to fetch more. But as some of the companies were owned by politically-correct individuals, concerns of irregular dealings were raised.[772]

Towards the end of 1983, as the company was being prepared for receivership, a taxi company by the name Kenatco Taxis, was incorporated. The taxi business thrived but it also became a cash cow for bigwigs in government." As the money flowed in from corporate clients, some company personnel saw an opportunity to engage in corruption and stealing revenue. One of the last top officials of Kenatco during its hey days admitted in a media interview that corruption was partly to blame for the collapse of the company.[773]

The management had taken two loans through ICDC amounting to KES.17 million which it could not repay. The company itself was not credit-worthy and relied on short-term government financial injections which by themselves could not sustain its operations. It was finally put into receivership in 1996 and 419 employees lost their jobs. On 30 June 2008, the total accumulative loan stood at KES.359 million.[774] By 2017, the company was still in receivership though operating, and the loans which had accrued significant interest fees, remained unpaid. In the end, the government's attempt at State-participation in the transport sector and the public endeavor to create a nation-wide company in which the public would have a role as per the sessional paper No. 10 on African socialism collapsed.

Criminal cartels

Often people look at crime only as an anti-social activity with no linkage to the social and economic well-being of a nation. Yet, crime is a form of looting where a few people benefit from resources that are meant to benefit all. Crime and corruption are inter-linked, and Kenya is known for both.

In the first 50 years of independence, Kenya became the most prosperous among the three original members of the East African Community including Tanzania and Uganda. But it was also the most corrupt and crime-infested country. Endemic corruption and powerful trans-national criminal networks operating in Kenya undermined state institutions and eroded public confidence in them resulting in depressed development, loss of international confidence in the country, and faulty governance.[775]

In the 1990s when a spate of robberies engulfed Nairobi and the city was labeled "Nai-robbery"; the implication to tourism was profound. International tourists stopped visiting Kenya for fear of being robbed or killed; institutions and residents erected fences and installed steel grills on their window and doors; and banks – which were the biggest victims of well-organized robberies – beefed up security within and outside their premises to deflect criminal attacks.

Gangs were roaming in major towns breaking homes and robbing banks. One steamy afternoon on 9 July 1996, for example, a gang led by a career criminal, Isaac Kamau Irungu, stormed into Delphis Bank in Mombasa brandishing pistols and an AK47. They ordered a terrified cashier, Shashikhan Patel, other staff members, and customers, to lie down facing the floor, then went about ransacking drawers and clearing the safe. Emerging fifteen minutes later carrying a sack loaded with KES.10.6 million, the thugs walked calmly out of the bank, jumped into a gate-away car, and disappeared into the crowded streets of the coastal town. That evening they met at Irungu's house and split the loot. Three days later, Irungu travelled back to his home district of Kiambu carrying a cache of KES.600,000.

However, the efficiency the gang had displayed as they cleaned the bank in one of the biggest heists of the 1990s vanished, as it began making one blunder after another. A week later, on July 15, Irungu stealthily walked into the Kenya Commercial Branch at Githurai – over 500 kilometers from Mombasa – with crisp KES.450,000 to open an account. His photograph was taken as a matter of routine and Irungu proudly went away unaware of the evidence he had left behind.

About that time, a major robbery had been reported in the neighboring town of Ruiru which drew a horde of detectives into the area. It was then the detectives came to know of the unusually big bank deposit. When they investigated, they discovered the account holder was a man on the run for previous crimes.

In September, when Irungu went back to the bank to withdraw some cash, he was informed the account was under police investigation. He went underground. It was not until 1 June 1997, during a planning meeting at a Nairobi neighborhood of Shaurimoyo that Irungu together with his associates, Kimilu Kilonzo, Mwangi Kibogoyo, Mwangi Karanja, Patrick Gitau and Kwengwo, were arrested after a tip-off. A pistol he had hidden in a stove at his home was recovered. In court, while not denying participating in the crime, Irungu claimed the KES.450,000 was income from his business which he intended to use to buy a plot of land. Nevertheless, the prosecution adduced enough evidence to convict the robbers. Irungu and his colleagues were sentenced to death.

The Delphis bank heist was one of several major bank robberies that took place during Moi's rule. Thirty bank robberies were executed during 1999 alone yielding millions of shillings. It was a decade dominated by big-time organized gangs led by vicious characters like Simon Matheri Ikeere, Anthony Ngugi Kanagi, aka Wacucu, Gerald Wambugu Munyeri, aka Wanugu, and Bernard Matheri Thuo, aka Rasta. It was a time of difficult economic times and political suppression under Moi.

A week before the Mombasa robbery, a gang of robbers walked into the Mashreq Bank at the center of Nairobi. A few minutes later, they walked out with KES.0.5 million in a crime that was executed expeditiously and without any weapon being fired. They had discovered the foible of the bank because at 6.15 am of 17 August, either the same gang or another, arrived at the premises on Kenyatta Avenue and lay in wait for the arrival of employees.

As the bank staff filed in, the gang pulled out their pistols and ordered everyone to lie down. They snatched the safe keys from a supervisor and for three hours they held the staff hostage as they ransacked the bank. By calling some of the staff in their full names, it was obvious the heist was an inside job. Two administrative police officers who were supposed to guard the entrance were nowhere to be seen. They arrived two hours later. When the job was done, the thugs had in a sack KES.9 million. The six gangsters jumped into a gateway car which had double-parked on the narrow street and vanished.

In 1998, at least one bank robbery occurred every week and KES.846 million was lost to criminals, the *Los Angeles Times* claimed.[776] That year a significant number of bank workers were retrenched due to economic reasons and possible connivance with robbers. A police spokesman, Mwangi King'ori, connected the dismissals to increased criminal activity by former staff members colluding with criminals.

In those days, too, many bank branches stored huge amounts of hard cash in vaults within their premises, attracting robbers to simply walk in and demand keys to the safe. The Kenya Bankers Association (KBA) was alarmed at the high rate of bank robberies and proposed enhanced use of surveillance cameras and dyeing material in cash-in-transit boxes. The dye hidden in those boxes would explode and release an aerosol of red dye staining the stolen money thus rendering it useless. The government on its side, responded by establishing the flying squad in 1995, a fast-response unit, to deal with gate-away thugs. Today, transactions are largely digital hence a marked reduction of brazen violent type of robberies. Tougher background checks and training on ethics and fraud prevention also help to make banks safer, said Joshua Nyamweya Oigara, the CEO of the Kenya Commercial Bank (KCB) in 2015. But that did not stop bank robberies all together.

In the meantime, the government had to deal with a proliferation of illegal weapons, possibly from the war-torn Somalia. The illegal arms were channeled through contacts at Eastleigh, a predominantly Somali neighborhood east of the city. Some reports said guns, from G3 rifles to AK-47, were available for hire in Nairobi for prices of up to KES.102,600 per job. Colt revolvers, Berettas, Ceskas and sub-machine guns went for KES.30,780 per job. AK47 bullets sold for KES.2,000 each and gun owners received 10% of every robbery revenue.[777]

It was reported that a significant number of leased guns came from crooked police officers.[778] The practice of hiring weapons has been going on for years in many police stations in Kenya and authorities are aware of it. One of those allegations was preferred against the police station at Shaurimoyo, the same locality where convicted bank robber Irungu and his gang of criminals were arrested. The police were not only linked to armed robberies either directly or through the leasing of their firearms, but also through extortion activities. In March 1998, the Kenya Hindu mission, on behalf of the Asian community, complained to Moi that “a gang of police from the criminal investigation department” raided homes of Asians allegedly to search for illegal drugs but ended up arresting and extorting from them amounts ranging from US$.500 (KES.51,825) to US$.2,500 (KES.259,125) before release.[779] The police promised to investigate.

Criminal cartels also source their guns from from blacksmiths who manufacture home-made guns in neighborhoods and sell them to criminals. These weapons are often crude but have the capacity to kill.

In Nairobi, young unemployed youths are easily recruited into gangs. They spend hours in “video parlors” watching violent movies including narratives of bank robberies like *Fast Gateway,* a 1991 action comedy film about a teenager who goes on a bank robbing spree with his father and a group of young hoodlums. Through such shows, they learn criminal techniques, how to handle guns, as well as escape skills. In mid-1990s, such parlors were also used as hideouts for criminals and police often visited the establishments to receive bribes from criminals to look the other way.[780]

Proceeds from bank robberies – like those from other criminal activities like drug trafficking – are also suspected to be used for political mobilization and for corrupting government institutions. Criminal networks have not only penetrated the political class and influenced elections but have also undermined justice by “persuading” or “buying” senior police officers, legislators, and Judges to act in their favor in judicial cases.

Over the years, bank robberies became too risky, and criminals had to find other less dangerous methods of stealing money. One was to use private security companies contracted to carry large sums of money for banks. Firms such as Wells Fargo, G4S and KK, became a source of revenue for disillusioned employees but also for hardcore criminals desiring quick money.

In 2009, G4S suffered two large heists. In early November, the company driver on a money transit duty, and an administrative policeman who was supposed to escort the van drove off with KES.22 million leaving their supervisor on a roadside. The vehicle was found dumped in the city with its ignition on. The same month US$.300,000 (KES.31 million) being transported to Wilson Airport, west of Nairobi, disappeared after the driver failed to reach his destination. The administrative officer who was detailed to guard the money turned himself in a few hours later but refused to cooperate with the police. A similar incident involving G4S occurred near the Kenya Uganda border and KES.40 million was lost.

In 2006, a KK employee who was entrusted to carry KES.25 million from Mombasa to Trust Bank, Nairobi, disappeared after landing in the capital. To confuse his handlers, he gave them wrong arrival information. By the time they arrived at the airport to escort Handson Nyasaka, he had already vanished.

So, the criminal activities of the early years were carried forward to successive regimes. As the first decade of Moi's rule ended, between 15% and 30% of expatriates, mainly Europeans had left the country to escape common robberies, carjacking and random assaults – a fall from 50,000 white settlers after independence to only 8,000 in 1998.[781] The looting by robbers had deprived the country of millions of shillings by the time Moi left office.

Donors fleeced

Kenyan taxpayers were not the only victims of corruption during Moi's time. Donor entities were also affected. "The game was simple: The Moi government would steal (foreign) assistance money then insult us if we said anything," an American diplomat complained. "People would suffer; the government would go to more donors and get more money which they could steal."[782]

There are several significant examples of how such donor money vanishes into people's pockets. In 2005, the World Bank, Britain, Canada and the UN children's fund launched the education support sector program, a US$.5.8 billion (KES.601 billion) Kenya initiative intended to improve the quality of education, increase opportunities for post-secondary education, build schools and train education managers. Four years later, an audit report showed US$.54.9 million (KES.5.6 billion) had been misappropriated, and the donors requested a refund.

Although KACC investigated the matter and interviewed about 40 people, at the end, the government had to use tax-payers' money to reimburse the offended donors. Some people were taken to court, but no one was convicted.

In 2008, several NGOs involved in combating HIV/AIDS and the Ministry of Health and medical services, were put on the spotlight for failing to account for approximately US$.166 million (KES.17.2 billion) of a total amount of US$.512 million (KES.53 billion) donated by the Global Fund over six previous years.

Canada lost US$.2 million (KES.207.3 million) meant for textbooks and other educational programs to corrupt Ministry of Education officials. The money from the Canadian International Development Agency (CIDA) was part of US$.100 million (KES.10.3 billion) the Ministry of Finance says was lost to corruption in the Education Ministry over several years. CIDA, which by 2010 had given Kenya US$.94 million (KES.9.7 billion), with US$.36 million (KES.3.7 billion) going to education demanded a refund.[783]

In 2016, KES.160 million of donor money was stolen and 730,000 doses of vaccines meant for newly-born babies vanished at the Ministry of Health leading to a stand-off with GAVI vaccine alliance and a demand for a refund of “every missing coin”. The money was part of a KES.3.4-billion vaccine request from Kenya, but an audit report covering 1 July 2009 and 31 June 2015, showed some of the money was missing and the Ministry could not provide supporting documents.

The audit also found tenders for works had been given to incompetent and inexperienced companies; and claims that KES.97 million had been used to purchase motorcycles and bicycles could not verified since there was no evidence of purchase or distribution.

Millions of shillings from donors meant for development projects have also disappeared and many of the projects stalled. In some cases, there were disagreements between Kenya and the donors over corruption, procurement, and implementation methods, and in others, doubts over security. By 2002, Finance Minister Chris Obure told Parliament, 100 projects had stalled including those funded by the World Bank, Japan, Norwegian donor, DANIDA, and the government of Finland. A total of KES.11.2 billion had been spent by the time work stopped and a further KES.6 billion was required to complete them.[784] Some of those that stalled are:

1. Kenya Finland Forestry Program Mathare 4A upgrading project
2. Western Kenya district-based agricultural development project
3. Tana Basin road
4. Kenya urban transport Infrastructure project (Kutip)
5. Horticultural and traditional food crops development program
6. Narok-Mau-Narok road
7. Yala Swamp irrigation project
8. The World Bank Chiromo campus
9. The national youth service housing project

Some of those projects, like the Narok-Mau-Narok road, and the national youth service housing project, were later re-funded and were completed but others were abandoned altogether.

Over the years, donors have also been active in providing relief food during times of famine and drought in Kenya. They donate money as well as food itself, but often not all the food reaches deserving recipients. Instead of distributing it to the needy, corrupt officials sell it clandestinely and keep the cash. In the north-eastern town of Garissa in 2006, 24 traders were nabbed with 500 “not for sale” bags of beans meant for drought relief victims. In the same town, the deputy County commissioner and a stores clerk were arrested in 2015 for fraudulently acquiring 270 bags of rice claiming they were sending them to a children’s center. In another case, 20 bags of relief food were found hidden in a shop in north Kadem location in Nyanza. Both the chief who supplied the grain and the businessman who bought the food were arrested.

Another administrator in Makueni County was sentenced to four-and-half years for stealing relief food in 2015. Cases of theft have been reported in all areas affected by famine. The World Food Program (WFP) the main food distributor, has suffered undetermined loss of grain meant for the hungry. While there is no record of senior people in government being prosecuted, several corrupt DCs, DOs, chiefs, and members of defunct District Development Committees (DDC) have been sacked and/or jailed for abuse of office.

Moi’s legacy

President Moi voluntarily left office on 30 December 2002 to comply with a 1991 constitutional amendment setting two five-year term limits, and after brushing away calls from party hardliners to continue. Uhuru Kenyatta, son of the Founding President, and the man Moi preferred to succeed him was soundly defeated by Mwai Kibaki of the opposition NARC in elections that year. As crowds heckled and shot pebbles at him at Uhuru Park after handing over power to a wheel-chair bound successor, Moi flew out to his rural home to begin life in retirement. Two things Moi carried with him: a hefty monthly- retirement package worth millions of shillings; and an almost guaranteed amnesty from all the “ills” he had committed to the Kenyan people during his 24-year tenure.

During the Independence Day celebrations a few weeks before his departure, Moi called for forgiveness. “If you abused me I forgive you, and forgive me if I hurt you.” But Moi also left behind indelible scars representing years of murders, tortures, and other abuses, and a monument at Nyayo House that for generations will honor those who sacrificed for Kenya’s second liberation. Kibaki said the imposing structure in the middle of the city, where dozens of Kenyans were tormented, will forever remain as a monument of shame.

Moi’s exit however triggered a fervent debate about what to do with the man who abused human rights, grabbed public land, stole from the Exchequer, and allowed relatives and allies to amass wealth in a way not seen even during Kenyatta’s reign. Some – including former political detainees and prisoners – said he should be consigned to the international court to face charges of crimes against humanity. They held demonstrations to press for his prosecution and on Moi Day, 10 October 2004, defaced his monument at central park in Nairobi.

Others talked of a special local court to try the former president and all those who had acquired public resources illegally. Yet, others like John Githongo – the anti-corruption czar in Kibaki’s government – thought Moi should be left alone because of his role in the peaceful transfer of power. The *People Daily* – a Kenyan newspaper owned by an elite group – warned in a write-up on 5 February 2002, that if not properly handled the matter on how to treat Moi in retirement could easily “plunge the nation into political genocide like in Rwanda, Somalia, Burundi, and the Democratic Republic of Congo (DRC).”

President Kibaki – who had been Moi’s deputy for ten years and a long-time friend – was himself not interested in pursuing Moi. It was Kibaki who vehemently resisted the return to pluralism and the surrender of the monopoly of KANU in 1991, saying getting rid of the party’s monopoly would be “like trying to fell a giant fig tree with a razor blade,” a position in line with Moi’s thinking. And it was Kibaki who stood by Moi against attempts to change the constitution to bar Moi from taking over power from Kenyatta.

Kalenjin leaders too were critical of suggestions that Moi should be prosecuted. One of them, William Ruto, a Minister in Moi’s government, called for Cabinet Ministers associated with graft and serving in the NARC government to “be sacked before anybody thinks of questioning Moi.”[785]

When he retired at the age of 78, it was estimated that Moi and his

“Kalenjin Mafia” cronies had looted as much as US$.3 billion (KES.310.9 billion).[786] *African Confidential* reported in 1998 that Moi and “the dynasty” – meaning his family and close associates – had accumulated a personal fortune in front companies in Kenya, offshore tax havens, and several major international banks, such as the Union Bank of Switzerland, “where Moi’s dossier was treated as a matter tantamount to national security.”[787]

Moi also left the economy in shambles. While the annual economic growth in the 1960s and 1970s was averaging 8%, by the time he left, it had dipped to -2%. Close to half of the Kenyan population of over 30 million were unemployed, infrastructure facilities including roads, railways, and bridges were run down, and the infant mortality rate had risen from 74 to 105 per 1,000. In 1999, the WB and IMF classified Kenya as one of 52 “heavily indebted poor countries.”[788]

Moreover, Moi oversaw the entrenchment of a system of patronage and the systematic destruction of Kenyan institutions, said Githongo, who at the time was the Kenya Executive Director of Transparency International (TI).[789] With his departure, KANU, the independence party shattered.

Nevertheless, Moi left a legacy of national peace and smooth political transition even as ethnicity and corruption gnawed at the roots of the nation. “There is hope for Kenya,” Mutahi Ngunyi, a political scientist, told *The New York Times*. “But now, we are not even at ground zero. We are at absolute zero, which is even lower than ground zero.”[790]

PART III
THE BOOK OF EMILIO MWAI KIBAKI

Chapter 20

Kibaki, the man

MANY TAGS HAVE been used to describe Emilio Mwai Kibaki: a gentleman, ‘a dependable neo-liberal technocrat’[791] an accomplished economist, and a great thinker. He was also said to be a slow-mover and somewhat lethargic. The “most slippery character…cordial with all but holds none dear.”[792] For most of his adult life up to the time he was involved in a motor accident that almost killed him during the 2002 presidential campaign, Kibaki liked his beer and lived a ‘cautious and frugal social life to the point of being eccentric.”[793]

Few comparisons can be made between Kibaki and his predecessors. He was not about symbolism. He did not carry a flywhisk like Kenyatta or clutch a short stick like Moi. Nor did he earn a nickname Mzee or Nyayo. He was just Kibaki or Mwai to his friends and foes. It took him five decades to reach the pinnacle of leadership, gaining more experience than Kenyatta and Moi on matters of party management and governance.

Early in his presidency, he banned MPs and Cabinet Ministers from presiding over *harambees*, the self-help initiative created by Kenyatta and elevated by Moi, believing that: “Leadership is a privilege to better the lives of others…not an opportunity to satisfy personal greed.”[794] He phased out currency notes bearing Moi’s image and instead brought back notes with the portrait of the Founding Father, Jomo Kenyatta. And in a controversial about-turn on an election campaign promise to put to an end to “the big man’s syndrome,’ Kibaki introduced a KES.40 Coin, a KES.5,000 gold coin and a KES.1,000 silver coin bearing his own image ostensibly to mark the country’s 40th independence anniversary in December 2003. Unlike his predecessors, Kibaki also recognized in words and deeds the role played by Mau Mau freedom fighters by lifting the ban on the former liberation movement and allowing its members to form welfare societies.

He was neither boisterous nor dandy by the way he dressed, and for many years, his signature imprint was a British checkered jacket, random trousers, and shoes that did not necessarily match in color with his clothes.

While Kenyatta and Moi were assertive, unapologetic, and pompous, Kenya's third president was completely the opposite. He was unassuming, gentle, and a virtual "hands-off" man who appeared unbothered about events swirling around him however explosive they were. That is why Kenyans were shocked when rumors spread in 1983 alleging he was colluding, perhaps with Britain and Israel, to overthrow President Moi's government. The rumors spread only months after the attempted coup by the Kenya Air Force in August 1982. Moi quickly came to his rescue announcing he had full confidence in his deputy, leaving Kenyans to second-guess each other.

The populist politician J. M. Kariuki, once referred to Kibaki "as *kimundu*, an amorphous and useless person, and called him a coward with a good mind but a weak heart."[795] But Kibaki was not entirely a coward. In 1985, several Kikuyu politicians with connections to the Mau Mau hatched a plot to isolate Kibaki in his home district of Nyeri. The plan was to reduce his powers as vice president and eventually replace him with Elijah Mwangale, a Luhya Moi sycophant. As the politicians went around Kikuyuland holding meetings to discredit him as a "colonial loyalist," and saying he had played no part in the freedom movement, Kibaki responded by calling a big meeting at Karatina at which he lashed out at "political tourists" who, he said, were "travelling Nyeri roads at night in pick-ups full of fat rams to give to their local godfathers to convince people of their strength."[796] That conspiracy turned out to be his biggest political score at that time. The conspiracy failed because Kibaki was obstinate and politically dexterous.

Kibaki's languid demeanor and perfunctory style of leadership were a subject of criticism from his foes with some accusing him of being aloof and disengaged from events, and his public addresses gibberish and ill-composed.[797] One joke going around the country was that Kibaki "never saw a fence that he didn't want to sit on."[798] Even during the controversial 'change-the-constitution' campaign, Kibaki, who supported Moi's ascendancy to the presidency, kept off. He only made occasional statements about tolerance and the need for the Kikuyu to accept candidates from other tribes.

Kibaki was brilliant, thoughtful, and a detail-oriented economist. He was the most elitist, clever, incisive, and conscientious[799] of the three Presidents.

***

Kibaki was born in Othaya division in Nyeri district, (now Nyeri County) by peasants Kibaki Githinji and Teresia Wanjiku. He attended local primary schools before entering Mang'u High School after which he joined Makerere University in Kampala, Uganda, a place where Kibaki said nurtured his leadership skills. He studied economics, history and political science and graduated at the top of his class with a first-class honors degree in economics. Thereafter, he secured a scholarship to the London school of economics for a BSc degree in public finance and graduated with a distinction.

On his return to East Africa in 1958 he taught briefly at Makerere before taking up a job with the ruling party KANU as Executive Officer. And in 1961, he married Lucy Muthoni who was a school teacher. He became a politician, an MP, a Minister in Kenyatta's government, and served as Vice President under Moi for ten years. In 1974, Kibaki was named by *TIME* magazine among the top 100 people in the world who had the potential to lead. He contested for the presidency twice – in 1992 and 1997 – but lost.

As an ardent Catholic, Kibaki attended mass regularly either at the Basilica or at the Consolata Church in Westlands, a tradition he carried through his retirement. He would saunter in with his bodyguards and walk straight to his front right pew from where he would take the Holy Communion. After mass, he would stand outside the church and shake hands with worshippers before driving off to his Muthaiga residence.

He loved his beer, and spent many hours at the bar in Parliament buildings imbibing his favorite White Cap, occasionally dropping into the Chambers for debates as Leader of Official Opposition from 1998 to 2002, or just to chat with his colleagues in the opposition. He only stopped drinking after the near fatal road accident in 2002 that immobilized him for months. After that, he could no longer play his favorite game of golf. A feeble attempt to resume playing failed. In his hey days, Kibaki played many golf games and participated in tournaments at Muthaiga Golf Club, an elitist, former colonial hang-out, on the fringes of the city center, and at Nyeri Golf Club, close to his rural home. Those who were close to him talked of a calm, thoughtful person who liked to delegate rather than get involved in the nitty gritty of matters.

Even as leader of the Democratic Party of Kenya (DP) it was not Kibaki who was running the show, but his fiery Secretary General, John Keen, a half

Maasai and half British independence fighter who was known for his rubble-rousing demeanor, and his close friend Njenga Karume. Keen was a provocative, almost belligerent, politician who was among those behind the defiant policies of KADU during the early pre-independence days, while Njenga's influence among Kikuyu was unbeatable. When Kibaki was demoted from the number two position and made Minister for health, he (Kibaki) was too scared to complain and seemed oblivious to his humiliation.[800]

Kibaki was more of a technocrat than a dyed-in-the-wool activist who was "not willing to dirty his hands with a crude brand of politics."[801] His contemporaries like John Michuki, Tom Mboya and Kenneth Matiba, worked hard in the trenches to make a name for themselves in politics, not so Kibaki. He was most comfortable with matters of finance and economics. In 2000, for example, Kibaki made a brilliant contribution in Parliament during the debate on the supplementary appropriations bill and stingingly criticized the government on matters of corruption and how the State had failed to collect revenue from imports.

> There is a racket in this country where petrol is brought to Nairobi from Mombasa under the pretext that it is being exported to Uganda and Rwanda. However, such petrol never leaves this country, and the Ministry of finance never collects tax due to it, because there is deliberate sustained corruption. Kenyans, the police, and generally the government know about this racket, but no action is being taken against the culprits.[802] He was applauded.

Just as it was in the corridors of power, Kibaki was too diffident when it came to starting arguments with friends in bars. According to one media account: "If one got tipsy or tried to pick an argument with Kibaki, he would just say, *hivyo ndivyo ilivyo* (that is the way it is) and refuse to comment further."[803]

As president, Kibaki tickled Kenyans with his one-liners which were more comical than crass. "*Wewe ni mavi ya kuku* (you are chicken poop), "*Bure kabisa*," (useless) and "*Wacha weweee*," (you, cut it off), were some of the phrases that left Kenyans bursting in a hearty laughter. Ironically, he was a man of humor and used it both for personal enjoyment and for political expediency.

One thing that favored Kibaki was that he did not have negative baggage when he entered the realm of politics. He didn’t “owe his place to the ‘independence struggle’ or to close tribal links with Kenyatta; he was a Kikuyu, but from a different, Nyeri clan.”[804] During his early years as a MP for Donholm in Nairobi from 1963 to 1969 and as MP of Othaya from 1974, Kibaki’s presence in government went unnoticed. It was only after Moi appointed him Vice President in 1978 that his national presence was rekindled. His political profile shot up further after breaking away from Moi in 1991 to form the Democratic Party (DP). As the 1997 election campaigns wound down, the 66-year old Kibaki who was battling Moi for the second time, mesmerized listeners at a big rally in Nairobi. “Everything has an end, and Kenyans know that,” he roared to a thunderous response from an estimated crowd of 10,000. “Now is the time for Moi’s end.”[805] The attack was ferocious, but he could not beat Moi’s tricks, so he lost at the election.

Kibaki’s victory in the 2002 general elections was almost by default. He was not the most popular person in the group of oppositionists who came together under the umbrella of NARC. But he was the least controversial, his ethnicity notwithstanding. Comparatively, the DP which he led was one of the smaller parties in the coalition in terms of membership. Though DP had a national reach, its popularity was concentrated in the central region, with its support coming from GEMA functionaries like Njenga Karume. Opposition to Kibaki was based on tribalism. Many felt the Kikuyu already had their chance in Kenyatta’s government, and the Kalenjin in Moi’s regime. It was now time for others to rule.

But as boardroom fights ensued between Raila and other members of the LDP as to who should be the coalition flag-bearer, Kibaki became the beneficiary. Without informing his colleagues in advance, Raila stood up during a major rally in Nairobi and announced “Kibaki tosha” (Kibaki, it is). The door had finally opened for Kibaki for another stab at the presidency. On that day, 14 October 2002, the journey to State House began.

Uhuru Kenyatta who was the candidate of the Kenya African National Union (KANU) could not match the combined forces of the opposition NARC on the election day on 27 December. Hours before the official results were announced on the night of 30 December, Uhuru conceded defeat. Kenyans breathed a big sigh of relief knowing that four decades of KANU’s misrule had come to an end. Kenyans dreamed of a new beginning away from corruption, misadministration, and human injustices. They sang “*yote* *yawezekana bila Moi"* (everything is possible without Moi), because they believed in change. The children who were born when Moi took over from Kenyatta in 1978 were adults with their own children. They hadn't known anyone else but "*mtukufu"* (the exalted one) Moi.

Kibaki's inauguration at Uhuru Park on 30 December 2002 was not without tension and political undertones. His legs bandaged, Kibaki said he was taking over "a country badly ravaged by years of misrule and ineptitude"[806] and battered by rampant corruption, economic decline, and increased poverty, and unemployment. Raising his voice through the loudspeaker to ensure he reached the tens of thousands of people thronging Uhuru Park at the center of the city, Kibaki vowed to deal firmly with corruption which Moi had failed to clamp down. "Corruption," he said, amidst a thunderous applause, "will now cease to be a way of life in Kenya… I am calling upon all of you to come out and fight corruption, and agree to support the government in fighting corruption as our top priority…The era of 'anything goes' is gone forever."

As he talked about corruption, many wondered whether Kibaki, a man who had been Moi's deputy for 10 years and a founding member of KANU, a party which flouted human rights and encouraged graft, could break away from his past and move towards a serious reform agenda. Political observers doubted that Kibaki had the ability to provide substantial leadership in the reorganization of Kenya's politics.[807]

Soon after being sworn-in, Kibaki moved to create institutions to deal with the challenge. He established the Kenya Anti-Corruption Commission (KACC) and appointed John Githongo as PS in his office to deal with matters of ethics in the public sector. The US Ambassador to Kenya, Johnnie Carson, said if Kibaki launched a serious crackdown on corruption, Washington would unfreeze aid which had been suspended for years.

Within a few months, he got Parliament to enact the public officer ethics legislation to compel all public servants to declare their wealth. The legislation tightened protocols to discourage favoritism, nepotism and administrative malpractices in government. From all initial indications, Kenyans were convinced Kibaki was the man to steer the country away from rampant sleaze which had dominated the two previous administrations.

Kenyans were so upbeat about change of government and the new war on corruption that some citizens began taking the law into their own hands. In

Machakos town, 40 miles south of Nairobi, passengers in a *matatu* (minibus) ganged up and forced a corrupt policeman to return a bribe of KES.100 he had pocketed from the conductor of the minibus they were travelling in, and lectured the cop on moral and integrity matters. Elsewhere in the country, emboldened *wananchi* refused to part with money in exchange for services in government institutions.

One big mistake Kibaki made during the early months of his rule was to dishonor a Memorandum of Understanding (MOU) entered with the opposition Liberal Democratic Party (LDP) that would have given Raila Odinga the position of prime Minister in the NARC government. That caused a schism in the coalition and later led LDP to vacate the government.

Barely three months after taking over, he allowed MPs to increase their salaries and perks exponentially. In addition to a salary increase, the legislators were granted duty free privileges to buy vehicles and a generous fuel and maintenance allowance making them some of the highest paid public servants in the country.

Kibaki himself approved an increase on his own salary to US$.312,000 (KES.32.3 million) per year while almost half of the population lived below poverty line. That was not all. Kibaki "awarded" his Ministers and top officials brand new E240s Mercedes Benz to replace the "outdated" E220, placing eight of them in the office of the president. He ordered a S600L for himself and gave his main ally in the coalition, Raila Odinga, a customized S500 Mercedes Benz.[808] The term "*Wabenzi*" meaning those who drive the German classical car - referring to the rich in Tanzania during Nyerere's time - found its true meaning in Kenya.

Sacred cows

The high expectations Kenyans had in the fight against corruption was shaken in April 2004, when Parliament passed a law barring KACC from investigating offences committed before the body was established in May 2003. KACC was established to follow up on Kibaki's inaugural address that there would be no sacred cows in the fight against graft. KACC was given widespread powers of investigating corruption crimes, and laid out tough penalties of fines and jail time for anyone violating the various provisions of the law.

But the new dispensation restricting the work of the anti-corruption body meant no action would be taken against Moi for the myriad of human rights and economic crimes committed by his government and members of the political elite; and that perpetrators of the heinous Goldenberg scandal could only be pursued by the police, itself one of the most corrupt in the country.[809] In December 2003, Kibaki's anti-corruption czar had made it clear that Moi would not be a target in government moves against corruption, partly because of the peaceful way he handled the transition to Kibaki.

The government decision was widely criticized. "It is a mockery of the judicial system," said KACC's director Aaron Ringera, while Maina Kiai, Chairman of the Kenya National Commission on Human Rights (KNCHR) chirped in: "All these guys who looted must be celebrating now…This shows what a farce the whole war on corruption is."[810] The move appeared to confirm that Kibaki was not prepared to bow to public pressure and take punitive measures against his predecessor.

Ringera had a checkered career as an anti-corruption crusader. He was the second director of KACA after Harun Mwau who served from December 1997 to March 1999 when Ringera took over. A year later, the court ruled the body was unconstitutional and Ringera had to resign. In came the Kenya Anti-Corruption Commission (KACC) in 2003 and Ringera was appointed its director in August 2004. He served his five-year contract term without a hitch, but when it came up for renewal on 31 August 2009, the civil society and politicians ganged up to oppose it. Consequently, Parliament voted against it, and on 30 September 2009, Ringera bowed out, so did the other Commissioners, Fatuma Sichale (legal services), Dr. Smokin Wanjala (preventive services), and Dr. John Mutonyi (investigations and asset recovery).

KACC was born out of the Anti-Corruption and Economic Crimes Act (ACECA) and the Public Officers Ethics Act of 2003 which became fully operational on 2 May 2003. The Act also established the Kenya Anti-Corruption Advisory Board (KACAB), a body which recommends to Parliament persons to be appointed as director and assistant directors, and advises the commission on the exercise of its powers and performance of its functions.

By the time of their departure, Ringera and the other commissioners had little to show other than claiming that KACC had sent over 500 corruption cases to the Director of Public Prosecutions (DPP). Not a single Minister, MP or PS named in various scandals was prosecuted in those five years. The organization was a "toothless dog"[811] because whenever it sent suspects to court, cases were withdrawn, or the AG invoked the *nolle prosequi* provision. In addition, the organization was suffocated for lack of funds and staff and was never fully operationalized.[812]

Ringera was replaced by PLO Lumumba, a tough-talking law professor who joined on 23 July 2010 promising to "slay the dragon of corruption." Lumumba lasted for only a year during which time he made minimal progress in prosecuting what he called "high voltage files". The most he did was to take to court the Industrialization Minister, Henry Kosgey, on the case of abuse of office involving the importation of cars older than eight years. Lumumba is also credited for forcing Moses Wetangula to resign as Foreign Affairs Minister on 26 October 2010 after KACC found financial anomalies in the country's foreign missions. Also compelled to quit was Higher Education Minister William Ruto who had been taken to court in April 2011 accused of benefiting from an illegal sale of government land in Ngong Forest. The land was reportedly sold to the Kenya Pipeline Corporation for KES.272 million and Ruto was alleged to have received KES.96 million from that deal. The case was eventually dismissed on 11 April 2011 because of insufficient evidence. Also set free were two other prominent people, Joshua Kulei, a former Moi aide, and MP Sammy Mwaita, a former lands commissioner.

The West Mugirango MP, James Gesami, was also arraigned in court during Lumumba's time for allegedly obtaining KES.2.4 million shillings from his constituency's CDF fund using fraudulent means. The offence was alleged to have been committed between December 2009 and March 2010. On 1 September 2012, he was cleared of the charge and released.

But the most dramatic event during his term at KACC were allegations Lumumba made in August 2011 that the MP for Runyenjes, Cecily Mbarire, whose husband at the time was being investigated over illegal tenders at the Ministry of water, had tried to bribe him with KES.100,000. The legislator denied, alleging it was Lumumba who asked for the money to donate to charity. The public drama attracted the attention of parliamentarians – some of whom had been named by KACC in various questionable deals – who accused Lumumba of engaging in politics. That was the beginning of the end of Lumumba's short stint at KACC.

In August 2011, MPs rushed through Parliament the Ethics and Anti-Corruption Bill to create a body that would be in line with the constitution of Kenya, 2010. It removed provisions guaranteeing the Commissioners' job security and snatched away their powers to prosecute cases. That gave the government an opportunity to remove Dr. Lumumba and his four deputies, Dr. John Mutonyi (investigations and asset recovery); Pravin Bowry (legal services and asset recovery); Prof Jane Onsongo (education); and Wilson Shollei (finance and administration), from the anti-corruption organization.

The removal of the KACC board was interpreted as another attempt by Kibaki and allies to replace the action-oriented board with a lame duck entity to protect their interests. In came the Ethics and Anti-Corruption Commission (EACC) on 5 September 2011 with powers to conduct investigations, trace assets, and recover public or unexplained assets. A prominent Kenyan lawyer, Donald B. Kipkorir, said in August 2011 that by disbanding KACC, the MPs had killed the message and the messenger. "What the MPs have done is to give us an EACC that is a eunuch; a useless fattened slave in the Royal Court. In transforming KACC to EACC, the anti-corruption and integrity commission will be an appendage of MPs," adding "Our leaders have never wanted a real robust, anti-corruption and integrity body, but rather one that will be used to undermine enemies and clear sycophants."[813]

But when time came to nominate the director to head the new organization, a tussle erupted between the two principal partners in the grand coalition, President Kibaki and Prime Minister Raila Odinga, further underscoring the fragility of the power-sharing arrangement and the personal interests at play.

Raila favored lawyer from the wider Nyanza region while Kibaki wanted a lady from the GEMA community. The tug-of-war continued for weeks before a tasty compromise was reached early in December 2011, and Mumo Matemu's name was submitted to Parliament for approval. Matemu was formerly a commissioner at the Kenya Revenue Authority (KRA). That decision was controversial given the fact that both the Chief Justice, Willy Mutunga, and the Justice Minister, Mutula Kilonzo were from the Kamba tribe, meaning any corruption case would be investigated, determined and adjudicated through departments headed by people from one community. In a highly tribalized nation as Kenya, such an eventuality was considered inappropriate. Nevertheless, Matemu took over the helm at the EACC. Kibaki and Raila also settled on Jane Onsongo, a former Director at KACC, and Irene Keino a former member of the KACC advisory board, as members of the Commission.

The choice of Matemu was a victory for Kibaki. The Kamba and Kikuyu communities share common historical roots and are closely related in terms of culture and language. The general perception was that Matemu would be ‘user-friendly’ and ‘soft’ on corruption cases involving senior officials allied to Kibaki. At the time of the changes, active investigations were ongoing over the loss of KES.4.2 billion at the Ministry of education. At the center of the scandal was education Minister Sam Ongeri who denied responsibility.

Although Kibaki enacted numerous legislations and set up institutions to speed up the crusade against graft, not much was achieved in terms of catching what was commonly referred to as the “big fish.” Between 2003 and 2009, the AG’s office managed to get only 60 corruption convictions because of delays in investigations, prosecution and corruption in the Judiciary. There were 69 acquittals, 70 dismissals, and 225 cases pending in court, according to Prime Minister Raila Odinga. “It is a pathetic record by the AG’s office and the entire judicial system,” he said. “We cannot hope to contain corruption while our judicial system is so inadequate.” [814]

A code of conduct and ethics for public officers and the declaration of wealth – income, assets and liabilities – contained in the Public Officers Ethics Act (POEA) failed to work because it didn’t have effective guidelines for its implementation. The Act did not provide for public access to officials’ assets declarations; did not spell out clearly what assets, liabilities, and interests public officers must declare; and did not provide a framework for review or inspection of asset declaration forms.[815] For example, MPs filled the forms as required by law, but the Speaker who was the custodian of the declarations didn’t know what to do with them. He merely stored them in his official safe on the premise that the information was personal and confidential.

The POEA has been ineffective in deterring corruption and abuse of office and has largely been ignored by the government and institutions it was supposed to protect. Violations of POEA are so flagrant and common that the whole idea of subjecting public servants to some form of control has become a matter of ridicule. The law had mandated that all persons involved in corruption cases leave office to facilitate investigations. In many cases, officials have resisted and only quit after being forced out by the executive.

Due to the failure of effectively implementing POEA, cases of misappropriation of public funds increased and impunity was entrenched. “Big fish” implicated in corruption were not caught, and when they were, used constitutional applications to delay cases, sometimes for years. The delays, in turn, caused damage to evidence. Where witnesses were unavailable due to attrition, cases were terminated, and culprits left to go scot free, as was the case with the Goldenberg scandal suspects.

It was during Kibaki’s first term, 2003 to 2007 that ethnic composition of the civil service changed dramatically. When Moi came to power in 1978, he upended all the top positions held by the Kikuyu and appointed people from his Kalenjin community. With Kibaki, a Kikuyu, now at the helm, it was time to reverse the trend. One by one, the Kalenjin were replaced by the Kikuyu and not necessarily from the president’s home district of Nyeri. Kibaki’s first government was dominated by members from the GEMA communities. There were no Kikuyu leading military units when Kibaki came to power. Within three years, things had changed: out of six military heads, four were Kikuyu.[816]

In addition, out of 82 DCs in 2006, 47 were from GEMA, and the number of Kalenjin DCs had declined from 30.4% to 12%.[817] When time came to campaign for his second term in 2007, Kibaki found it necessary to explain why his first regime had tilted so much in favor of the Kikuyu. He had to reassure the people. “My next government will reflect the face of Kenya, appointed from every part of the country,” he told Kenyans.

But that did not happen. Tribalism became a major issue in the 2007 elections leading to post-election violence pitying largely the Kikuyu against Raila’s Kalenjin and Luo followers. The center piece of the chaos was, however, in the Rift Valley where Kalenjin gangs roamed the countryside attacking non-Kalenjin residents and ordering them to leave “their” region. And after Kibaki and Raila agreed to form a grand coalition government, following Kofi Annan’s negotiated settlement, a scramble for top positions became commonplace. That was demonstrated in 2011 as the two feuded over the distribution of three key positions of AG, Controller of Budget and Auditor General. Kibaki insisted on a Kikuyu AG. Raila agreed, but only if his compatriots held the other two positions. Such was the mode of sharing positions in the Grand Coalition government. By the end of 2017, the AG remained a Kikuyu, and positions of both the Controller of Budget and Auditor General were held by the Luo. To note also is that since independence, Kenya has had six AGs; four of them have been Kikuyu.[818]

Kenyans only realized the extent of ethnicity in the Grand Coalition government when the NCIC in an audit revealed that of 302 employees in the Prime Minister's office, 21.85% were Luo and 21.19% Kikuyu, leaving the 40 other tribes to share the remaining 56.96%. Kalenjin and Kikuyu – the two tribes that occupied the presidency for four decades – occupied 39% of the jobs. Overall, four tribes, Kikuyu, Luo, Kalenjin, Luhya, and Kamba took 70% of all jobs in the civil service.[819] Tribalism also infiltrated institutions of higher learning. The NCIC found tribalism to be rife in universities, and that staff especially vice chancellors and college principals, were hired based on ethnicity, with heads even sourcing personnel from their areas of origin.

Initially, when he took over the government, Kibaki did not sack all the top Kalenjin officials. He retained the Head of the Civil Service, Dr. Sally Kosgey, a Kalenjin technocrat and a one-time Moi confidante. The delay in appointing his own people especially in the security sector, however, led to grumblings among the "Mount Kenya Mafia" who feared possible sabotage.

> Their fear was that holdover security personnel had networks of informers still in place and, should members of the previous regime wish to return to power or protect themselves, they might undermine the credibility of the new government by creating uncertainty and chaos, which would keep donors and investors at bay and the economy weak.[820]

When Major General Hussein Ali, of Somali origin, retired as Police Commissioner in 2009, Kibaki brought in a Kikuyu, Mathew Iteere. The diplomatic service was not spared either. In a brazen display of nepotism that October, Kibaki appointed four siblings of Cabinet Ministers and a twin brother of an Assistant Minister as envoys. He also employed his own daughter as an officer in the foreign office.

Things got so bad during Kibaki's tenure in terms of tribal appointments that in October 2009, Prime Minister Raila Odinga, when addressing a meeting to mark the public service week, appealed to heads of government departments to recruit staff based on merit, not ethnic considerations. "Nepotism and tribalism are the new monsters we have to deal with in public service," he said. The Public Service Minister, Dalmas Otieno added: "We do not want a situation where all officers from top to bottom come from one tribe,"[821]

Still, Kibaki felt more comfortable with his Kikuyu compatriots running the government. Some of the most important ministries in his first Cabinet appointments in January 2008, including Finance (Amos Kimunya), Justice and Constitutional affairs (Martha Karua), Internal Security (George Saitoti), and Energy (Kiraitu Murungi) were headed by the Kikuyu. Another powerful Kikuyu politician, John Michuki, held the Environment and Mineral Resources docket. In the Grand Coalition government installed in April that year, the four retained their positions.

Uhuru Kenyatta doubled up as deputy Prime Minister and Finance Minister. His PS, Joseph Kinyua, was a Kikuyu. The Defense Minister was Njenga Karume, Kibaki's close friend, assisted by PS Zachary Mwaura, both Kikuyu. All the major branches of government including the Central Bank of Kenya (CBK) and the Capital Markets Authority, (CMA) and the Kenya Audit Office (KAO) were in the hands of the GEMA community. And when he named members of the powerful National Economic and Social Council (NESC) in September 2008, five out of 14 members were Kikuyu, namely, Uhuru Kenyatta, John Michuki, Kiraitu Murungi, Martha Karua and Beth Mugo, so were four out of the twelve local experts, Michael Chege, Jimnah Mbaru, Wilfred Murungi and Raphael Mwai.

By 2012, the heads of CID, NSIS and military were all Kikuyu while parastatal and department chiefs were also largely held by the Kikuyu. Kalenjin officers who had been placed in the military by Moi were sent home and the lucky ones were reappointed to head government institutions. The reaction to some of the appointments especially that of Major General Michael Gichangi as Director of the NSIS in the place of Brig. Wilson Boinett, a Kalenjin, was critical. Observers said during his tenure, Boinett transformed the NSIS into one of the best intelligence services in Africa, and should not have been replaced. In a leaked report by whistleblower WikiLeaks, the American Ambassador in Nairobi, William Bellamy, was of the view that the process used to appoint Gichangi, the founding director of the National Counter-Terrorism Center, "reeks of tribal cronyism," noting that the incoming Director, "has an increasing lock on major power positions in the Kibaki government…and is close to both Cabinet Secretary Muthaura and Security Minister Christopher Murungaru,”[822] two people who were calling shots in Kibaki government.

Chapter 21

Anglo Leasing and Goldenberg ripples: “A feeding frenzy”

KIBAKI’S PLATE WAS full of inherited corruption scandals when he took over the government from Moi. The biggest of them all was the Anglo Leasing fiasco in which the government lost billions of shillings through procurement scams involving a passport equipment system from France, and forensic science laboratories for the police from Britain.

The Anglo Leasing, named after the shell company that perpetrated the scandal, was busted in 2004 by John Githongo, then PS, Ethics and Governance. It involved bogus companies which were given huge contracts by the government and paid enormous amounts of money through European banks for equipment not delivered and work not done. Transparency International (TI) where Githongo worked as Kenya director before joining the government as the anti-corruption czar, described the scandal as “an albatross around the Kibaki government’s neck.”[823] As the scandal unfolded, the Kenyan officials, worried about being caught, instructed their partners abroad to wire back the money, but the paper trail had already left fingerprints.

Anglo Leasing involved 18 contracts worth over KES.70 billion for a variety of purchases from local and foreign entities. Twelve of the contracts were started and processed during Moi’s government. The other six were handled during Kibaki’s regime. The scandal stretched over a period of seven years from 1997, when the first project was signed for the KES.1.94 billion security and telecommunications systems for the Kenya Prisons Service, to early 2004 when the last one, a Flagstaff NCTC project for the National Security Intelligence Service (NSIS) worth US$.41.8 million (KES.43.3 billion) was contracted. Many of the projects were for the Office of the

President and the Vice President, but the Ministry of Transport and the Postal Corporation of Kenya were also involved in the procurement scam.

The contracts included: A US$.90 million (KES.9.3 billion) contract paid to Silverson Establishment for provision of security vehicles signed on 16 August 2001; US$. 30 million (KES.3.1 billion) to Apex Finance for police security signed on 9 February 2002; US$.25 million (KES.2.5 billion) to LBA Systems for Security-MET signed on 7 June 2002; US$.29.7 million (KES.3.1 billion) to LBA Systems for prison security signed on 19 November 2002; €26.6 million (KES.3.2 billion) to Naviga Capital for Oceanographic vessel signed on 15 July 2003; and US$.24.56 million (KES.2.5 billion) to Ciaria Systems signed on 20 January 2004, among others.

In committing to these companies, the government did not do due diligence to establish their credibility and who their owners were. "It is impossible to imagine the government doing business with a non-registered company,"[824] MP James Omingo Magara said in 2004. The Anglo Leasing and Finance Company was neither registered in Kenya or UK nor in Switzerland. It was a phantom firm. Moreover, the firms were picked through single-sourcing and were not subjected to competition. That smelt of a conspiracy to defraud the government. "There can be no worse form of corruption than single-sourcing," Nakuru MP, Koigi wa Wamwere, told Parliament in 2004. "I can only believe that this was done deliberately to facilitate corruption."[825]

The acquisition of passport equipment, for example, was subjected to tendering twice and the process was marred by irregularities. First, as the office of the Vice President and Home Affairs engaged in discussions with Anglo Leasing in 2002/2003 for the supply of new generation passports, the Principal Immigration Officer (PIO) was kept in the dark and his numerous written requests to see what was involved in the arrangement were not honored. The authority to incur expenditure (AIE) which should have been signed by the PIO was instead signed by the accounting officer in the Ministry. That was the first sign something awfully wrong was at play.

Then, the three companies asked to tender failed to qualify because allegedly "they never met technical specifications." A second attempt on tendering for the project was made on 6 June 2003 but the government changed its mind and said it was enhancing the project, and therefore, required a more qualified and competent contractor to do the job. The enhancement was proposed by Anglo Leasing, raising the cost of the project from KES.600 million to KES.2.7 billion without budgetary provision having been provided. Then, the office of the Vice President and Ministry of Home Affairs said it had identified a donor to finance the project and declared the project a "security item" qualifying it for single-sourcing. "After bids for the tender failed through selective tendering, the next thing done was single-sourcing," said MP Omingo Magara.[826]

In April 2004, according to the TJRC report, the Parliamentary Accounts Committee (PAC) requested the Auditor General to conduct an audit on the Anglo Leasing transactions. When PAC presented its report to Parliament, it was "subjected to heavy mutilations." The name of Finance Minister David Mwiraria who the report named as being responsible for involving the government in the fraudulent scheme was expunged following a successful amendment by a colleague, Water Minister Martha Karua. The motion was, nevertheless, rejected by the House, showing a lack of political will in fighting graft.

The Committee was of the view that Anglo Leasing would not have been possible "without the most elaborate collusion on the part of all concerned" [827] – the business people who supplied goods, civil servants who negotiated the contracts and political leaders in charge of Ministries.

On 22 November 2005, John Githongo, who had already left his job as PS in charge of governance and ethics earlier in the year, sent president Kibaki a 19-page summary of "the most egregious cases of corruption" he had witnessed during his two-year tenure in the office. In a letter attached to the report, Githongo reminded Kibaki of the several briefs he gave him, adding that he found evidence of culpability on the part of the senior-most officials in the administration.

According to the PAC report of 2006, Vice President and Minister for Home Affairs, Moody Awori, allegedly approved the contract on 8 September 2003 and "even requested that interest payable on the contract be reduced from 5% to 4%. And on 2 October 2003, Finance Minister Mwiraria approved the agreement and instructed his PS, Joseph Magari, to sign it. The final nod came from the AG in December 2003, despite his earlier reservations over several clauses that were disadvantageous to the Kenya government. Officials from the treasury, Home Affairs Ministry and the Director of Government Information and Technology Services (GITS) held several meetings to plan the way forward. It was after that that the AG recommended a due diligence test on the company, but that request was not granted by the Ministry which hurriedly began implementing the project.

The Ministry and the Treasury signed the supplies services and finance credit agreement No. GOK/HA0301 with Anglo Leasing in 2003 on behalf of the government. The agreement provided that in case the government defaulted on the terms of the agreement, the government would repay all the KES.2.7 billion borrowed from the firm. According to the PAC report, even the method used by the Ministry's PS to execute the agreement was bizarre.

> The PS summoned top Immigration Department officials from Nyayo House (the Immigration Department headquarters) to Jogoo House (the Ministry head office), put them in a board room, gave them tea, came with a voucher and asked them to sign. Then he told them to go out.

The PIC report claimed the officers did not know what they were signing. "This was a case of a senior officer harassing his juniors. In fact, forcing them to sign the agreement was criminal and goes against the Public Officer Ethics Act which provides that senior officers are not supposed to molest, harass, or intimidate juniors."[828] The first payment of KES.91 million was made towards the end of 2003.

By 30 June 2005, more than KES.20 billion had been remitted from the Kenyan Treasury to the shadowy companies. More shocking was the finding in the report of the PAC of 2006 chaired by the leader of the official opposition, Uhuru Kenyatta, which said that "the principals behind Anglo Leasing projects were probably a front for persons within President Kibaki's administration." According to the Auditor General's report published in April 2006 all the 18 Anglo Leasing contracts were either "unlawful, irregular or have not performed." Some were half completed, and others were not delivered at all, an illustration of the depth of corruption that surrounded Anglo Leasing. Yet, the government continued to pay for them.

On 19 May 2009, Attorney General Amos Wako, trying to dampen a public outcry over the payments, announced the government had cancelled and stopped payments towards five contracts after discovering they were fraudulent. The five were the forensic science laboratories project; the immigration security documentation and control systems; the export lease purchase of security vehicles for police project; the Kenya E-Cops security and law order systems; and the modernization of security equipment and accessories for Kenya police project.

There were a lot of twists and turns in the Anglo Leasing scandal. In June 2011, the parliamentary Public Accounts Committee (PAC) was stunned when it received information that KES.147 million had been paid to Kenyan, British and Swiss lawyers to help recover the lost Anglo Leasing millions. Several government officials were questioned by the PAC to explain why the money was paid and even whether the lawyers had received the money at all. “There was no acknowledgment by any of the law firms after receipt of payment,” admitted the Solicitor General, Wanjiku Muchemi. No proof could also be found that the payment had yielded results. The money was allegedly distributed as follows: KES.134.7 million to the UK law firm, Freshfields Bruckhaus Deringer LLP; KES.2.8 million to Edwin Coe also in the UK; and the rest distributed between a Swiss firm, Lalive, and a Kenyan law firm.

In another twist, representatives of Anglo Leasing and Apex Finance International Limited went to court in Nakuru in May 2011 to stop KACC from freezing the assets associated with the Anglo Leasing Finance International Limited, a sister company of Anglo Leasing, in Switzerland. Through their lawyers, the two companies said investigations would violate their constitutional rights. In May 2012, the government had announced it was tracking KES.3.8 billion said to have been irregularly paid to Kenyan businessman Deepak Kamani in one project in which the government lost KES.50 billion. According to the Hansard, the Finance Secretary, Joseph Oyula, identified Kamani as the principal agent of Anglo Leasing Finance Company,[829] even though the government insisted the responsible person was unknown.

In July 2012, the Kenya government appealed to authorities in Switzerland, UK, Jersey, and Japan to help in recovering money stashed in foreign bank accounts some of which reportedly came from Anglo Leasing.

Eventually, several Kenyans were implicated including Deepak Kamani, Rashmi Kamani, and Chamanlal Kamani; a former Vice President; several Ministers and senior government officials; wealthy businessman Anura Pereira, an American consultant Merly Kettering, as well as companies in England, Switzerland, and France.

In 2013, Sylvester Mwaliko, former PS in Home Affairs, became the first high-ranking official to be convicted on Anglo Leasing-related cases. He was found guilty of abuse of office and fined KES.3 million or three years in prison on 5 September 2012. The court ruled it was Mwaliko who signed the tender documents in respect of the new generation passports awarded to Anglo Leasing without approval of the treasury.

Below is the list of companies and amounts of contracts committed by the Kenya Government on the Anglo Leasing Scandal. Courtesy: John Githongo's letter and report to President Mwai Kibaki, dated 22 November 2005.

S.NO.	**Payee**	**Purpose**	**Amount in US$ (millions)**	**Signatories**	**Date signed**
1	Anglo Leasing	Forensic Lab CID	US$.54.56	PS-Treasury PS-Internal Security OP	16-08-01
2	Silverson Establishment	Security vehicles	US$.90	PS-Treasury PS-Internal Security OP	16-08-01
3	Apex Finance (addendum 2)	Police security	US$.30	PS-Treasury PS-Internal Security OP	9/2/2002
4	LBA Systems	Security-met	US$.35	PS-Treasury	7/6/2002
5	Apex Finance (addendum 3)	Police security	US$.31.8	PS-Treasury PS-Internal Security OP	14-06-02
6	Universal Satspace	Satellite services	US$.28.11	PS-Treasury; PS-Transport	11/7/2002
7	First Merchantile	Police security	US$.11.8	PS-Treasury; PS-Transport	11/7/2002
8	9. Apex Finance Corp	Police security	US$.12.8	PS-Treasury PS-Internal Security OP	12/7/2002
9	10. LBA Systems	Prisons security	US$.29.7	PS-Treasury	19-11-02
10	Nedemar	security	US$.36.9	PS-Treasury; PS-Transport	19-11-02
11	Midland bank	Police security	US$.49.65	PS-Treasury	29-05-03
12	Navigia Capital	Oceanographic vessel	€26.6	PS-Treasury	15-07-03

13	Empressa	Oceanographic vessel	€15	PS-Treasury	15-07-03
14	Euromarine	Oceanographic vessel	€10.4	PS-Treasury	15-07-03
15	Infotalent	Police security	€59.7	PS-Treasury PS-Internal Security OP	19-11-03
16	Apex Finance Corp	Police security	€40	PS-Treasury PS-Internal Security OP	17-12-03
17	Ciara Systems Inc	Design, maintain satellite for NSIS	US$.44.56	PS-Treasury; Director-NSIS	20-01-04

Goldenberg

Kibaki inherited from President Moi the biggest scandal ever, the Goldenberg International Limited (GIL) scandal, and Kenyans were demanding action – which Moi could not provide – against those behind the multi-billion-shilling theft of public money. After vowing to act against the corrupt, Kibaki did not waste time after his inauguration, and appointed the Goldenberg Commission of Inquiry on 24 February 2003 to investigate fully the affair. “With this commission,” said a statement from the Office of the President, “finally the Kenyan people will be able to close one of the most ignominious chapters in the nation’s economic history.”

At the end of July, Kibaki expanded the mandate of the commission to include seizure of all assets acquired through Goldenberg money. The establishment of the Commission ended “a circus in the courts that had become an all too familiar result of any attempt to prosecute the principal suspects in the Goldenberg affair.”[830]

Several top government officials including Education Minister George Saitoti had already been mentioned as having had a role in the scam. As the Commission under the Chairmanship of Judge S. E. O. Bosire received testimonies from witnesses, the names of former President Moi, his relatives and some former top officials came up, with a bombshell from the Treasury PS Joseph Magari, that it was Moi who ordered him to pay KES.34.5 million to GIL in violation of the law.

The Goldenberg scandal gobbled KES.5.8 billion of taxpayers’ money or one-fifth of the country’s GDP. The scam was so big that Terrence Ryan, an economics professor who served in the Kenya Treasury in the 1980s and 1990s, said the scam – masterminded by a Kenyan entrepreneur Kamlesh Pattni – adversely affected the country's balance of payments and terms of trade, and estimated it would take three generations for the country to fully recover from the effects of the mega scam.[831] Lamented the *East African Standard* on 25 July 2003: "Pattni appears to have hit Kenya below the belt at a time when the country was at its weakest." Starting at the peak of Moi's rule in 1991 and masterminded by a young Kenyan entrepreneur, Kamlesh Pattni, the scandal spilled over into Kibaki's tenure.

The Bosire Commission described Goldenberg as "a series of business deals or alleged business deals revolving round various economic schemes including export compensation, pre-shipment finance, retention accounts, forex certificates, contracts, check kiting and outright theft. "The transactions were either illegal or irregular and were regarded as fraudulent," the commission said.

But late in October 2003, there was drama when the Commission's Vice Chairman, High Court Justice Daniel Aganyanya, was suspended on allegations of corruption and misconduct precipitating the appointment of a tribunal to investigate him and the halting of hearings.[832] The integrity of the Commission's Chairman was also questioned over accusations he was "protecting certain people from being adversely mentioned."[833] The hearings resumed on 30 October 2003 and attracted a lot of interest from the citizenry. Moi was not called to testify despite his name being mentioned by both PS Magari and PS Dr. Wilfred Koinange.

The investigations took two years, received testimonies from 102 witnesses in 295 days, and spent US$.20 million (KES.2 billion). In October 2005, it presented its report to President Kibaki and named 355 individuals and companies that allegedly benefitted from Goldenberg money. Among them were Moi's family members, his close political confidantes and business associates.[834] It also concluded that further investigations be undertaken to determine the role played by, among others, former President Moi, his former top aide Joshua Kulei, and PS Joseph Magari. It also named those it considered "responsible for acts and omission" and asked the AG to decide whether he wanted to prefer criminal charges against them, as follows:

1. Kamlesh Mansukhlal Pattni, Businessman

2. James Kanyotu, Director of Intelligence
3. George Saitoti, Minister for Finance
4. Charles Mbindyo, PS Treasury
5. Dr. Wilfred Karuga Koinange – PS Treasury (1991-1993)
6. Collins Owayo – Commissioner of Geology and Mines
7. Arthur Ndegwa – Senior Mining Engineer
8. Eric Kotut, Governor, Central Bank of Kenya (CBK)
9. Francis Chelelgo Cheruiyot – Commissioner of Customs and Excise
10. Elphaz Riungu – Deputy Governor CBKTom Kilalya Werunga – CBK dealer
11. Michael Wanjihia Onesmus – CBK Assistant Chief Dealer
12. Job K. Kilach – CBK Manager

According to the Commission, starting April 1993, a total of KES.5.8 billion was paid to GIL based on three letters signed by Dr. Koinange dated 19 April, 28 June and 8 July 1993. On 19 April 1993, the Kenya Commercial Bank (KCB) received KES.1.8 billion from the Treasury as compensation for the export scheme which it transferred on the same day to four institutions where GIL had accounts, as follows: National Bank of Kenya, KES.430 million; Post Bank, KES.500 million; Transnational Bank, KES.400 million; and Delphis Bank, KES.470 million.

A further KES.2.8 billion was paid on 1 July 1993, and was forwarded to Delphis Bank, KES.1.4 billion; and, Exchange Bank, KES.1.4 billion. The two payments were followed by another one on 7 July 1993 for KES.1.1 billion which was promptly transferred to Delphis Bank, KES.600 million; and to Exchange Bank, KES.561 million. All those monies were not recorded in the books of KCB.

The commission surmised that much more of taxpayers' money could have been lost through export compensation, undelivered contracts and interests, among other charges, including money transferred abroad and never returned; noting all that was done with the complicity of Trade bank which was GIL's sister company through various offshore bank accounts in pseudonyms such as Ratan, Orlando, and Solitaire.

Such accounts known in banking circles as "nostro accounts" – accounts a bank holds in a foreign currency in another bank - were opened at the Citibank Switzerland, Citibank London, Euro paische Iranische Hendels bank AG in Hamburg, and City Bank New York, among others. The commission was told GIL would transfer the money throughout local commercial banks into the “nostro accounts” of correspondent banks overseas. In Kenya, GIL had accounts with ABN, National Bank of Kenya, Delphis Bank, Post Bank, First American Bank, and Trade Bank, among others.

There were instances when large sums of money in foreign currency were deposited in cash directly into the offshore accounts. It is estimated that KES.6 billion was spent on purchasing foreign currency, according to the testimony of Melville Smith a forensic accountant. The Exchange Bank with a capital of KES.40 million was owned by Kamlesh Pattni, James Kanyotu, Daksha Rana, Bhailal Patel, and Rohit Damji.

Clients used an intricate method of depositing money in those accounts. Some bought cash or forex certificates in foreign currency from the public and sold them to GIL for Kenyan shillings or checks-for-cash withdrawals from the same bank. Others would bank foreign currency directly into any of the offshore accounts. The commission was told GIL had a network of people and banks in Kenya through which they obtained their foreign currency. The entities included individuals and companies.

In the meantime, Pattni admitted he had given money to MPs and other politicians as donations for various projects. The news astonished the Commission. “While it is true that without further evidence the so-called donations may not constitute a bribe, they portray a dangerous facet in parliamentary proceedings which such gifts and donations could be used to influence Members of Parliament in parliamentary proceedings.”[835] Pattni also alleged that he had an agreement with the former President Moi to finance KANU in the 1992 general elections. A conduit system was then set up whereby a senior official would write chits at State House addressed to Pattni, who would in turn, pay money to persons stated on the chits.[836]

For sometimes, Pattni appeared almost above the law. He used his elaborate influence in government to get members of the crack General Service Unit (GSU) to guard his residence, and often influenced the arrest and sometimes dismissal of some government officials, the commission was told. As such, it became impossible to arrest him, even with all his infractions, given his business relationship with Kanyotu, the senior-most official in the intelligence branch. It was only after the GSU were withdrawn from his residence through the influence of a senior Central Bank of Kenya official, that the police managed to arrest him.

Top officials charged

Police investigations into the scandal began in July 1993 when the matter was detected by the Auditor General. It was realized then that the scandal was wider, larger, and deeper than initially thought. A letter from the AG directed the Commissioner of Police to intensify the investigations of the matter to find out: whether gold was exported, and if so, how much? Does it tally with the declared quantity? How much foreign exchange was received? And does that tally with the declared amounts, the basis of which the compensation was calculated, paid or claimed?

After gathering enough information, the police arrested Kamlesh Pattni, Eliphaz Riungu, Lazarus Wairagu, Job Kilach and Michael Wanjihia, all former CBK officials, on 30 May 1994. The following day, they appeared in court charged under criminal case no. 4053 of 1994 on 11 counts of theft in case of Pattni, and theft by servant in case of the others. There was a total of nine criminal cases related to Goldenberg. Two cases, one No. 392/99 against Pattni and another No. 1902/95 against Pattni and former PS Treasury, Charles Mbindyo were withdrawn without any reason. Out of the remaining, case no. 1474 of 1997 against Pattni, Koinange, Riungu, Wanjihia and Goldenberg International Ltd, proceeded but was not completed.

Pattni also faced criminal case no. 3314 of 1994 involving two counts of stealing with alternative counts of obtaining KES.2.6 billion by false pretenses. Pattni and Koinange were also charged under criminal case no. 46 of 1995 for allegedly stealing KES.5.8 billion. Two other criminal cases were filed by the Law Society of Kenya (LSK) and Raila Odinga by way of private prosecution against Pattni, Kotut, Mbindyo, Owayo, Koinange, and Cheruiyot, but were dismissed by the court. The whole case load was very complicated with the defense using all means to prolong the hearings. The Bosire report was critical of those prosecutions saying they had proceeded in “a most haphazard and lethargic fashion” in a “pointless merry-go-round resulting in serious delays. It was not until 1998 that any of the cases commenced.

Prof Saitoti, Kotut, Wanjihia, Wanjohi, Kilach, Mbindyo and Bernard Kalove, who were charged together with Pattni under Criminal Case No.

9438 of 1998, were cleared of wrongdoing at different times between 1994 and 1999. After 20 years of back and forth, Kamlesh Pattni and a former manager of Kenya Commercial Bank (KCB), Elijah arap Bii – the only ones left in the case – were cleared on 19 April 2013 by High Court Judge Joseph Mutava of all charges relating to the scandal and set free.

The Judge ruled that the long delay, lost documents and unavailability of witnesses due to death, and fading memories of the surviving ones could not result in a fair trial. Moreover, he said, there was the reality of settlement agreements being reached with the complainants. “This effectively ends any current or future criminal proceedings against Mr. Pattni and Mr. Bii arising from the Goldenberg affair or the Bosire report,” Judge Mutava asserted. By the time of the ruling, the principal suspects, Kanyotu, Koinange, and Riungu, had died of various causes.

Assets from Goldenberg

Smack in the center of downtown Nairobi, next to the headquarters of the National Intelligence Service (NIS) and overlooking the lush greens of the Central Park and Uhuru Park is a 12-storey structure with a huge sign at the top “Laico Regency Hotel.” With 21 suites and 188 double rooms, choice restaurants, meeting rooms, and a spa, the hotel is everything luxurious.

Built in 1994 by Kamlesh Pattni from funds believed to emanate from Goldenberg International, the 5-star hotel, originally called the Grand Regency Hotel, was confiscated by the CBK in 2008 to pay off KES.2.4 billion he owed the government. In return, the CBK abandoned all claims against Pattni and the company that built the facility, Uhuru Highway Development Limited. In addition, he was granted amnesty for a series of corruption charges facing his company, Goldenberg International.

After taking over the hotel, the government through the CBK, sold it in June 2008 to the Libya Arab African Investment Company, (LAAICO), a group of Libyan investors associated with the late strongman Muammar Gaddafi for US$.45 million (KES.4.6 billion) and renamed it Laico Regency Hotel. Critics claimed the hotel was worth US$.115 million (KES.11.9 billion) and therefore grossly undervalued, meaning the taxpayers could have lost millions of shillings in the deal.

But the CBK governor, Njuguna Ndung’u, said three valuers – Value Zone, Lloyd Masika and Ark Consultants, had assessed it and agreed on the US$.45 million (KES.4.6 billion) price-tag. An official of the Libyan company, Alhaj Bashir Saleh, defended the valuation saying the project was “free of any ulterior motives.”[837] Finance Minister Amos Kimunya agreed saying the price was fair and told Parliament his hands were clean. He said he was open to an independent inquiry into the sale of the hotel. However, Mwalimu Mati of Mars, a corruption watchdog, said the Grand Regency scandal was the tip of the iceberg and a symbol of Kenya’s corruption-era politics.

In July 2008, demonstrators joined by MPs poured into the streets to demand Kimunya’s resignation claiming he had negotiated the sale in disregard to procurement regulations; that the sale was not subjected to open bidding, and the hotel was therefore illegally disposed of. Police used tear gas to disperse the protesters outside Parliament buildings shouting, “Kimunya must go.” A Parliamentary Committee passed a no-confidence vote in Kimunya. Prime Minister Raila Odinga declared: “Nobody is indispensable on matters of corruption. Not even President Kibaki or myself.” Despite vowing he “would rather die than resign,” the Finance Minister finally bowed to pressure and submitted his resignation later that month.

Kimunya’s fall was a big blow to Kibaki who was caught between saving him and enforcing without favor, his commitment to wipe out corruption. Kimunya was not only the President’s close political ally and golfing buddy but one many thought could be heir to the presidency in future.

Kibaki chose to appoint a three-man Commission of Inquiry led by former Chief Justice Abdul Majid Cockar, composed of Kathurima M’inoti, Chairman of the Law Reform Commission and Charles Kirui, a chartered accountant, to interrogate those involved in the transaction, gather information from the public on what they knew of the sale, and get opinions from experts on such sales.

On 24 November 2008, President Kibaki received the Commission’s report which, while agreeing the property was undervalued, it exonerated Kimunya from any wrong doing. It found the sale was done “secretly and hastily” and rejected the submissions of the Central Bank Governor that the sale was a government initiative, saying the State had no basis to get involved in the transaction given the hotel was private property. It therefore blamed CBK for flouting procurement procedures by irregularly selling the hotel.

Kimunya was a fourth member of the original Kibaki inner circle to leave government in a cloud of misdeeds. The others were Finance Minister

David Mwiraria, Constitutional Affairs and Justice Minister Kiraitu Murungi, and Internal Security Minister Chris Murungaru.

Immigration woes amid corruption

On 22 July 2013, after Jane Waikenda became Director of Immigration, an immigration officer was arrested by EACC after allegedly receiving a bribe of KES.20,000 from a passport applicant. The sting operation was part of an integrity test launched by Waikenda. The officer was charged in court. In September, Waikenda suspended temporarily the processing of work and residence permits. Only non-renewable special passes of up to 90 days were issued.

However, the move was not well received by the private sector who complained of increased bureaucratic setbacks. Waikenda's action also sparked further corrupt practices as only those prepared to bribe got the special passes. In January 2014, KEPSA under its Chairman, Vimal Shah, met with Waikenda to complain about delays in the issuance of permits. The suspension of work and residency permits created a huge backlog of applications which KEPSA said was undermining the private sector.

Ironically, Waikenda was herself forced to step aside as the EACC closed in over allegations that she had irregularly issued 300 work permits to foreigners. When she was arrested by the anti-graft authority in January 2014, she collapsed and had to be hospitalized. The following year, her name appeared on the 'List of Shame' of 175 officers allegedly linked to corrupt practices. While still on suspension, Waikenda was quietly posted to the Kenya embassy in South Africa as Deputy High Commissioner. *She was not prosecuted.*

In came Maj Gen Gordon Kihalangwa, a retired army officer in August 2014. He too moved quickly to halt the work permit review committee which usually met weekly to approve or reject work permits. No reasons were given but corruption issues were suspected.

Staff at remote immigration border posts were found to be the most corrupt due to lack of oversight and their remote locations. Often large groups of Somalis and Ethiopian migrants have been found hidden in cramped houses and vehicles after bribing their way into the country through the porous frontier.

In an undercover investigation at the border posts, EACC found immigration officials were extorting money from travelers for services meant to be free, and colluding with foreigners to enter and leave Kenya without required documents. For example, visitors from Tanzania were charged KES.200 to have their documents stamped and had to part with KES.5,000 for a yellow fever vaccination certificate while it costs KES.3,000 at the airports. Those without proper documents were also allowed in after paying bribes to the border immigration officers.

The report of the investigation, carried out between March and May 2015, also expressed concern over what it called idlers and brokers who were acting as money changers and clearing agents on behalf of the immigration officers at the border points. All the major entry stations including Jomo Kenyatta International Airport (JKIA), Moi, Eldoret, and Wilson airports, Ukunda airstrip, and Namanga, Lunga Lunga and Malaba posts, were found to be afflicted by corrupt activities.

Corruption along Kenya's borders is also considered a threat to national security. A report of a joint Parliamentary Committee on Administration and National Security, and Defense and Foreign Relations, inquiring into the Westgate Mall terror attack on 21 September 2013, singled out the Immigration Department among others for their "systemic failure" attributed to corruption at the border control points, adding:

> Corruption has greatly led to the vulnerability of the country in many cases, including where immigration officials are compromised, thus permitting 'aliens' who could [be] terrorists to enter the country and acquire identification. This (affords) terrorists ease of movement… They are therefore able to plan and execute attacks without fear of discovery.[838]

Sixty-seven people were killed and 200 injured in the Westgate Mall attack, reportedly carried out by the terror group Al-Shabaab. Githongo believes it is impossible to separate insecurity and the country's history of corruption. "There is a link between corruption and terrorism," he says, "and if Kenya wants to confront the latter it must stem the former too."[839]

Chapter 22

Land grabbing I

ONE OF PRESIDENT Kibaki's boldest decisions was to form the Commission of Inquiry into Illegal and Irregular Allocation of Public Land popularly known as the Ndung'u Commission immediately after taking office in 2003. The Commission was mandated to inquire into the extra-legal allocation of public lands to individuals and corporate entities and to find ways of restoring those lands to the original owners. By appointing the Commission, Kibaki must have known the political risk he was taking and the embarrassment he was likely to cause to some of the most powerful and influential individuals in the country, among them Kenyatta, Moi and their families. He was also putting his own self on the line too since he was one of the major beneficiaries of land grabbing.

The report "indicted virtually every senior KANU leader, including Moi himself, his family, politicians, civil servants and military officers for profiting from illegal land transactions, housing allocations and forest excisions, and demanded that most of these awards be revoked."[840] Land grabbing is so commonplace in Kenya that a Kenyan painter, Lonaa – who documents everyday street life of the poor, placed a notation at the center of one of his paintings reading "Land reserved for grabbers".[841] The *Business Daily* reported in December 2007 that Kenyans had lost more than KES.53 billion to land grabbers in a period of the previous ten years.[842]

One of the prominent families named in the Ndung'u Report were the Odingas who were linked to the Kisumu molasses plant said to be located on an illegally acquired piece of land. The 240-acre land was government property before Moi issued it to Specter International Limited, owned by the Odinga family.

ADC land

The Commission of Inquiry into Illegal and Irregular Allocation of Public

Land revealed explosive details about past injustices which threatened to ignite an already explosive ethnic schism between the Kikuyu – the biggest beneficiaries of land allocations – on one side, and a large population of Kenyans who felt cheated by both the Kenyatta and Moi regimes. One of the most controversial illegal acquisitions revolved around land owned by the Agricultural Development Corporation (ADC). Many of Kibaki's friends and relatives benefitted from irregular ADC land transactions. Njenga Karume, a businessman, politician, and Kibaki's friend, for example, acquired 1,000 acres of ADC land in Elburgon, Nakuru District, in 1994 paying KES.2,600 per acre. In August 2006, when he was Kibaki's Defense Minister, he sold it to the government at KES.169,000 per acre thus pocketing KES.169 million. The money was paid to Karume Investments Limited which he chaired.

The government said it needed the land to resettle people evicted from Likia Forest and those areas affected by earlier land clashes in the Rift Valley, and that the transaction was transparent. Karume, on his part, said he got the land legally and that all procedures were followed. The transaction was carried out at the time when the government had allocated KES.1.5 billion for resettlement of displaced persons. The Ndung'u Commission had particularly directed in its report that all ADC lands sold to Karume and others be repossessed.

Mau Forest

The Ogiek people who have been victims of displacement since the colonial times, in 2004, wrote a protest note to the government lamenting about the grabbing of their land at Nkareta location, Narok District by what they said were former powerful government officials. Representatives of the Ogiek human rights defenders, Kiplang'at Cheruiyot and Saitoti Tanki, said at a press conference in Nakuru on 10 December 2004 that the grabbing took place with the connivance of the provincial administration which had sent administrative police officers to protect the grabbers as they subdivided their 2,000-acre group ranch belonging to 230 Ogiek members. The Ndung'u Report acknowledged the dilemma of the Ogiek people in its report but its non-implementation brought no relief to the hunter-gatherer community.

The roving Ogiek community was to have been settled in the Mau Forest complex way back in the mid-1980s but the exercise was, according to Paul Ndung'u, author of the report, bedeviled with corruption. "Instead of carving out say, 2,000 hectares, those handling the exercise would excise

10,000 hectares to themselves and other influential individuals in government,"[843] he told the *Daily Nation*.

The consequences of the land grabbing were reflected in the many ethnic clashes in various parts of the country in which thousands of people were killed. It also elicited numerous protests from land rights activists during both Moi and Kibaki regimes. Father Gabriel Dolan, a Catholic priest and land activist, was one of those on the frontline of opposing land grabbing in Western Kenya. On 15 August 2005, the Irish-born priest along with 23 other protestors were brutally arrested and locked up in squalid cells while protesting land theft in Kitale. A member of the Catholic Justice and Peace Commission, Dolan, has opposed slum evictions, forest excision, and land grabbing by the rich. He is one of the most vocal voices demanding the implementation of the Ndung'u Report. In 2003 when he tried to present a memorandum protesting the theft of land belonging to Kitale prison to vice president Moody Awori, who was also in-charge of prisons, he was arrested and detained for seven hours.

The report of the Judicial Commission on tribal clashes chaired by Justice A. M. Akiwumi which Moi appointed in 1998, drew a gloomy picture of ethnic relations leading to intermittent and violent fights in the Rift Valley, Western Kenya, Coast, North Eastern, and Eastern provinces beginning 1991. Corruption, greed, and political machinations all had to do with the clashes borne out of irregular and biased allocation of land.

When the Ndung'u Commission made its report public in 2005, Kenyans were shocked, though not entirely surprised. What they had heard and witnessed was now in black and white. Ministers and other top officials including elected leaders, members of the Judiciary and the military under both the Kenyatta and Moi, were exposed as having illegally acquired thousands of acres of land for themselves and their families. The report found that the allocations took place either on the direct orders of the president of the day or at the instigation of prominent, senior public officials, and well-connected business people and politicians. People were given letters of allotment of improperly allocated public property, which were then sold for personal benefit.[844]

The report further noted that "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."[845]

It also found that various commissioners of lands donated public land without any authority from the President; forged letters and documents were used to allocate land; and that land was sold by officials without following conditions laid out in the letters of allotment; and that many illegal titles to public land were transferred to third parties – often state Corporations – for massive sums of money. Some of the illegally acquired public land, the Commission said, was allocated to foreign diplomatic missions which was against the Vienna Convention on Diplomatic and Consular Relations.

The commission concluded that all allocations of public utility land were illegal and should be nullified; and that all land allocations in settlement schemes to public officers, MPs, councilors, political operatives, and other undeserving people, at the expense of the landless be revoked. One of the many affected plots around the country is the plot where the Kisumu dumpsite is located. The plot is registered as block 9/102, a public utility plot which was meant for a stadium but was grabbed and allocated to private individuals. Eleven other public plots around the dumpsite, blocks 9/122, 9/123, 9/124, 9/125, 9/126, 9/136, 9/137, 9/143 and 9/144, were also illegally given away. *By 2017, the Kisumu County government was still trying to revoke the illegal titles in line with the recommendations of the Ndung'u report.*[846]

Although the Ndung'u Commission recommended criminal prosecution and disciplinary action against those involved, no such action was taken. However, Kibaki's government did take measures to stem the land grabbing mania. In 2005, it enacted the Forest Act to secure the forests and stop illegal logging which was decimating the forests especially Karura, Mau, and Ngong; it formulated the national land policy in line with the constitution to guide sound management of land allocation.

Amos Kimunya, Lands and Settlement Minister under Kibaki's administration, admitted that for years, land had been used as "a pay-back system for political supporters, though limited to certain groups of people."[847] Kimunya became a victim of land grabbing himself when he was charged in court in June 2005 with allegedly allocating public land identified as Nyandarua/Njabini/5852 to a company he was associated with while knowing the plot was not available for alienation. *That case was still unresolved by the middle of 2017.*

Kibaki's initiative through the Ndung'u Commission, did not, however, stop the continuation of land grabbing, partly because the Commission was only an advisory body with no executive powers, and partly because of political exigencies.

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Compared to land grabbing during Kenyatta's and Moi's time, stealing of publicly owned land was relatively subdued during Kibaki's tenure. Not that the mania of land grabbing had posed or that the vicious cartels had finally vanished. What slowed down theft of public land under Kibaki could be attributed to the shocking revelations in the Ndung'u Report, fear of possible criminal action following Kibaki's tough declarations, and dwindling vacant public properties. However, that did not stop greedy government officials from skimming the left-overs.

Having come from peasant beginnings, Kibaki did not have much as he grew up. For his education, he essentially relied on the magnanimity of endowed relatives and Christian missionaries, and rode on a scholarship which allowed him to complete his studies in London. His job as an economics lecturer at Makerere University paid well by the standards of the day, but the emoluments did not match those of his European counterparts. And when he joined KANU as the executive officer, he worked *pro bono* receiving no salary from an organization that had financial problems of its own.

Kibaki – like many of his contemporaries – began accumulating wealth when he became an MP in 1963. As public land became available to the elites, Kibaki too took advantage and acquired several large farms in central and Rift Valley regions. Numerous parcels of land have been linked to Kibaki: 10,000 acres in Rumuruti, Naivasha; 10,000 acres in Igwamiti in Laikipia; 20,000 acres in Nanyuki; and 10,000 acres in the posh suburb of Bahati along the Nakuru/Nyahururu road, part of which he was selling in 2017. He also purchased prime real estate in the city of Nairobi including the 14-storey Union Towers which he sold in 2014 to Mt Kenya University for a staggering KES.800 million.

In 2016, Kibaki was embroiled in a controversy involving a 0.0697 hectare-plot of land he owned together with nine other directors in his home town of Nyeri. The piece of land bought jointly in 1970s was in dispute over the management of the firm's registered company, Mathingira Wholesalers Company Limited. A retired Kibaki personally attended the hearings of the case, a rare event in the Kenyan presidency.

At the sunset months of his rule, the government rushed to build a KES.400-million residence in Mweiga, Nyeri, for use by the soon-to retire president. The mansion was built in a hurry in what some believed was a scheme by officials in the office of the president to make money. It was constructed on a 100-acre parcel of land and has a swimming pool, a jacuzzi, a guest house, security and secretariat officers, and a compound capable of accommodating 500 visitors. Guarding the home secured by an electric fence are members of the GSU. The house remained vacant for three years before the former President occupied it in February 2017, a year after the death of his wife, Lucy Kibaki.

The President's wife

And talking about Lucy Kibaki, she was the first, First Lady to occupy State House in 24 years after the demise of President Jomo Kenyatta. Since Kenyatta died and Mama Ngina retired to her vast business empire, the country did not have a First Lady. At the time Moi took office, he was divorced from his wife, Lena, and never remarried. Lucy's entry into the presidential household was a welcome relief to Kenyans who were yearning for a stabilizing factor at the big house on the hill. They wanted a mother figure and a mentor.

Unlike Mama Ngina whose name adorns streets – Mama Ngina Street in Nairobi, Mama Ngina Drive in Mombasa – and such facilities as Mama Ngina Children's Center and Mama Ngina schools – the only notable institutional legacy Mrs. Kibaki left behind was the Mama Lucy Kibaki Hospital in Nairobi.

A career school teacher with a soft heart for the disadvantaged and disabled, Lucy met her future husband in 1959 when she was the principal of Kambui College in Kiambu. The two got married two years later and people who knew them, say the couple lived an often-turbulent family life. Lucy was pugnacious while Kibaki was laid-back and compliant. Mama Lucy loved privacy and "protected her family with assertive ferocity which earned her respect and fear in equal measure."[848] Although the First Lady did not have any official role in government – outside her status as First Lady – she behaved like the co-president, sometimes issuing direct instructions and reprimands to senior civil servants. Once, a key leader, Charity Ngilu, lamented that the "government was being run from the President's bedroom,"[849] and that Mama Lucy had usurped the presidential powers and privileges and was misusing them to intimidate everyone including Cabinet Ministers.

For nearly five years, Mama Lucy stayed away from public eyes, fueling speculation about her health. She was admitted to hospital in Nairobi in March 2016 for an undisclosed ailment. Her health deteriorated and was flown to a London hospital where she died on 26 April 2016.

National parks

One of the financial scandals Kibaki inherited related to the flagrant stealing of government revenue at the Maasai Mara Game Reserve on the south-western border with Tanzania and in other game sanctuaries. The theft of park fees and other conservation revenue had been going on for years. In 2006, Minister Morris Dzoro reported a loss of KES.200 million every year perpetrated by officials and tour guides in Kenya's game reserves. He claimed 75 officials of his Ministry were involved. An inter-Ministerial task force report on the management of the reserve revealed people were stealing entry fees to the parks and that millions could not be accounted for or were misappropriated. Another probe conducted by the local Narok County Council under which the reserve is located unearthed a KES.22 million scam involving public revenue[850] in one year alone.

When the council awarded a tender to a local bank to collect park fees on its behalf through a new electronic payment method, protesters barricaded the entrance to the park. The system was intended to curb widespread stealing of funds, but protesters said it was irregular and had ulterior motives. In 2015, EACC preferred charges of financial and procurement irregularities against Governor Samuel Tunai and two other officials but the cases were dropped for lack of evidence. Governor Tunai was among those on a "list of shame" released by the government in March 2015 by the EACC after investigations on corruption-related allegations.

The Narok council collects the largest amount in gate and animal viewing fees of any sanctuary in the country, but the Maasai inhabitants live in abject poverty, their town Narok has no drainage and no reliable garbage disposal arrangement, while officials live in mansions pitched in the savannah country and drive all-weather road vehicles. It has resisted years of pressure to have the park administered by the Kenya Wildlife Service (KWS) because of the benefits it yields to local County officials.

One case of corruption involved a former elected council official who allocated himself a stretch of 10 km along a river inside the park on a 33-year lease. He paid KES.60,000. Within three years the investment had yielded KES.51 million to people who had sub-leased it from him. The financial return to the council was only KES.13 million.[851] What this means is that the lessee continued to make money from public property at the expense of the interests of the inhabitants who have turned to charcoal burning and arable farming to survive. The game reserve measuring 371,000 acres of government land has become a curse to the Maasai rather than an asset.[852]

At the Nakuru National Park thieves reportedly broke into the main gate offices in 2016, dismantled the safe, and walked away with KES.6 million in what was suspected to be an inside job. The park is one of the most popular tourist destinations because of its proximity to Nairobi – only two hours-drive away – and its unique habitat of pink flamingos and Rothschild giraffes.

In 2017, the Kenya Wildlife Service (KWS) introduced electronic methods of payment to curb corruption by officials who received bribes to let visitors into the parks and occasioning revenue losses.

And it was not just looting of revenue at the gates of national parks that has worried the government. Gradually over the years, people have been encroaching into animal reserves and forests and excising land for their personal use. In Maasai Mara alone, corrupt County council officials shaved off 4,000 acres of park land and an equal amount from the Maasai Mau Forest and allocated them to a relative of an Assistant Minister in the Kibaki government.[853] The individual was just one out of many other prominent individuals, including government officials, politicians, and private surveyors who obtained title deeds fraudulently for vast pieces of land in the forest, many of them under the guise of group ranches. By 2005, group ranches had hived off 1,962 parcels of land from Mau Forest amounting to 14,103.7 hectares.[854]

KACC has repossessed thousands of acres of land grabbed in various parts of the country from influential people. They included sixty acres belonging to the KWS and a further 100 acres belonging to the Kenya Forest Service (KFS) in the Ngong forest. Also, captured by KACC were pieces of land in Kajiado, Tigoni, Kiambu, and in other parts. The total value of land, real estate properties and corruptly obtained money between 2004 and 2010 amounted to KES.6 billion. Experts say less than 3% of the country's original forest cover remains, the rest having been decimated through illegal activities such as illegal logging, agricultural encroachment, charcoal burning and land grabbing.[855]

Qatar investor

Where there is big money there is a Kenyan willing to deal. In 2009, the Kenya Airports Authority (KAA), a government body, came across a Qatar investor by the name, Afro-Asian Investment Corporation (AAIC), who was willing to inject a staggering KES.27.7 billion into an exposition and convention center at the Jomo Kenyatta International Airport (JKIA) in Nairobi. The deal was attractive to authorities as well as to the technocrats at KAA who were salivating at the possibility of minting huge commissions. Officially, the input was described as the largest single direct investment after many years.

The deal was for Qatar to provide the finances and Kenya to provide 90 hectares of land to accommodate a 450-room five-star, and a 300-room 4-star hotel, 5 office blocks of 10 floors each, a 5-star 200-bed hospital facility, an ultra-modern conference center and bonded warehouses. It is not clear who made the first approach. But the signing took place only a few weeks after Kibaki returned from a tour of Qatar early December 2008, where he held discussions with government officials over the building of a new port at Lamu, north of Mombasa.

The KAA Chairman, Erastus Mwongera and his Managing Director George Muhoho – brother to Mama Ngina, were particularly elated about the mega project and boasted that the investment, which was to be completed within two years under a Build-Operate-and-Transfer (BOT) arrangement, was to yield 5,000 direct jobs. Under the BOT process, an investor uses his own money in return for rights to own and operate the project for some time.

The airport facility was to be under an 80-year concession arrangement allowing Kenya to receive a US$.1 million (KES.103.8 million) yearly concession fee for the first five years. Also excited was Kibaki and his Cabinet who quickly approved it following the recommendations of the AG and the Public Procurement Oversight Authority (PPOA).

The government said the project would boost the economy, lead to higher revenue collection, and enhance Kenya position as a major tourist destination, apart from attracting direct foreign investment through companies that would set up activities at the trade center.

In the absence of competition from other bidders and due diligence on the Qatari investor, the multi-billion-shilling deal raised immediate suspicion that it could be a vehicle for kick-backs for some officials. The suspicions increased when the Minister for transport, Chirau Ali Mwakwere, was asked in Parliament but could not name the directors of the Afro-Asian company. "This appears like another Anglo Leasing scandal," the MP for Yatta Charles Kilonzo retorted. "How could a Minister of government come to this House to defend a company of which he does not know the directors. Nor does he know the share capital? This could be another scandal in the making."[856]

The only names of people known to be behind the AAIC were Dr. Mohammed Kalani referred to as the Chief Executive Officer, and Haj Mohammed Yassin Ismail, an enterprising Somali national, who boasted that the investment would attract traders and businessmen from China, Malaysia and Singapore and promote Nairobi as a major international business hub. Yassin was a prominent businessman who had real estate interests in Somalia and Zimbabwe. He was also a politician and in 2003 contested but lost in the presidential election in his home country.

Three years after the signing of the agreement, KAA asked the government to put off the ground-breaking ceremony which was to be held in March 2011; and in December, requested that the whole deal be cancelled altogether as the investor had taken too long to start the project. The real reasons, however, were fears in government that the Qatar deal could turn out to be a major scandal because of the way top officials were fighting over tenders. If it had materialized, the airport project would have been one of the biggest graft scandals in Kibaki's government.

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At a time when foreigners were scrambling for land in Africa to grow crops for export, President Kibaki boarded a plane for the tiny Gulf nation of Qatar in December 2008. Under the cover of the International Conference on Financing and Development in Doha, Kibaki slipped into private discussions with the Emir, Sheikh Hamad bin Khalifa al-Thani, on a subject that triggered controversy back home. Kibaki signed a deal to lease 100,000 acres of land to Qatar in exchange for a US$.2.5 billion (KES.259.5 billion) loan, without consulting the relevant Ministries in Nairobi.

During the three days of negotiations, wining and dining with Princes, a deal was reached for the Arab country to loan Kenya the money in exchange for a long-term lease of 100,000 acres in the Tana River Delta for rice farming. The deal was however shrouded in secrecy. “The content of the deal is not for public consumption,” said an official of the inter-Ministerial unit called Agricultural Sector Coordination Unit (ASCU), “and its magnitude is confidential.” Even relevant Ministries including Agriculture and Water and Irrigation were uninformed about the project, with the PS of the Ministry of Lands admitting the matter had not passed through his desk. “To date I have not received any official request or communication to process any lease of land to the Qatari government,”[857] he said when queried.

That deal was eventually cancelled because of a combination of opposition from stakeholders and government’s fear of international reaction. The secrecy left no doubt, however, that something was extremely fishy.

The Qatar project was not the only one to draw attention to the Tana Delta. In 2008, the Kenya government, not having learnt from previous controversial foreign projects, agreed with a British farming company G4 industries to slice off 28,000 hectares of public land in the delta for a biofuel project. A 10,000-hectare pilot project was begun to cultivate jatropha, a crop that is important for biofuel as part of a 60,000-hectare initiative which was also to include sugarcane production. Both crops consume a lot of water meaning that the streams would be dry, and crops would die. An estimated 500 households were dislodged to give way to the project.

G4 industries said it conducted a detailed social and environmental impact study and worked closely with the local community in Oda village to determine the viability of the project. However, the studies, it emerged later, did not fully unravel the environmental destruction expected from the project.

Though the land was owned by a company called Wachu ranch, hundreds of locals had bought plots by paying money to corrupt village elders who claimed Wachu ranch had sold the land to the government and was now public property. That was not true. When G4 Industries acquired it from Wachu, people who had lived in the area for many years became squatters. “They are criminals,” a villager Ali Saidi Kichei of Ozi village said of the invaders, “and we will fight them, with guns and with sticks…. We lived in paradise, in peace. Now what? No water, only salty water, land thieves and water thieves, and children with empty stomachs.”[858]

The G4 industries initiative was a complete disaster and had to be cancelled in 2011 for environmental reasons.

Other foreign land investors in Kenya whose projects are either ongoing or were cancelled for various reasons included Bedford biofuels, a Canadian energy company which began a 160,000 jatropha growing project in Tana River Delta in 2008 and ended in 2013; Xenega & Eurofuel Tech, a Germany/USA Jatropha Initiative; Tiomin Kenya Ltd, a Canadian mining company with a titanium project in Kwale which began in 2006 but stalled; and H. G. Consulting, a Belgium food producer which started in Homa Bay in 2007 and is ongoing.[859]

Dominion Farms

In 2004, an American by the name of Calvin Burgess arrived in Kenya with big plans, lots of promises and a mission to produce rice and tilapia fish, reduce dependency on imported food, and make money for his company called Dominion Farms. Burgess argued that money was not the primary goal, “The primary concern is providing food security for the growing population.”[860]

It all started in Oklahoma, Burgess’ home state in America, after he had had a conversation with a woman at his Evangelical Church. The visitor had been to Kenya and had returned with a positive opinion about the country. After listening to the woman, Burgess was convinced Kenya was the place he wanted to be. “God has plans for people’s lives,” he told a church audience as he prepared to leave for Kenya, “and I thought that this was part of His plan for me.”[861] The middle-aged man who was involved in everything – from construction to real estate to pig farming – saw his journey to the East African country as another mission to help Africans boost their food security.

His target was Yala Swamp, a 75-square mile cover in western Kenya described as “the richest and most delicate ecosystem in East Africa.” The swamp is part of Kenya’s wetland region estimated to occupy 4% of Kenya’s land area. For generations, inhabitants along Lake Victoria had used it for survival – raising goats and cattle, planting crops and harvesting papyrus and sisal to make mats and baskets.[862] In this region, swamps support communities through agriculture and fishing.

The area had a history of occupation because of its rich diversity. At one time, a group of colonial farmers claimed a large portion of it and tried for 24 years to farm it. It finally ran out of money and left. The colonial government, realizing the swamp's potential, opened a demonstration farm not only to teach locals modern methods of farming but also to boost the country's food security. Eventually, the farm shut down.

So, when in 2002 Burgess made his pitch to help the country plug its huge food deficit, he found keen ears in Kenyan officials. An MOU was signed between the Siaya and Bondo County Councils and the Dominion Farms ltd, a subsidiary of the American-based Dominion Group of companies, for a long-term lease at a fee of US$.140,000 (KES.14.5 million) annually. The deal was approved by the Ministry of Lands, said the PS Dorothy Angote. Initially the project known as the Yala Swamp integrated development project was to cover 6,900 hectares but the goal was eventually to cover the whole 17,500 hectares of the swamp.

At that time, the land was managed by the Lake Basin Development Authority (LBDA), a government parastatal which had left basic infrastructure in unusable condition. The buildings were in a state of collapse, electricity and water had been disconnected, and workers had gone for months without pay. That however did not damper the excitement among officials and farmers. They entertained Burgess with songs and looked forward to the fulfillment of the promises of jobs, schools and medical facilities in an area with high levels of malaria, poverty and crime.

So, the first thing Dominion did was to relocate with compensation about 300 families, and to clear the bushes. Locals claimed they were not consulted before Dominion set foot at Yala. It employed several hundred casual workers for the task and paid them KES.200 each per day; and later hired 60 permanent employees to work the rice fields. The working conditions were horrible. Without proper gear, workers were exposed to pesticides which endangered their health and ruined domestic animals and plants. The US Public Broadcasting Service (PBS) reported that an analysis of water supply found the US-banned dieldrin, a chemical linked to breast cancer and Parkinson's disease.[863]

Apart from fish farming, Dominion also planned to venture into cotton and rice farming and to build processing and milling factories which meant they had to build irrigation dykes and a weir which environmentalists said would cause floods that could ruin the livelihoods of the villagers. Dominion "privatized the lake and public roads, blocking access to schools, markets and health clinics,"[864] further complicating life for the villagers. Indeed, floods did occur during the heavy rains of 2007 leading to extensive destruction of crops and more than 1,000 homes. A dam built by Dominion was blamed for the flooding.

The problem came when they wanted to evict villagers from settlements around the swamp for their expanded activities. Hundreds of locals protested even after Dominion offered to buy their land at less-than-market price. When Burgess showed up in August 2011, they chased him with *pangas* and the government had to dispatch police to the scene; the protesters were teargassed and arrested.

A lawyer who was hired by the Institute of Law and Environmental Governance (ILEG) to assist the villagers felt the occupants in the expanded area should have been given priority of purchasing the land before it was leased to Dominion.

The company then resorted to corruption. It allegedly bribed officials and politicians to lure them to its side and manipulated journalists to avoid adverse publicity. Reports say it bribed the council with US$.100,000 (KES.10.3 million) in 2007 and the LBDA with US$.120,000 (KES.12.4 million) in 2003. The money reportedly vanished into individuals' pockets. The company admitted to making the payments but denied they were bribes.[865] No evidence was adduced to confirm any wrong-doing. However, that did not stop people from speculating. "Dominion bought the complete political leadership," claimed a councilor who reportedly turned down an offer of a well-paying job with the company to oppose the company's management policies. Burgess and the two organizations denied receiving any bribes from Dominion.

But not everyone opposed Dominion's presence. A local leader said Dominion was "a blessing for the population of Yala Swamp…and should be supported by the government…"[866] The Minister for Regional Development

Authorities, M. A. Mahamud, told Parliament in November 2006 that the State would continue to work with the investor “so that the objectives are fully realized for the benefit of not only the community there, but also the entire country.”[867]

By 2011, Burgess said, the company had developed 5,000 acres of the allocated portion.

In December 2015, following recommendations from the environmental body, the National Environment Management Authority, the Siaya County Assembly stopped all new activities by Dominion at the Yala Swamp including the construction of a proposed sugar factory and ordered the original agreement with the company to be renegotiated.

Suspicion that the project was mired in corruption and political shenanigans continued as late as 2016. The MP for Gem, Jakoyo Midiwo, accused a senior County official of receiving KES.70 million in bribe in exchange for authorizing 6,000 acres of Yala Swamp to a businessman without revisiting the original MOU. However, when Raila’s name cropped up with accusations by Burgess that he was using extortion to frustrate his business, the matter took a much more controversial tone.

Burgess alleged his troubles came when he refused to fund Raila’s ODM party, something he said was against US laws, and further claimed during a press conference in Nairobi in February 2017, that politicians had deployed goons to evict him from the farm. The American also claimed that a relative of a leading politician had taken a consignment of rice worth millions of shillings five years earlier but never paid for it. The allegations were vigorously denied by Raila allies in Nyanza.

Towards the end of 2017, the frustrated Dominion owner announced plans to pull out of the Siaya project, a move that attracted swift reaction from local leaders who demanded that the company pays all outstanding salary arrears and meets obligations to suppliers amounting to tens of thousands of shillings before exiting. Burgess claimed local politicians were undermining his operations by demanding bribes.

President Kibaki’s decision to allow a foreign enterprise to acquire what is Kenya’s most precious asset, land, was one of his worst actions in office. And that it was tainted by corruption did not help Kibaki’s legacy.

TJRC report, 2008

Perhaps the most trying moment of the Kibaki administration was the events that occurred immediately after the bitterly contested 2007 elections. As the tallying of polls at the Kenyatta International Convention Center (KICC) in Nairobi came to an end, and as invitees rushed to State House to witness the swearing-in of the new leader at dusk on 29 December 2007, violence broke out in the capital and in other towns in what was the beginning of months of mayhem in which more than 1,300 people were killed.

Initially, it appeared that the target were the Kikuyu, but the violence quickly escalated up country and at the coast with Nairobi slums bearing the biggest brunt. The Kalenjin region of the Rift Valley saw months of ethnic fighting including the killing of 30 unarmed civilians in a church near Eldoret.

In January 2008, the former UN Secretary General Kofi Annan was mandated by the international community to mediate and after protracted talks between Kibaki and Raila, a power-sharing agreement called the National Accord and Reconciliation Act was reached providing for a grand coalition government between Kibaki's Party of National Unity (PNU) and Raila's Orange Democratic Movement (ODM).

Part of that agreement was to form a Truth, Justice and Reconciliation Commission (TJRC) in 2008 through an Act of Parliament to investigate historical injustices and gross human rights violations beginning with those committed during Kenyatta's government. Investigations were to include mass land grabbing by the elite, corruption, political murders, and tribal clashes between Independence Day and 28 February 2008, as an effort to restore national unity, reconciliation and healing.

The eight-member Commission was chaired by Bethuel Kiplagat, a career diplomat, whose own credibility about past actions while serving in Moi's government was questioned in Parliament and through court filings. Civil rights groups linked him to human rights violations the Commission was about to investigate, causing delays of almost a year. He refused to resign when asked to allow the Commission to conduct its business without distractions, prompting the Commission to bring in a human rights lawyer, Betty Murungi, as Vice Chairman.

When the four-volume report was finally handed over to President Uhuru Kenyatta on 21 May 2013, the TJRC had declared the fight against corruption to be central in the struggle for human rights. It examined the

KenRen scandal of the 1970s, to the irregular procurement of biometric voter registration kits by the IEBC in 2013, to the Goldenberg, the Charterhouse Bank, and Anglo Leasing scams. It further cited the Kibaki government for gross violation of human rights and perpetrating economic crimes and grand corruption.

The TJRC also examined irregular allocations of land and land grabbing which, it concluded, were conducted "with wanton impunity, recklessness, and (are) blatant and widespread."[868]

> Almost every type of public land was affected: from forestland, to water catchments, public school playgrounds, road reserves, research farms, public trust land, and land owned by public Corporations and private individuals. Perpetrators of the injustices were equally varied and include holders of public office and government leaders at every level, the political and economic elite, church organizations, individuals and communities. Those who held sway usurped the institutions of government to their bidding including the Legislature, the executive and Judiciary.[869]

The Commission heard harrowing stories about displacement of innocent people from their original locations. In Tharaka, for example, the inquiry was told of how a leading politician who served in both Moi and Kibaki governments, along with others, evicted 2,000 families and erected commercial cottages at an area called Tholoni in 1997. The politician used a group called "Kabuithu" to carry out the evictions, according to the TJRC report. A former Minister, Kalonzo Musyoka, denied allegations he was involved in the evictions even though the cottage's vendor appeared before TJRC with evidence showing the cottages were sold to Musyoka. The Commission ruled that Musyoka had not acquired the land unfairly but asked the National Land Commission (NLC) to carry out further investigations to determine the truth. *No information is available whether the NLC took any action.*

The TJRC report named 446 prominent people as implicated in land grabbing, human rights violations and ethnic clashes. Among those mentioned in the report were two Kamba politicians who were named for excising 3,000 acres of land at Hombe forest and of evicting Nzalae residents from their group ranch respectively in the early 1980s.

The TJRC report was not implemented by Uhuru.

Medical Plunder

HIV/Aids funds

In one dramatic turn-a-rounds against corruption, President Kibaki pardoned a senior government official who had been convicted in 2004 of defrauding the government of large sums of money. The case of Margaret Gachara, Director of the National AIDS Control Council (NACC) put to rest Kibaki's own personal commitment to the fight against graft. She was convicted on three counts of abuse of office and obtaining KES.27 million by false pretense and jailed for 12 months each on three counts to serve concurrently. Four months later, Kibaki released her on presidential clemency along with 7,000 'petty offenders.' The quick pardon of a person convicted of stealing public funds hurt Kibaki's credentials as an anti-graft leader and reinforced "public perceptions that there are different sets of laws for the rich and the poor."[870]

Chapter 23

The cemetery land saga

In 1980, President Moi held a meeting in Athi River and dished out 6,000 acres of land to the landless people of Mavoko area. The land was part of 8,912 acres that had been given to the Kenya Meat Commission (KMC) earlier in 1951. On 31 December 1980, KMC handed the land back to the government for use as a holding ground for the Ministry of Agriculture and Livestock Development. In 1982 the government sub-divided the land into two portions, one for squatters who were already occupying the land at the time, and the rest, 2,912 acres left with the Ministry.

The land given to squatters, 6,000 acres, was subdivided into 64 plots and allocated to 62 people with one plot reserved for a church and another for a shopping area. Each of the new landholders paid KES.5,000 as title processing fee, and by 1984 each one of them had been issued with a title deed. According to a report of the Parliamentary Departmental Committee on Local Authorities of 2010, one of those who benefitted from the land, plot No. LR 14759, was a peasant Maasai small-scale farmer called Marinie ole Tiranti Makaita.

During the 1984 drought, Makaita, who was married to Agnes Nenka, invited a friend, Henry Kilonzi, to till part of his 140-acre land on condition that Kilonzi would cultivate 10 acres for himself and three acres for his host's family. In 2002, Makaita contracted tuberculosis and died. Nenka then left the family holding to visit her father-in-law in Maasailand, but on her return a few months later, found Kilonzi had dismantled the family home and used the roofing material to construct a cow shed. Kilonzi had also sold 10 acres to the Merciful Redeemer Children's Church at KES.500,000 and pocketed KES.5 million. He was therefore left with 130 acres. When questioned by Nenka, Kilonzi said Makaita had sold the land to him though he couldn't produce any documentary evidence or proof of sale. Kilonzi's acquisition of the property was clearly fraudulent.

It was around that time that information spread in Mavoko that the Nairobi City Council was looking at LR No. 14759 for use as a cemetery. The Mavoko Municipal Council, under which the plot was located was, however, not aware of any such plans. In the meantime, since Kilonzi wanted to keep 10 acres for his use, he applied for change of user for the remaining 120 acres in 2008 from agriculture to plot development. Although he paid all the rates, Mavoko Municipal Council did not approve the request.

The Nairobi City Council had been scouting for land for use as a cemetery after it was found in 2005 that the main 117-acre burial ground at Lang'ata – which had its first body of a 74-year old European settler Robert Lockhead interned there in September 1958 – was almost full and could no longer cope because of the fast expanding population of the city. Officials could not find a suitable plot in the environs of Nairobi, so they broadened their search to include the greater metropolis area, and that was when they came across Kilonzi's holding at Mavoko.

On 5 June 2008, a meeting was held at City Hall chaired by Reuben Rotich, the senior deputy secretary in the Ministry of Local Government and Mary Ngethe, the Council director for legal affairs, to discuss the matter. The Ministry was brought in because the Council did not have funds to buy the land and wanted government help. It became known around that time that a Council delegation had visited President Moi at State House who agreed there was a need to acquire another cemetery land.

Before the tender was advertised in September, the Ministry went to Treasury to ask for money, and on 30 June, the Ministry sent a check of KES.175 million to the Council's law firm, Omotii and Company Advocates, being the first tranche towards the purchase of the cemetery land. Kilonzi had originally asked for KES.80,000 per acre totaling KES.96 million, but after negotiations, according to advocate Alphonse Mutinda, representing Kilonzi, a sum of KES.110 million for the entire 120 acres was agreed. However, from the testimony of E. M. Omotii, the purchase price which was finally agreed was KES.2.3 million per acre. In October 2008, the deputy Town Clerk, N. M. Otido, appointed a six-person "opening and evaluation of bids team" headed by Ngethe.

Needless to say, the decision to invest in the cemetery land was not referred to the General Purposes Committee of the Council and did not receive the approval of the full Council as required by procurement laws.

However, there were a series of meetings at both the Ministry of Local Government and City Hall over the matter. By mid-October, the transactions had not been finalized and on 30 October, the Ministry PS wrote to the council giving it five days to complete the transfers.

But the shock came on 11 November when the Council Tender Committee declared the intended land was unsuitable for a cemetery. It explained that the plot did not meet the threshold of red soil of more than six feet deep. Moreover, it was rocky and situated along an animal migratory corridor. The Kenya Wildlife Services (KWS) and the local Maasai community were also opposed to the placing of the cemetery in the area. Two officials in the city planning department, P. T. Odongo and J. K. Barreh, too confirmed the land was unsuitable and that the tender documents were defective and insufficient to assist in procuring suitable land for cemetery use. The Mavoko land had red soil of only four feet deep. Moreover, the area was not easily accessible to the public which was one of the criteria.

Twelve bids were considered during a tender committee meeting chaired by the deputy Town Clerk, and a decision was made to purchase 120 acres from Naen Rech Company Limited, in the name of Henry Kilonzi for KES.283 million. According to the report of the Parliamentary Departmental Committee on local authorities, however, the adjudication and award of the tender was based on a forged valuation report which showed a value of KES.325 million, against the actual value of KES.30 million.

On 13 November 2008, the Chairman of the Tender Committee, N. W. Otido, officially informed Naen Rech Company Limited that it had won the tender and requested that it provides a performance bond. The Council lawyers prepared an agreement which was signed by Kilonzi, the vendor, and Mayor Geoffrey Majiwa, and the deputy Town Clerk, paving the way for the second check of KES.108 million to be sent to Council Advocates. According to the committee report, however, Kilonzi meanwhile disowned the signature on the agreement and denied selling the land to the Council. He insisted he sold LR No. 14759/2 to Naen Rech Company Limited for KES.110 million and even had an executed sale agreement.

Inexplicably, the Ministry of Local Government had already released a check on 30 June 2008 for KES.175 million before the tendering process was completed and without supporting documents. That check was presented for payment on 22 December 2008. A second check for KES.108 million was drawn on 15 January 2009. Thus, the Council Advocates received a total of KES.283 million.

By that time, officials from the Ministry of Local Government had not visited the land. A letter purportedly written by the Auditor General asking the Ministry to confirm it had valued the land was written on an old letter-head no longer in use and was thus found to be a forgery.

On 3 February 2009, the Council received a title deed for the land. In total, the Ministry of Local Government, on behalf of the Council, paid out KES.290.6 million. But KACC said out of that only KES.110 million was paid to Kilonzi, the “land owner”. It further said:

> There was a clear conspiracy to defraud the Government of the balance amounting to KES.173.2 million by various advocates, senior officials at the Ministry of Local Government, treasury, the Council and various other intermediaries, who in one way or another, facilitated the actualization and execution of the fraudulent scheme.[871]

The Parliamentary Committee eventually interviewed dozens of officials including the deputy Prime Minister and Minister for Local Government, Musalia Mudavadi, the Lands Minister James Orengo, City Mayor, Geoffrey Majiwa, the former Town Clerk John Gakuo, senior government officials, plot owners at Mavoko and lawyers, and concluded the whole affair reeked of fraud. It recommended that those involved including officials in the Ministry of Local Government, the City Council, lawyers, individuals, and companies associated with the fraud be either investigated, interdicted, or prosecuted.

The Parliamentary Committee further recommended that all those who received the money be reported to the Kenya Revenue Authority (KRA) for tax assessment.[872] The process was said to have been a premeditated plan “to defraud the government of public funds, and involved the City Council, Ministry officials, businessmen and advocates. The Committee observed there were a lot of illegalities and irregularities bordering on criminal acts. For example, the “price of the land was inflated and the government procedure on procurement was not followed” the report said. Investigator Tabu Lwanga said only KES.110 million was spent on the land and KES.173 million was stolen.

On 9 March 2010, President Kibaki suspended the Local Government PS, Sammy Kirui, along with 11 other officials among them senior deputy secretary Reuben Rotich; director of planning Boniface Misero; and the chief financial officer, Herman Chavera. Also sent home were, former Town Clerk John Gakuo, at the time the Nairobi River project coordinator; deputy town clerk Geoffrey Katsolleh; director of planning Kanyi Nyambura; director of legal affairs, Mary Ngethe and her deputy, Karisa Iha; deputy director procurement, Alexander Musee; director of budget at the Ministry of Local Government, Paul Ngugi; and, chief internal auditor, I. N. Ngacha.

The following day, the deputy Prime Minister and Minister for Local Government, Musalia Mudavadi, issued a personal statement in Parliament demanding “a full, credible, and expeditious investigations into this matter and that all involved be punished to the full extent of the law.”[873] The statement was an attempt to distance himself from speculation that he could have benefited in some way from the scandal. “What evidence do you have that I received an iota of a cent?” he asked in Parliament. “This is serious!” Mudavadi hit back at MPs who were pressing him to come clean. Investigator Lwanda confirmed no monies from the illegal deal were deposited in Mudavadi’s account. On 13 March, Mudavadi filed a defamation case against KACC through the firm of Kaplan Stratton, over a report entitled “procurement of cemetery land by the Nairobi City Council – Land LR No. 14795/2 Machakos” of 8 March which, he said, had mentioned him adversely.

On 29 April, Kirui and 13 other people were charged in the anti-corruption court on various charges among them procurement violations, abuse of office, and conspiring to defraud the public by receiving KES.283.2 million from the Ministry of Local Government purporting to be the price of the cemetery land. The chief magistrate, Cecelia Githua, was told the offences took place between December 2008 and April 2009.

Also charged were John Gakuo, Daniel Nguku, Mary Ngethe, Alexander Musee, Herman Chavera, Newton Osiemo, Alphonce Mutinda, Nelson Otido, Joseph Owino, Maina Chege, Paul Onduso, Joseph Kojwando, business lady Mercy Kinyanjui; and Davies Osiemo. Added on the list were Mayor Geoffrey Majiwa and former PS William Mayaka. They all denied the charges. On 24 August 2012, Majiwa was acquitted by anti-corruption magistrate Lucy Nyambura who ruled that the prosecution did not establish a case to put the former Mayor on his defense on the KES.283 million conspiracy charge. The fate of the other cases was unknown.

Mudavadi who came under pressure to quit refused to resign, but Mayor Majiwa stepped aside on October 26, 2010, two days after the KACC Director, PLO Lumumba, boasted: We have dealt with the “small fish”; now it’s time for the commission to turn its attention to the “big fish.”[874]

But no “big fish” has been convicted, not from the cemetery saga, not from any of the many incidents of plunder that bedeviled the Kibaki government. It could not be determined whether the recommendation of the Auditor General for recovery of lost millions in the scam was carried out.

One interesting aspect of this saga was the statement issued by KACC dated 18 March 2010 complaining about the leakage of a confidential brief relating to the investigations of the cemetery scandal. KACC’s advisory board had met the previous day to discuss the matter but were shocked by reports appearing in the local newspapers which implicated some senior government officials. It asked the AG to investigate the leak and prosecute those found to have violated the law.

There was another attempt by the Nairobi City County – successor of the Nairobi City Council – in 2013 to acquire land for an alternative cemetery adjacent to the existing Lang’ata cemetery. A request for 100 acres in Lang’ata Forest belonging to the Kenya Wildlife Service (KWS) received was denied. Nevertheless, the County Assembly approved KES.225 million in its budget for the purpose.

Ringera’s Judicial Radical surgery

During his 24 years in office, president Moi did little to rein in corruption in the Judiciary. Judges and magistrates were known to be corrupt and unprofessional. They were heavily compromised by the political elite, and Kenyans lost trust in the men and women in black robes and snow-white wigs. The adage, why hire a lawyer if you can buy a Judge, could have been directed at Kenya as the corridors of justice became a haven for bribes and extortion. However, things looked promising when Kibaki was elected in 2002. But did that change the way the Judiciary conducted its affairs?

In his first Cabinet announced on 3 January 2003, Kibaki named Kiraitu Murungi, one of the most progressive lawyers and a leading light against Moi’s dictatorship and corruption-ridden government, to head the Ministry of Justice and Constitutional Affairs. It was he who was to spearhead reforms and the fight against graft in the Judiciary.

Two months later, on 19 March, the Chief Justice Evans Gicheru formed the Integrity and Anti-Corruption Committee of the Judiciary chaired by Justice Aaron Ringera to identify the nature, forms and causes of corruption, find out the level of bribery in monetary terms, and identify corrupt members of the Judiciary and recommend disciplinary action. The government reform program with the full support of Kibaki, Murungi, and Gicheru, came to be known as the "radical surgery." The initiative caused a stir beyond the corridors of justice. Death row convicts petitioned the government asking to be released and to be compensated claiming they were convicted by a "corrupt Judiciary."[875] The petition was ignored.

As a further move to nail down corruption in the Judiciary, the Chief Justice appointed an Ethics and Governance Committee of the Judiciary chaired by Justice Onyango Otieno on 18 March 2003 to serve as an internal audit of the Judiciary's integrity and processes. Two other Committees were formed, one was the Rules Committee and the other, the Expeditious Disposal of Cases Committee, both aimed at "addressing complicated rules of procedure and bottlenecks hindering the speedy disposal of cases which lead to delays and corruption in the Judiciary."[876]

Murungi admitted the Judiciary was "a haven of thieves, tax evaders, and the corrupt." He emphasized that the government would not rest until "we have completely cleaned up the Judiciary."[877] The International Commission of Jurists (ICJ) said in a 2005 report that corruption in the administration of justice was a serious impediment to the rule of law in the country.[878] In 2015, TI put the Judiciary at number six out of 52 public organizations in the country prone to corruption.

When the Ringera report was released in October 2003, it revealed that out of an establishment of 3,234 officers as at 30 August 2003 – comprising 11 Appeal Court Judges, 44 high court Judges, 254 magistrates, 15 *kadhis* of Islamic courts, 2,910 paralegals – 152 judicial officials were implicated in corruption. Five out of nine court of Appeal Court Judges, 18 out of 36 High Court Justices, and 82 out of 254 magistrates, were found to be corrupt. The Judiciary was thrown into a temporary turmoil as Judges and magistrates named in Ringera's "list of shame" cleared their desks. A foreign reporter said some of them wept before reporters pleading their innocence.[879]

The report said the impact of graft had adversely affected the performance of the Judiciary. The rule of law was undermined; the capacity of the Judiciary as an impartial arbiter of legal disputes compromised, and courts could no longer champion and safeguard human rights and the rule of law. “The esteem of the Judiciary as an institution was inestimably lowered. The contribution of the Judiciary to the national economy was decimated.”[880]

Among the judicial officials caught in the crackdown was Justice Kaburu Bauni who was presiding over the inquiry into the suspicious death of a US missionary, Father John Anthony Kaiser. The 67-year old priest who had worked in Kenya for 36 years was found murdered on 23 August 2000, his body lying on a roadside with a bullet wound on his head about 90 kilometers northwest of Nairobi. Father Kaiser was one of the most critical anti-corruption crusaders who often took shots at senior officials in Moi’s government.

The head of the Kenya Human Rights Commission (KHRC) who later became Chief Justice, Willy Mutunga, suspected Kaiser was killed by “powerful people who saw him as a moral thorn in their evil flesh.”[881] In April 2008, Justice Bauni was killed in a road accident along the Nanyuki/Meru road.

Also suspended in the “radical surgery” was Justice Daniel Aganyanya who was a member of a three-bench presiding over the Goldenberg scandal. Though noble, the Judiciary reform initiative was criticized because it failed to afford the adversely mentioned judicial officials an opportunity to defend themselves. Their names were published in the media and they were condemned as corrupt “well before the commencement of the subsequent tribunals of inquiry.”[882]

Justice Ringera blamed interference by the executive and protection of corrupt officers by “godfathers” and superiors as some of the reasons fueling corruption in the Judiciary. Incidentally, almost all the Judges were appointed during the corrupt Moi regime and were merely subscribing to what was a common societal practice.

Some of those named by Ringera, like Justices Daniel Aganyanya, Philip Waki, Mbogholi Msagha and Lady Justice Roselyn Nambuye, went to court to challenge the report of the Judiciary tribunal chaired by retired Appellant Judge Akilano Akiwumi, and were exonerated and reinstated. Others were retired, while others chose to resign or were fired. But two Judges, Tom Mbaluto and Vitalis Juma, were sacked in May 2008.

Justice Gicheru was himself not without controversy. He suffered allegations of impartiality after he swore-in Kibaki in a hurry as widespread violence broke out in the country following the 2007 post-election violence. The opposition presidential candidate Raila Odinga disputed the elections. Gicheru survived that dark phase of Kenya's post-independence history because of the confidence Kibaki had in him.

Not everyone felt that way, however. In a cable to Washington, the US Ambassador Michael Ranneberger, said Ringera "has not only failed to successfully investigate a single senior government official, he has actively thwarted their successful investigation and prosecution…." The cable recommended barring Ringera and members of his family from entering the US for "engaging and benefiting from public corruption."[883]The correspondence was conveyed six months after Ringera admitted that the Anglo Leasing scandal which erupted in 2004 had collapsed.

Despite numerous actions Kibaki took, graft in the Judiciary continued. One Judge was reportedly caught red-handed in his chambers holding a bundle of currency notes he had received from a rival party in a civil case.[884] In another incidence, a Judge reportedly "picked up suitcases of cash bribes from the underground car park of Nairobi's Hilton Hotel."[885]

A local newspaper printed a "price list" reportedly contained in an unpublished version of the Ringera report, showing the price of corruption in the Judiciary. An Appellant Judge was said to command US$.200,000 (KES.20.7 million); a High Court Judge US$.20,000 (KES.2 million); and a magistrate US$.3,000 (KES.311,040). Rapists and drug dealers could go scot free if they paid upward of US$.10,000 (KES.1 million).[886] In addition, the report said, bribes were also paid in the form of land, fish, and goats or other livestock, supply of building materials to construction sites owned by judicial officers, *harambee* contributions, personal entertainment, hospitality or even sexual favors. *The Economist,* quoting an "official inquiry" claimed some Judges charged US$.250 (KES.25,950) for the accused to escape a rape charge, and US$.500 (KES.51,900) for murder. For civil disputes, the paper claimed, the cost was US$.20,000 (KES.2 million) to win a case in the High Court, and up to US$.190,000 (KES.19.7 million) for one in the Court of appeal.[887]

Corruption in the Judiciary also impeded convictions in other types of crimes. Take bank frauds and wildlife-related offences, for example. Both sectors have complained of lighter sentences and low numbers of convictions being meted by courts on offences that carry much higher penalties. In the second quarter of 2010 as Kibaki reached his second mid-term, for instance, only eight cases were finalized and five got convictions out of 102 cases of fraud in banks. With such poor record of convictions, banks were reluctant to "report fraudulent activities and in pursuing criminal prosecutions."[888]

In the prosecution of wildlife-related cases, according to a report covering January 2008 and June 2013, withdrawal of cases by the police and courts was commonplace. Cases were dropped due to missing police files, inconclusive investigations and wrongful case registration. Convenient cash bails and bonds and lenient penalties issued by courts often jeopardized successful conclusion of cases leading to suspicions of corruption.[889]

Another inquiry on integrity issues in the Judiciary was appointed by the Chief Justice on 18 March 2005. It was called the sub-committee on Ethics and Governance of the Judiciary and was chaired by Justice J. W. Onyango Otieno. It had the mandate to collect information relating to the integrity of the entire judicial staff and court processes; to investigate all cases of alleged corruption, unethical behavior and other lack of integrity; and to study and report on the case for in-house intermediary disciplinary measure, and the process of punishment for breaches not warranting removal of a Judge from office.

In January 2006, it presented its report to Justice Gicheru showing that missing files, unnecessary adjournment of cases, delays in court processes, and congestion of courts, were some of the issues fueling corruption in the courts. It said there were marked improvements in the integrity of the Judiciary since the release of the Ringera report, but noted that cases of corruption continued to be reported. The report however declined to name specific cases and names of officers allegedly implicated in graft "in the interests of confidentiality and fairness to both the judicial staff and the complaints."

One of its key recommendations was the establishment of an eight-member Judges Peers Committee to deal with misbehavior of Judges and any disciplinary action needed; and the establishment of a Judicial Complaints and Disciplinary Committee to investigate complaints against Judges before their cases were referred to the constitutional tribunals.[890]

Tokyo Embassy scandal

What could have been a routine purchase of an embassy property in Tokyo turned out to be one of Kenya's high profiled scandals that consumed – and almost jailed – some of Kenya's senior diplomats. It was in January 2009, when the Kenya Ministry of Foreign Affairs and International Cooperation sent an Inspection validation team to Japan after it became clear Kenya was spending far too much on rental accommodation for the chancery and the ambassador's residence.

The team inspected six properties, four of which were disqualified for various reasons. The fifth was the plot on which the embassy and chancery were sitting on, and the sixth was a 700.39 square meter plot offered by the government of Japan. Kenya chose the fifth as the latter was not only smaller in size but had a price tag of KES.1.1 billion (1.2 billion Yen), a much higher cost for its dimensions.

A Ministry of Lands valuer, Teresia Kimondiu, in her report dated 25 May 2009 reported she had valued the plot where the embassy is located at KES.1.241 billion and the buildings at KES.130 million against the sale price of KES.1.63 billion, a difference of KES.297 million which, it was alleged, Ministry of Foreign Affairs officials conferred to the vendor, Nabuo Kuriyama, using their office. Moreover, the property was reportedly overvalued and paid for by money diverted from a budgetary allocation meant for building the embassy in Nigeria.

The auditor-general's report of 2008/2009 mentioned the financial impropriety at the embassy in September 2010 and blamed top officials of the Ministry for the loss of KES.1.1 billion. The Parliamentary Defense and Foreign Relations Committee chaired by MP Adan Keynan said in its 328-page audit report of Kenyan embassies abroad tabled in Parliament in October 2010, that instead of accepting a free offer of property from the government of Japan, Kenyan officials opted for a private property and bought it without following proper procurement procedures.

The Committee also faulted Ministry officials for paying 80% of the price before the property was transferred to the Kenya government and in cash, which was unusual in government transactions. Even a Japanese lawyer, Yoshito Kijima, said that was not the practice in Japan. Buyers paid only 10% to 20% of the buying price upfront. Moreover, the Committee further said the purchased property did not reflect Kenya's stature regionally and internationally because of its location even though it was situated off

Meguro ward of Tokyo, part of the diplomatic colony where 15 embassies including those of Egypt, Senegal, Gabon, Algeria, Bangladesh, and others, were located.

Both the Ethics and Anti-Corruption Commission (EACC) and the Parliamentary Committee on Defense, Security and Foreign Affairs were of the opinion in their reports in 2010 that some people pocketed the difference between the valuation price and the sale price.

The Foreign Minister was also lambasted for "misleading" the Committee that the plot was irregularly-shaped and therefore unsuitable for construction of both the embassy and the chancery. That was not the opinion of the architect commissioned by the mission, according to the Committee, who said the plot offered by Japan allowed more floor space and a capability for erecting top floors that could be used as staff residential quarters. Also, the plot was not the only one located on an archaeological zone as claimed. The whole of Tokyo is affected, according to the Committee. It accused the Minister of giving false and misleading statement which was in violation of the Public Officer Ethics Act. The barrage of criticisms against the Minister, Moses Wetangula, came from everywhere – from Parliament as well as from government auditors. The Committee recommended that Wetangula should take political responsibility and step aside to pave way for investigations by EACC and other bodies.

On 27 October 2010, a few hours after the PS, Mwangi Thuita resigned, Minister Wetangula also quit. On the eve of his departure from office, Wetangula, told Parliament: "If there is any wrong doing on this matter that occasioned the loss of money, the Committee of Parliament is right in recommending investigations of those responsible." Exonerating himself from the scandal and saying the whole experience "has been very painful to me, to my family and friends," Wetangula said as Minister, he did not procure, sign checks or vouchers, nor did he budget things that went through procurement.[891] *He was not prosecuted for any offense.*

Three people considered most responsible, the former PS Foreign Affairs, Mwangi Thuita, former First Counselor in Japan, Allan Mburu, and former Director of Administration at the Ministry, Anthony Mwaniki, were arrested on 27 February 2013, and charged the following day with three corruption-related counts allegedly committed between January and October 2009.

Kenyans had anticipated conviction of the three top officials to demonstrate the government's renewed commitment to punish "big fish" implicated in corruption, but after a protracted trial punctuated by long delays caused by lofty legal arguments on both sides, the three accused were acquitted on 31 March 2016 for lack of evidence. *The Chief Magistrate, Kennedy Bilali, ruled that proper procedures were followed in the purchase of the property and that the prosecution had failed to prove its case.*

Abuja, money diverted

The diversion of the Tokyo embassy money from Nigeria's capital Abuja was also a subject of a query by the Parliamentary Committee which reported that by the time the money was transferred from Nigeria to Nairobi and then to London before reaching Tokyo, KES.8.4 million had gone missing.

In 1972, Kenya was allocated three plots in Lagos to build its mission and residences, but after the capital was moved to Abuja in 1991, Kenya sold its prime properties in Lagos with the intention of constructing premises in the new city. That money was never used for that purpose but instead was diverted to Tokyo. Moreover, the Nigerian lawyer who processed the sale was not paid and Kenya thus owned him KES.94 million.

The Kenya Audit Office, in its report in 2010, revealed several anomalies in the sale of the embassy properties in Nigeria. It said the sale agreement and other related records including the bids for the property were not made available for audit review, with the result that the terms and conditions of the sale could not be established. In addition, during a review in September 2009, a difference of KES.65.6 million was discovered between the mission's cashbook and bank statements. The difference had not been rectified.[892] Ten percent of the money accruing from the sale of the Lagos properties could also not be traced.

The Central Bank of Kenya Governor Njuguna Ndung'u told the Committee in September 2010 that the bank had no clue about the missing money other than the information it received from the Bank of England in UK on 29 December 2008 that the money had been transferred to Kenya. The following day, he said, the bank passed that information to the Ministry. The Committee eventually found that the money was used to pay rent for the house occupied by the immigration attaché in Lagos without authority from Treasury.

The Parliamentary Committee also examined property purchase and construction or disposal of five other Kenyan missions: Egypt, Japan, Nigeria, Belgium, and Pakistan, and found serious financial anomalies involving government properties. In 1989, Kenya bought a plot in Cairo measuring 698 square meters at a price of US$.377,240 (KES.1.6 billion) intended to build the Ambassador's residence. The plot was never developed because the area which initially was a prime area deteriorated into a slum and became a target of illegal sale by conmen. Eventually, the government sold it for KES.47.1 million. Part of the money amounting to KES.4.7 million was left with the embassy in Cairo while the rest, KES.42.4 million was transferred to the Ministry. The Director General of the Public Procurement Oversight Authority (PPOA), M. Juma, lamented that his body was not consulted about the sale.

In Pakistan, Kenya bought an undeveloped plot in 1991 for KES.1.4 million but it remained vacant for years. When the Parliamentary Committee on Defense and Foreign Relations visited the country between 23 and 25 August 2010, only 40% of the building had been completed. The construction costs had ramped up from KES.157 million to KES.366 million.

The Committee also found during its visit to Belgium between 18 and 26 August that the purchase price of the chancery in Brussels had been inflated. On 26 July 2007, Kenya Ministry of Lands officials had valued it at €3 million (KES.366.8 million) including some 10-year old furniture items, while the private valuer, S. A. Atisreal, had posted the price of €3.316 (KES.405.4 million). The government is estimated to have lost KES.84 million in the whole transaction.

Allegations were also made that a former Ambassador to Germany and a former financial attaché had swindled the government of KES.6.2 million by pretending they had remitted the money to the John F. Kennedy School in Berlin as school fees for their children. KACC recommended in 2007 that the two be charged with various counts of obtaining money by false pretenses. No evidence exists that the AG took any action.

Chapter 24

Medical Plunder: Vomiting on our shoes

APART FROM THE combative Smith Hempstone who served as the US Ambassador in Kenya between 1989 and 1993, no other foreign envoy rattled the political scene as did Edward Clay, the British High Commissioner, who was in Nairobi between 2001 and 2005. Clay was already in Kenya when Moi exited the scene after the 2002 general elections, and witnessed the dawn of a new era at the inauguration ceremony at Uhuru Park as Kibaki took over government. He was there when Kibaki pledged to fight corruption. But when in 2004, it became clear that Kibaki's anti-corruption rhetoric was failing; it was the British diplomat who vowed to take on what he called the "Kibaki mafia."

Clay's first major confrontation with a high-ranking Kenyan official was on 9 January 2008 when Clay and the Minister for Justice and Constitutional Affairs, Martha Karua, met face to face on the BBC World program, *Hard Talk*. The subject of discussion was the violence that had erupted after the contentious 2007 presidential polls between Kibaki and Raila. Clay accused Kibaki of staging a "civilian coup" by stealing the elections. He said he never thought Kibaki would be so brazen as to rig the polls. The equally assertive Minister shot back accusing the envoy of interfering in Kenya's internal affairs, and blasted the international community for encouraging Raila to label the mayhem as "ethnic cleansing."

On 2 February 2005, Clay announced he had given Kibaki a list of 20 new corruption cases. "Corruption is the single biggest impediment to good governance in Kenya," he said. "Many stones remain unturned…many, many stones."[893] It was clear by that time that Kibaki's commitment against corruption had waned, and he was losing the war to a strong cartel of fraudsters within his own government even as Ringera declared the war "a matter of life and death."

On 6 February 2005, John Githongo the anti-corruption czar, resigned after stumbling on the KES.5.8 billion Anglo Leasing procurement scam, lamenting that Kibaki's government was no longer committed to fighting graft and was held together only by "a glue of corruption." Two days later, the US government cut off aid to Kenya amounting to KES.200 million.

After his confrontation with Ms. Karua, Clay became a thorn in the flesh of the Kibaki government as he ratcheted his criticisms against the way Kibaki was governing. His most critical remarks came when he addressed UK businesspeople in Nairobi in July 2004. He tore into the Kibaki government for failing "to tackle the problem and to investigate previous, notorious cases of graft and fraud"[894] during Moi's regime. He claimed the new corruption in Kibaki's government was worth KES.15 billion enough to "buy 1,000 Mercedes Benz S350s…construct 15,000 classrooms…and (that) Kenya could afford to pay for its own development budget, and not come to donors, cup in hand and with fingers crossed."[895]

Kenyans aside, not everyone was amused by Clay's radical approach. The British Department of International Development (DFID) said it "had little appetite for the antics of a High Commissioner who appeared to have launched a personal crusade against government venality in a key African ally. When he saw the remarks, Clay was livid. "They found it an embarrassing obstacle, because it got in the way of their (DFID) plans to spend more money."[896] Kenyan Foreign Affairs Minister Ali Mwakwere called Clay an "incorrigible liar," adding:

> We are not ready to entertain derogatory remarks, hallucinations, assumptions, imaginations, or rumors on the person of Ministers, senior government officers, and by projection, virtually the presidency and the President as a person; that is unacceptable and undiplomatic.

Public Perceptions

The American Ambassador, William Bellamy, was equally critical. "Corruption in Kenya isn't a matter of *kitu kidogo* (a small bribe). It is big enough to cause macroeconomic distortions,"[897] During an official visit to Kenya in 2006, Kim Howells, the UK Minister of State for Foreign Affairs, did not mince words. "Kenyans can be bought: from the person who works at the docks in Mombasa up to the government. You can buy off politicians;

you can buy off policemen,"[898] Howells's was a fairly wide brush that was received with anger and disgust in government circles.

Analysts began to say Kibaki's government was as corrupt as Moi's, and that the Anglo Leasing scandal "had become the government's biggest political liability and a symbol of its failure to tackle corruption.[899] *Africa Confidential* thought Kenya's third President had been "fatally wounded" by increasing scandals in his government.[900]

Some of the people mentioned in corrupt deals were Kibaki's confidantes including an official in his office at State House, a PS and a businessman with close links to higher authorities. In March 2006, US President George W. Bush's government took one of the most drastic steps it could take against foreign citizens when it banned Alfred Getonga, a personal assistant to Kibaki, Jimmy Wanjigi a prominent wheeler-dealer, Anura Pereira and Deepak Kamani, all of whom had been mentioned adversely in the Anglo Leasing affair report, from visiting the US. Getonga was sacked from his job at State House.

Various media reports observed that all the measures taken by the Kibaki government including the enactment of anti-corruption legislations had been ineffective and that corruption had caused huge financial losses to Kenya estimated at up to US$.1 billion (KES.103.7 billion).[901]

But another bombshell was not far away. Finance Minister Uhuru Kenyatta presented to Parliament in 2011, results of an internal investigation which showed KES.4.2 billion had gone missing from the Education Ministry. The money, some of it donations from the United Kingdom and the United States, were for free primary education, building of new classrooms and purchase of textbooks. Provision of free primary education was one of Kibaki's early successes as President. An estimated 1.5 million children were enrolled in school for the first time through the program. A finger was immediately pointed at the Minister-in-charge, Sam Ongeri, who however said his conscience was clear and that he had done his duty to the best of his ability.

The scandal led to the freezing of donor funds and the suspensions of two dozen officials from the Ministry. Both the US and UK demanded a refund. The US Ambassador to Kenya, Michael Ranneberger, however, said suspensions were not enough. Those involved, he said, should be prosecuted and put behind bars. In November, the director of public prosecutions, Keriako Tobiko, ordered the EACC to undertake fresh investigations into the case and dismissed police recommendations that there was lack of sufficient evidence to indict anyone. No one was convicted.

Public sector role

There is a saying that it takes two to tango. Corruption in government cannot be curbed without the cooperation of the private sector. A British Chamber of Commerce survey singled out graft as the greatest challenge facing businesses in Kenya. To succeed in curbing it, the private sector had to be an active participant given that it was the supply-side of most corruption in Kenya, largely through public procurement, which accounted for 70% of corruption in the public sector.[902]

In March 2012, Kenya's private sector endorsed a code of conduct to deal with its own problems of corruption in the sector. Thirty companies, including blue chip companies like Safaricom and institutions like the Nairobi Stock Exchange signed the code of ethics for business in Kenya - an effort of the UN Global Compact Initiative, the Kenya Association of Manufacturers (KAM), and the Kenya Private Sector Alliance (KEPSA). Five hundred companies that met in Nairobi committed themselves to responsible business conduct and agreed to refrain from engaging in corrupt practices.

Slush funds

Despite the setting up legal infrastructures to combat corruption, graft continued during Kibaki's rule and peaked during the last year of his government. In the months leading to the elections in 2013, senior officials in the Internal Security Ministry opened a secret account at the National Bank of Kenya (NBK) and deposited billions of shillings into a slush fund masked as a general account from where they withdrew huge amounts of money under the item "confidential." Details of how the money was used could not be found, but it was estimated that KES.2.8 billion had disappeared into the pockets of officials. There were 48 cash withdrawals between July 2012 and March 2013 totaling KES.1.1 billion while KES.130 million was withdrawn only five days to the elections.

The Public Accounts Committee (PAC) Chairman, Ababu Namwamba, in a report tabled in Parliament, recommended to EACC that two senior officials in the Office of the President whose signatures were found in some of the transactions be held accountable. It noted that the expenditure “was so opaque and smacks of loss, wastage, misapplication and pilferage.” No legal action was taken to prosecute the individuals. In the last year of Kibaki’s administration, KES.60 billion could not be accounted for in government Ministries.

In a surprising turn of events, Namwamba and his Committee were sent packing after investigations found some of its members had used their positions to enrich themselves through extortion and blackmail in the very same case involving the Interior Ministry. It was alleged the Ministry officials bribed the legislators to have their names removed from the report. Namwamba exonerated himself from the charges but pointed a finger at some of his colleagues.

The House Committee of Privileges – which oversees members’ privileges and immunities – investigated the allegations and recommended that the 26-member PAC be disbanded, and the report be forwarded to State anti-corruption agencies for investigations. It was the first time in the history of the Kenya Parliament that such action had been taken against a Parliamentary Committee over corruption allegations. Nothing further was heard about the additional probes.

Chapter 25

Parastatals II: More looting

THE POLITICAL CRISIS over the contentious results of the 2007 general elections had ended, and a grand coalition of Kibaki and his nemesis Raila was in place. But another crisis was looming in 2009: famine and drought. In the northern, eastern, and coastal regions, cattle were dropping dead, crops had withered, and lakes were dry. The country was "on the verge of a catastrophe of Biblical proportions."[903] An estimated four million people depended on food aid. Consequently, the country was going through a serious shortage of maize, the stable food. While the grain flour was available in stores, the price was beyond the reach of many Kenyans. A two-kilogram packet which normally sold for KES.48 was selling at KES.130. The situation was made worse by a ban on importation of maize.

In 2007, the National Cereals and Produce Board (NCPB) had 5.3 million bags of maize including 3 million bags in the strategic grain reserve (SGR). By mid-2008, it had only 2.6 million bags of maize in its silos. And by January, the silos carried only 1.4 million bags.[904] The average amount of strategic food reserves is six million bags which must be in stores at all the time. In January 2009, Kibaki declared the drought and famine a national disaster and initiated a campaign to raise KES.37 billion to deal with the situation.

To ease the shortage and lower retail price on the market, the SGR trustees, comprising the Ministries of Special Programs, Agriculture, Office of the Prime Minister and Treasury, announced the lifting of the ban on the importation of grain. An authority was given to import 3 million bags to be sold to a selected group of millers at a subsidized price of KES.1,750 per 90-kilogram bag, instead of the regular price of KES.1,910. Two different prices were announced for retail consumers: A regular one of KES.72 per 2-kilogram packet and a special price of KES.52 for the lower-income bracket.

The government selected 46 millers to mill 80,000 bags of maize for release into the market.

What happened next was emblematic of the extent of greed by the elite whenever an opportunity to make money arose. First, bags of maize started disappearing. While the NCPB released 144,000 bags to the millers, only 40,000 bags could be accounted for. The remaining vanished into thin air, emerging later that the consignment had mysteriously been diverted to South Sudan.

In February 2009, Ikolomani MP Bonny Khalwale, tabled a motion of censure against the Agriculture Minister, William Samoei Ruto, for the “manner he has handled the purchase, storage, sale, and distribution of maize” from the NCPB leading to high costs of maize meal and scarcity of the commodity “that has resulted in a national disaster where some Kenyans have succumbed to death and left a further 10 million people starving.” It was the third censure motion involving maize in the country’s history. The first was against Minister of Agriculture Paul Ngei for mismanaging cereals in 1965, and another against Agriculture Minister James Osogo who was censured following the food shortages preceding the 1984 famine.

“I submit that Mr. Samoei must go home and remain away from that Ministry because he has abetted this maize scandal, and for gross incompetence in running the docket,” Khalwale told Parliament, referring to the Minister of Agriculture, William Samoei Ruto. Khalwale claimed while Kenyans were dying, 6,500 tons of maize were detained at the port of Mombasa because of questions about its quality. “Why did the Minister allow this scandal to take place?” Responding, Ruto laid in the House a slew of documents denying all the allegations by Khalwale and other MPs, and said the SGR did not, after all, fall under his Ministry. *The Motion was defeated.*

Other allegations were that two officials with direct connections to the government had imported 33 million gunny bags cheaply from China and Bangladesh in 2009 and sold them to the NCPB at “large profits” thus making millions of shillings in profit. One of them was a Kenyan Cabinet Minister who allegedly helped a company he was associated with to get the contract from NCPB. Although Agriculture Minister Ruto “admitted being a shareholder of a company called Amaco, he denied the company bid for the contract saying ten foreign firms had tendered for the supply of the gunny bags.”[905] Ruto told Parliament in February 2009 that three companies with the lowest bids, Hora Mills company limited, Alterban Industries Limited, and Mulnidar and Ratanlal Exporters Limited, were awarded the tender.[906] The entry of the bags saturated the market, forcing the local bag manufacturing company, the East African Bag and Cordage Co., to go broke and sack 3,000 workers.

Two, some of the milling companies were nothing but ‘brief-case’ entities managed by politically-correct individuals. One company which received 58,000 gunny bags, was reportedly connected to a powerful businessman related to a senior sports official, while another company which got 10,000 gunny bags was closely associated with president Moi. Names including that of at least one MP were also mentioned as having benefitted from the business allocation. One company was defunct having closed-down nearly a year earlier.

Some millers lied about their capacity to execute the job and were allocated far more than what they could mill. Media reports cited cases of millers who did not deserve to get the contract including one which claimed it could mill 96 bags of maize per hour while its capacity was only 10 bags per hour. Others claimed they were asked by officials to inflate their milling capacity to qualify for higher maize allocations in return for kick-backs.

The reports said the “millers” who had been allocated large quantities of maize were businessmen who either wanted to sell the maize to South Sudan where the grain fetched three times the prices it fetched locally, or to act as middle men for real millers.[907] However, Ruto said 94% of them were big millers, 5% smaller millers, and 0.8% were schools, NGOs and other institutions. Individual Kenyans who bought one or two bags comprised 0.3% or 3,646 bags.

What shocked Kenyans were reports that greedy businessmen had taken advantage of the shortage to fetch from South Africa 6,000 tons of maize unfit for human consumption. The government got wind of that deal before the grain was distributed. In June 2009, the maize was shipped back to South Africa. Cases of maize rotting in NCPB silos also emerged. It was reported in 2011 that 400,000 bags of maize donated to internally displaced persons in Eldoret had turned yellow and partly rotten due to poor storage, but the NCPB refused to declare it unfit for human consumption.[908] The NCPB insisted the food was good.

The whole thing played out as another major maize scandal right before the eyes of Kibaki, the man who had vowed to eliminate corruption. Even some officials at the NCPB were baffled how some of those companies got on the list of millers; at one time they (officials) didn't even know which companies had collected the maize from NCPB and which ones had not. A special audit was undertaken. On 27 January 2010, Ruto dissolved the NCPB, and detectives went to question three PSs, Joseph Kinyua of Treasury, Romano Kiome of Agriculture, and Mohamed Ali of Special Programs, to determine who were the genuine millers and who were fakes.

While Chairman Jimnah Mbaru and Managing Director Gideon Misoi continued at the helm of the NCPB, operating departments at the State Corporation were reduced from 14 to four. New board members were also appointed composed of Kamau James Njendu, Francis Wanyonyi, Grace Wanjiku Maina, Bernard Kiilu, and Mohammed Duale Ahmed.

The Ministry of Agriculture, one of the entities involved in the importation of the maize, denied accusations that it had anything to do with the scam. That did not stop Prime Minister Raila Odinga from suspending Minister Ruto from his Cabinet position on 14 February 2010 to facilitate investigations into corruption allegations after his name appeared in the PriceWaterhouseCoopers (PwC) report. The report claimed Ruto instructed his personal assistant to write a letter asking that an individual be allocated 1,000 bags of maize by the NCPB. Ruto, in turn, said it was Raila who chaired the Committee that supervised the importation, the sale and distribution of the maize. In the meantime, Raila approached the US Ambassador, Michael Ranneberger, who agreed to give Kenya a KES.7.9 billion-loan for food purchases.

In Parliament, MPs called for the prosecution of officials and politicians who influenced the NCPB to issue maize from the SGR to individuals and companies. Ruto however explained the high cost of maize meal was caused by SGR trustees, and that millers went to farmers to buy maize and passed on the increased cost to consumers. Ruto denied maize had been diverted to South Sudan saying instead it was sold to millers. In fact, he told Parliament on 22 January 2009 that he wrote a letter to the government of South Sudan on 29 October 2008 informing it of Kenya's inability to sell maize to Juba.

Four hours after Raila suspended Ruto, Kibaki reinstated him and transferred him to the Ministry of Higher Education, saying he (the President) was not consulted about the decision, and in any case, he added, Raila did not have authority Ministerial suspensions. Not to be seen to be condoning corruption, Kibaki made it clear in a press statement that war on corruption would only succeed “when it is done in accordance with the constitution and the due process of law.” Ruto a former ally of Raila was then working closely with Kibaki. When he suspended Ruto, Raila also sent home the Minister of Education Sam Ongeri, on a separate corruption scandal in the Ministry. That suspension too was nullified by the President**.**

On 13 February, two top officials in the Prime Minister’s Office, the PS, Mohamed Isahakia and the Chief of Staff, Caroli Omondi, resigned after their names were mentioned in the PwC audit report of the scandal. They denied involvement. The audit report showed as much as US$.26 million (KES.2.6 billion), was lost through illegal maize deals.

In cables leaked by WikiLeaks, the American Ambassador Michael Ranneberger claimed Raila suspended Ruto not only because he wanted to be seen as fighting corruption, but “to divert attention from his family’s involvement in the KES.2 billion maize scandal.[909] This is what the envoy wrote:

> We have credible reports that members of Odinga’s family, presumably with his knowledge and/or involvement, were involved in the maize scandal…It seems highly possible that Odinga made the announcement regarding Ongeri and Ruto knowing that it would cause a huge political and constitutional flap, and thus divert focus on both the corruption…[910]

Transparency International Kenya called for the prosecution of those involved in the scandal and blamed the Executive for using its political power to profit individuals at the top.[911] Parliament absolved Raila and his family from any wrong-doing.

Maize importation has always been a controversial issue in Kenya because some see it as one of the ways the corrupt elite use to defraud the government. In some instances, importation was ordered even as grains were rotting in farms. Cases arose when people in the northern regions were starving while maize was pilling in the Rift Valley and Western Kenya, for lack of transport. That happened in 1998 as the famine raged. Maize farmers were unable to sell their produce because of imported grains and poor prices offered by NCPB. The result was that the grains spoilt.

“When a certain Minister wants to import maize for his own milling plant, he lifts the ban on maize importation," said one MP. "After he has imported enough maize, he then imposes a ban. Then after the stock he imported is over, he then again lifts that ban. This has been a play…"[912]

Constituency Development Fund thefts

After numerous initiatives had failed to stir development in rural areas during the regimes of Kenyatta and Moi, the introduction of the Constituency Development Fund (CDF) in 2003 – at the initiation of the MP of Olkalou Muriuki Karue - was a boon, especially to marginalized communities.

Established through the CDF Act, the program required that an annual budgetary allocation of 2.5% of the total national revenue be allocated directly to the constituencies. To ensure equilibrium, 75% of the amount was to be distributed equally among the 210 constituencies and the remaining to be disbursed based on poverty levels and population size.

The creation of CDF aroused a lot of excitement not only among the MPs who were to oversee the funds in their constituencies, but the citizenry as well who saw an opportunity to rectify the imbalances that had existed through the centralization of power and finances. It also attracted the attention of other countries such as Tanzania, Uganda, Zambia, Zimbabwe, India, Honduras, Philippines, Papua New Guinea, and Jamaica, which eventually came up with their own versions of CDF.

During the first year of operation in 2003/2004, KES.1.2 billion was disbursed to constituencies through CDF. The amount increased to KES.5.6 billion in 2004/2005; KES.7.2 billion in 2005/2006; KES.10.08 billion in 2006/2007; and KES.10.1 billion in 2008/2009.

The funds were to be channeled into practical infrastructural projects such as schools, dispensaries, feeder roads, and other projects to help end poverty and illiteracy. Local people were to be engaged in decision-making processes, particularly in the identification of crucial projects and priorities, as well as in ensuring transparency and accountability.

However, that is not how many MPs saw it. They viewed the millions of shillings from CDF to be a cash cow to advance their own personal and political agendas. They appointed their cronies and relatives to Constituency Development Committees (CDCs) which controlled CDF, prioritized projects they saw as politically-beneficial to their cause, diverted money to personal and family use, and shut out dissenters and oppositionists from any development roles. In a study by the Kenya National Anti-Corruption Steering Committee (NASC) in 2004, CDCs in 21 constituencies were found to include MPs' spouses, close relatives and supporters.

The result was that money was stolen, projects to which money had been allocated were not constructed or were half completed, and MPs used the yearly disbursements as a slush fund to curry favor with constituents. They formed shell companies which then tendered for contracts from CDFs, creating a serious conflict of interest dilemma. Materials bought at exorbitant prices from such companies were sometimes not delivered.

Allegations of misuse of funds by one Nairobi MP got KACC to investigate the legislator in 2007. The anti-corruption body, in a report, said as chairman of the CDC, the MP interfered with the tendering and implementation of CDF projects involving a secondary school and *jua kali* (informal businesses) market stalls; that he withheld a check for KES.2 million owed to the contractor of the stalls. KACC also alleged the MP coerced the contractor to pay KES.2.3 million to a company of his choice for the supply of building materials. It forwarded the matter to the DPP with recommendations that the MP be prosecuted with two counts of abuse of office.

Because MPs are not necessarily experts in management affairs, and those selected for CDCs often lacked skills, monitoring and evaluation processes were not done, resulting in shoddy work and broken deadlines. Where projects were completed, they remained closed due to lack of equipment and staff. Kolenyo dispensary in Kisumu Rural constituency is a good example. After its completion around 2008 at a cost of KES.2.7 million, it stayed shut because money had not been allocated for running expenses even as people suffered from common diseases. At the same time, structures for the Kibuye open market in Kisumu Town West constituency which was to be used by the informal sector remained disused after the CDF had pumped in KES.750,000 for its construction.

In the 2008/2009 financial year, the National Taxpayers' Association (NTA) reported that KES.400 million allocated to 28 constituencies could not be accounted for. Ugenya constituency was ranked the worst performing constituency with 52.5% losses, Bumula, 50%, Kanduyi 48% and Msambweni 38%. Tinderet recorded the least misuse of funds.

KACC launched an inquiry in Igembe south constituency in 2009 into allegations that KES.4.8 million meant for the construction of the Maua Municipal stadium perimeter wall and dais in the 2008/2009 and 2009/2010 financial years had been misappropriated. It discovered that some of the payments were done without an Interim Payment Certificate (IPC), and that a sum of KES.1.7 million was paid to a contractor without work being done. KACC recommended to the DPP on 26 October 2011, that the culprits be apprehended and charged with fraudulently making payments from public revenue for services not delivered and for abuse of office. On 1 December, the DPP backed the recommendations.

In 2011, the MP for Kitutu Chache Richard Onyonka was interrogated by KACC over claims that he used CDF money to buy sugar worth KES.137 million for personal benefit from Chemelil Sugar Company and failed to remit VAT worth KES.21.2 million. He was arrested and appeared before a Kisumu court in January 2014 to answer charges of failing to pay the tax and of trying to defraud the public, an offence under the Economic Crimes Act. He denied the charges. The case was on-going by the end of 2017.

The same year, the Auditor General listed 28 constituencies where millions of shillings allocated to the CDF could not be accounted for. Five of the constituencies were represented by top Kibaki confidantes among them Internal Security Minister, George Saitoti, and two by Assistant Ministers. On the list were three each from Nairobi and Rift Valley and four each in Western, Coast, Central, Eastern and Nyanza provinces. The remaining constituencies were, however, said to have used their money well.

In 2012, a constituent, Kelvin Mumo of Kitui South constituency, sued the area MP to stop him from operating the CDF account alleging a misappropriation of KES.80 million. He said the MP had drawn checks to individuals and companies and wanted the court to order the money be recovered.

Gross misuse of money led the National Management Committee of CDF to cut off funds to constituencies that failed to be accountable or follow good implementation practices until they complied. Every year, dozens of constituencies fail to apply for additional tranches of money because of failure to account for previous disbursements. The CDF regulations insisted that MPs must submit statements of accounts of the previous year to justify fresh replenishment of cash. In 2010, 72 constituencies most of them from the poorest areas of the country, failed to apply for fresh funds. Some of them, such as Subukia, had a poverty index of 34% while Kitui South constituency had an index of 76%, according to the Kenya Bureau of Statistics (KBS), yet they could not access development money because of bad management. For their poor management practices, they slowed down development and deprived the citizenry of essential services.

The NTA has been doing regular audits of the CDF and has found massive losses of money meant for development. Those audits were used by the DCI and KACC to institute investigations into malpractices. In 2008, the anti-corruption body conducted investigations on the misuse of KES.30 million in five constituencies.

The NTA has often accused MPs of failing to account for funds, spending money on ghost or stalled projects, or building non-developmental projects such as toilets; and of misusing the money to sponsor youths for driving classes.

The abuse of development funds was the subject of discussions during the 56th Commonwealth Parliamentary Association (CPA) conference in Nairobi in September 2010 entitled "the role of parliamentarians in facilitating grassroots projects." The meeting lauded Kenya for devolving funds to the ground, but called for transparency and accountability in their use. It was followed by another CPA meeting in Kingston, Jamaica, a country which has also adopted the CDF concept.

As Kibaki prepared to leave office early in 2013, NTA claimed KES.355 million of KES.1.8 billion allocated to CDF in the year 2010/2011 was either unaccounted for or wasted in 28 constituencies. One constituency, Khwisero had wasted a staggering KES.58.9 million or 81.2% of its total allocation of KES.61.3 million. Others were Ikolomani which lost KES.27 million and Rongo KES.18 million.

The EACC Vice Chairperson, Irene Keino, said her organization had investigated 200 cases involving CDF.

With all misappropriations, CDF nevertheless succeeded where programs such as the district development grant program of 1966, the special rural development program of 1969, and the district focus of 1983, had failed to yield economic benefits for the rural folks.

ECK

During and after the 2007 elections, the Electoral Commission of Kenya

(ECK) was heavily chastised for the way it handled the tallying of votes and the apparent rigging of the polls that gave Kibaki the presidency over Raila Odinga. What Kenyans didn't realize was that ECK was not just enmeshed in political corruption – dictating who should lead the country – but also steeped in financial mismanagement; well beyond what the Auditor General had been saying in his reports throughout the 1990s up to 2007.

ECK had 22 Commissioners with seven standing committees each comprising six Commissioners. The organization was allowed by the treasury regulations to use what is called the "preferred procurement procedure" which meant it could employ single-sourcing in the procurement of its materials. Generally, single-sourcing is prone to corruption and manipulation and affords opportunities for procurement officers and their bosses to enrich themselves.

The period between 1991 and 2007 (excluding the 2007 general elections), according to AfriCOG, an NGO, ECK was allocated KES.15.8 billion for electoral activities including voter education, registration and the carrying of elections. There were three general elections during that period and numerous by-elections. There was also the national referendum in 2005. Not everything went well though. There was serious abuse of finances. The Auditor General issued a report questioning the use of KES.19 billion, of the money, equivalent to 12% of the Commission's disbursement from the Treasury. The money was allegedly lost to irregular payments to commissioners amounting to KES.219.4 million between 1992 to 2007; irregular allowances to other staff members, KES.69.5 million; doubtful hire and repair of vehicles, KES.119 million; irregularities in procurement of stores, KES.52 million; an authorized over-expenditure, KES.868 million; wasteful expenditure, KES.332 million; unsupported expenditure, KES.263 million; and outstanding imprests, amounting to KES.8.3 million[913]

Commissioners paid themselves unwarranted sitting and subsistence allowances and other remunerations amounting to millions of shillings. In the 2006/2007 financial year, the Chairman was paid KES.63,000 and the Vice Chairman and Committee members KES.420,000 per month during the whole financial year as sitting allowances contrary to regulations. During the 1990s, the AfriCOG report said, Commissioners paid themselves sitting allowances for each day of the year including Saturdays, Sundays, on public holidays, and even when they were out of the country. In addition, they paid themselves subsistence allowances even though it was irregular to pay the two allowances simultaneously. There was so much abuse of allowances that one Commissioner was paid KES.926,600 in medical and travel expenses even though he was sick in hospital. Most of the abuse took place during Moi's rule, especially when Zacchaeus Chesoni was chairman, but there wasn't much change when Samuel Kivuitu was the boss after taking over from Chesoni in 1999. ECK continued to lose money to greedy, venal officials.

NHIF

Of the mega scandals during the four regimes under review, the one that rocked the National Hospital Insurance Fund (NHIF) in 2012 ranks among the top ten, alongside Goldenberg, Anglo Leasing, NSSF, the NYS scam, and the cemetery saga. The NHIF is a key state Corporation established in 1967 to provide accessible, affordable, sustainable and quality health insurance for all Kenyans over the age of 18 years.

The NHIF's biggest shame in the last year of Kibaki's rule followed a series of bizarre events preceding a tender of KES.634 million for a civil servants' medical aid scheme. As part of the scheme, the NHIF board was mandated to accredit clinics throughout the country to be the backbone of health service delivery to the people. But what followed was a horde of irregularities including the controversial creation of a unit within the NHIF called the strategic business unit to run the scheme, non-procedural selection of clinics, and questionable disbursements to ghost clinics. Add those to internal feuds pitying various NHIF board members over control of the funds, and there emerged a combination of collusion, intrigues, manipulation, and corruption, which drew in the EACC, the Efficiency Monitoring Unit (EMU), the Kenya Audit Office (KAO) and the Criminal Investigation Department (CID).

Hundreds of clinics were opened to service 217,000 civil servants and members of the uniformed services, but after inspection, many were found to have serious management problems with inadequate ICT support and poor communication structures. Whereas the clinics were supposed to be "stand-alones" many were operating under the cover of other companies, and had been accredited illegally.

Two of the clinics, Clinix Healthcare ltd and Meridian Medical Group were allocated a total of KES.318 million many times more than the KES.7 million given to each of the two major referral facilities in the country, Kenyatta National Hospital and Moi Teaching and Referral Hospital. The companies quickly rolled out clinics in different parts of the country and began receiving money from public coffers. In the first three months alone, Clinix received from NHIF KES.202 million in disbursements for clinics which, in some cases, did not exist.

The Parliamentary Departmental Committee on Health was shocked to find out that the owner of one of the companies also owned majority shares in a pharmaceutical firm which had been barred by the government for supplying fake drugs to the Kenya Medical Supplies Agency (KEMSA). The company, registered in the tax haven offshore Virgin Islands, and whose directors were unknown, was said to have connections with senior government officials in an arrangement in which corruption was suspected. Vice President Kalonzo Musyoka said in 2012 the island's Prime Minister, Dr. Orlando Smith, had offered to name the directors if Kenya requested.

"I was with Dr. Smith and he promised me that he will not allow any Kenyan with suspect money to open an account in their country and deposit it for personal gain,"[914] Musyoka said on arrival from a visit to China. *However, no one knows whether Kenya made the request or not.*

EACC announced it was in the process of recovering the money paid to Clinix and Meridian and in October 2013, a newspaper quoted the commission's Chief Executive, Michael Mubea, as saying KES.100 million had already been recovered and restored back to the State.[915]

The former NHIF boss, Richard Kerich, was arrested by EACC and charged in court for conspiring to defraud the Fund of KES.116 million. With him in court were Peter Wambugu and Ndiba Wairioko, both directors of Meridian; and David Chingi, the NHIF manager for strategy and corporate planning.

There were other scandals at the NHIF including one in which the Fund lost KES.479 million invested in Euro Bank which eventually went under. It was later alleged that Moi had urged parastatals to deposit their money in indigenous banks. That advice was reportedly given during three meetings at State House between March and December 2001 attended by top NHIF officials. The Fund's Managing Director, Ibrahim Hussein, was later charged for abuse of office for authorizing the deposit against the State Corporation Act. Hussein denied all the charges.

The Fund also found itself in hot soup after agreeing to pay KES.7.2 billion in consultancy fees for the construction of a KES.22 billion hospital in Karen. Angered by that decision, the government ordered the NHIF not to pay what it said was a “ludicrous” amount and a misuse of public resources. “The Ministry of Health’s position on the NHIF Karen Hospital project is that we shouldn’t pay, can’t pay and therefore won’t pay the claims for the purported consultancy services which alarmingly now stands at KES.7.2 billion,” Health Cabinet Secretary James Macharia said in a statement.[916]

Then there was the ambulance scandal in 2001 where irregularities were detected in the purchase of ambulances for the organization. The NHIF quoted for 103 ambulances but the number was changed to 158 at the Ministry of Health with one senior official reportedly asking for a kick-back of KES.6.2 million from one of the two motor dealers. Although the Minister of Medical Services, Amukowa Anangwe, was not directly linked to the scandal, Moi felt he should be held responsible and was sacked.

Another NHIF fiasco involved a multi-story car park in Nairobi whose cost was inflated from KES.900 million to KES.3.9 billion. The Auditor General said in his 2011/2012 report that the expenditure representing a 337% increase could not be justified. He also questioned a payment of KES.407 million for consultancy fees for the building of a resource center whose cost was KES.93 million. It appeared no approval was given for the expenditure.

In 1998, reforms at the NHIF became inevitable. Hand-picked and usually politically connected board members were removed and replaced with stakeholders which included the labor unions, and by 2012 the NHIF had an annual expenditure of US$.60 million (KES.6.2 billion) serving nine million contributors and dependents.[917]

NSSF and financial fiddling

The scandal-ridden National Social Security Fund (NSSF) was under scrutiny in 2009 when the Parliamentary Public Investment Committee (PIC) questioned the transfer of KES.1.4 billion from the Fund to the Discount Securities Limited (DSL), a brokerage firm. The scam was revealed in the 2001 report of the PIC after a routine scrutiny of government parastatals, and found DSL had opened 82 nominee accounts in 2008 for purposes of buying shares at the Nairobi Securities Exchange (NSE).

A PIC report tabled in Parliament showed DSL had bought only KES.25 million worth of shares in return. The balance of the money could not be explained, and DSL officials declined to appear before the PIC panel to shed light. More troubling was that at the time of the deposits, DSL was on the verge of collapse.

Glaring irregularities were discovered. For once, the contract to DSL to handle NSSF shares was not subjected to competitive bidding and neither the Ministry of Finance nor the Ministry of Labor were consulted as required under the NSSF Act. Then there was the mode of payment. NSSF paid DSL using open checks which was unusual. Those shares were then deposited in multiple numbered accounts that were unknown to NSSF. "Why the NSSF agreed to give the broker an open check – and the leeway to keep the shares in its own name for protracted periods – is one of the biggest riddles in this complex game of deception," said Jaindi Kisero, an economics analyst.

The NSSF became suspicious early in 2007 when it discovered that shares bought by DSL from way back in 2005 were not registered in joint names of NSSF and DSL as agreed. On 28 August 2008, the Managing Trustee, Rachel Lumbasyo, and six senior managers were sent on compulsory leave to pave way for investigations. The others were James Akoya, Francis Mutori, Wilfred Munyoro, Mary Ndirangu, Isaac Nyamongo and David Githaiga.

The following March 2009, the Capital Markets Authority (CMA) put DSL under statutory management.

The revelations of the loss were so startling that the Minister of Labor, John Munyes, issued a Ministerial statement in Parliament on 18 February 2009. He revealed the total amount NSSF invested through DSL between August 2004 and 2007 for purposes of buying shares on its behalf was KES.3 billion. A total of KES.1.1 billion worth of shares were delivered while KES.1.2 billion shares were undelivered. According to the Minister, DSL admitted owning NSSF shares of KES.517 million but disputed shares worth KES.683 million. However, NSSF maintained the outstanding amount was KES.1.2 billion inclusive of the KES.683 million, and said DSL had remitted to the Fund KES.1.3 million being dividends in respect to the outstanding amount.[918] The Minister's explanation showed the matter was much more convoluted that originally thought. The use of workers' money for such a risky venture with a company facing serious financial problems was beyond understanding. Consequently, the net loss to the workers appeared to amount to more than KES.682 million.

Early in 2010, the AG gave KACC a go-ahead to prosecute those involved in the irregular trading. *But no action was taken until 2013 when Kibaki was out of office.*

Looting at the oil tap

Until 2003 when Kibaki's NARC regime came to power, the oil industry was dominated by foreign marketing companies. Small local companies were in no position to compete with those big firms because every time they bought oil from them and processed it at the Kenya Petroleum Refinery (KPR); they had to pay a premium of US$.4 (KES.415), per ton above the landed cost. And because the small companies had to rely on the big ones for imported oil products, the cost of operations could not allow them to grow.

The Energy Minister, Kiraitu Murungi, told Parliament in 2009 that to set a level playing ground, the government had to introduce what it called the Open Tender System (OTS) for importation of petroleum and other refined products.

And to enable oil firms to access huge volumes of products, the Kenya Pipeline Company (KPC) in conjunction with local and international financiers came up with a credit scheme called collateral financing arrangements (CFA) in 2004. Under CFA, oil was held in trust by KPC on behalf of the financiers for a period of 30 days and could only be released on the instructions of the financiers.

Several companies, said Murungi, took advantage of the CFA arrangement and everyone was happy, until some KPC employees and one of the companies, Triton Petroleum Company, released petroleum products held in trust by KPC to the company without written authority from the financiers as required. What made the situation worse was that Triton sold the products but failed to pay the money borrowed from the financiers, and in the process accumulated KES.7.6 billion in bad debt.

The bubble burst when the financiers and suppliers of Triton laid claims for compensation against KPC. When KPLC conducted an audit of its stocks, it discovered that 126.4 million liters of oil had been irregularly and illegally released to Triton between 2007 and 2008.[919] In effect, there was no oil left in trust for other companies. Total Kenya alone was left with a bill of KES.850 million incurred through Triton.

The CBK as the government's fiscal and monetary agent, reviewed the impact of the loss on the balance sheets of Kenyan banks that provided facilities to Triton and confirmed the institutions had adequate capital to cushion any potential losses.[920] In the meantime, the Energy Ministry got involved and the Triton oil scandal was born.[921]

Triton was owned by Yagnesh Devani, an Asian billionaire with high connections within the Kenya government. As Triton flooded the market with illicit products, the price dropped substantially to US$.50 (KES.5,190), per barrel, forcing the company into receivership. Seeing what was happening, Devani disappeared from his offices in Westlands, Nairobi, prompting an international arrest warrant to be issued.

Then the blame game started. Junior staff were blamed for the multi-billion-shilling fiasco. In September 2011, the 46-year old Devani was arrested in Northwood, Northwest of London. After an unsuccessful battle to stop his extradition, he was finally sent to Kenya early in 2016 and charged with defrauding KPC together with four others: Julius Kilonzo, Collins Otieno, Mahendra Pathak and Benedict Mutua.

Several banks including the Kenya Commercial Bank (KCB) filed suit against KPC to recover lost money.

KPC is a strategic government institution which was set up to transport refined petroleum products from the port of Mombasa to the interior. In 1978, it opened a 240-mile pipeline between the port and Nairobi later to be extended further into the hinterlands to Eldoret. It was part of the country's ambitious Vision 2030 blueprint which sought to transform Kenya into a middle-level developed country by 2030. But KPC has had a bumpy ride over the years resulting in a high turn-over of top level officials.

In 2002, Dr. Linus Cheruiyot was the first KPL Managing Director to be charged in court for conspiring with others to defraud the company of KES.339 million through the awarding of a computerization tender to a company called Data Logix before it was discussed by the tender committee. He also faced charges of obtaining money by false pretenses. However, Cheruiyot jumped bail while on a KES.10 million-bond and fled to the US leaving eight of his officials to face the music. In April 2006 all the accused were set free after the State failed to prove the case against them.

The person who took over from Dr. Cheruiyot, Ezekiel Komen, was another executive allegedly implicated in corruption while at the helm of KPC. In 2010, Komen was charged with two counts of breach of trust and conspiracy to defraud. It was alleged that as a signatory, he irregularly authorized payments from the bank account of the East African gas company limited (EAGCL) thus occasioning a loss of KES.65.2 million of KPC money. He denied the charges.

Another victim of the KPC curse was Dr. Shem Ochuodho who replaced Komen. With former KPC Chairman Maurice Dantas and two directors of Triple A. Capital, a debt-financing company, Ochuodho appeared in court in February 2010 on charges of conspiring to defraud the organization of KES.827 million by paying for services which were not rendered. John Kiarie and Ms. Terry Kiarie, directors of Triple A. Capital were also charged separately with obtaining KES.1.6 billion from KPC. *The accused denied the charges. In May 2014, the High Court cleared the accused of all charges and restrained a lower court from proceeding with the case.*

Then came George Okungu who was appointed in 2005. Five years later he was sacked and charged in court together with a former senior manager, Mary Kiptui, for an alleged fraud of KES.65 million involving the sale of company houses to employees. The two went to the High Court and argued their constitutional rights had been infringed. They succeeded; the Court dismissed the charges and restrained KACC from prosecuting them.

The next Managing Director of KPC to face the law was Selest Kilinda. After the end of his three-year term as Managing Director and following accusations of nepotism and abuse of office, he was dismissed in 2013. Kilinda was censored for hiring two sisters and a brother contrary to the law, but argued they were junior employees and were of “no consequence.” He was not charged.

His replacement was Charles Tanui who lasted for only two years. He too was accused of abuse of office for irregularly awarding a KES.29 million-contract to Redline Limited for the installation of auto-transformers. He was arraigned in court with the chief engineer and the chief technical manager, Josephat Sirma and Elias Karumi, respectively, and Judy Wamaitha Thuo and her company Redline Limited, on six charges of failing to comply with procurement rules. On 24 October 2017, the case against all accused was terminated because EACC had not been properly constituted at the time it investigated the case.

Dr. Ben Chumo who was the company's chief manager of human rights and administration was appointed to act as Managing Director effective 1 July 2013.

Looting by the gun

In 2009, the Kenya government established what it called the National Space Secretariat (NSS) through a gazette notice No. 5563 signed by the Minister of Defense, Mohamed Y. Haji. Membership of the secretariat comprised representatives of the AG, directorate of military defense; the national military command center; communications commission of Kenya; Kenya meteorological department and the department of resource surveys and remote sensing.

Its objectives were widespread and of highly technical nature: to conduct research on science policy to reflect the current trends in the use of space science and technology; promote peaceful uses of space science applications including satellite earth observations, navigation, telecommunication and disaster management; oversee the transition of the secretariat to a fully-fledged Kenya space agency, among others.

In every aspect, the body was a potentially powerful organization that would have propelled the country into the space age ahead of many other African countries. But that appeared not to have been so.

Every year since then the NSS has been receiving huge amounts of money from the treasury for purposes of furthering its objectives. Almost nine years later, the NSS remains a paper project with no clear indication as to how the disbursed money is utilized. The Auditor General Edward Ouko blew the whistle in 2004 when he disclosed that the NSS had been allocated KES.500 million each year for the past three financial years and "questioned the wisdom of the national Treasury Cabinet Secretary, Henry Rotich, and bosses at the military for consistently budgeting colossal amounts for a paper project."[922]

In the 2013/2014 financial year, the NSS could not account for KES.40 million, but it was still allocated KES.558 million in 2015 and KES.605 million in 2016.

Over the years, the military has been queried on the way it uses its budgetary allocation. In the 2013/2014 financial year, the Auditor General Ouko said KES.320 million spent by the military was questionable. There was a myriad anomalies in its accounting, including questionable payments, payments for shoddy work, and failure to channel to the government billions of shillings received from the United Nations for Peacekeeping Services. Millions given out to officers as per diem and imprests had not been accounted for at the end of the financial year. In the same period, the military was paid KES.6.1 billion by the UN, most of which could not be accounted for.

Another sum of KES.74 million was paid to officers to travel to various parts of the world for official duty including Europe, North America, Asia and the Middle East, but the officers never left Kenya. Forty-two officers were involved. An additional KES.31 million was advanced to officers as imprests to travel to Mombasa to clear military goods from the port. The money was not surrendered.

When auditors went to the department of defense in December 2014 to inquire about how the department spent their allocation, the military brass could not provide documentation to show its use, and the auditor-general surmised the money was either pocketed or not properly recorded.

Kenya has been a contributor to the UN peacekeeping forces around the world since soon after Moi took over power from Kenyatta in 1978. Thousands of soldiers of different ranks have been deployed to trouble-spots in different countries starting with military observers in the UN Iran-Iraq military observer group (UNIIMOG), (1988-)1991), to UNTAG in Namibia, (1989-1990); to UN protection force in Croatia, (1992-1995); to two missions to Liberia, UNOMIL, (1993-1997) and UNOMIL, (1993-1997); to UN0MSIL in Sierra Leone,(1998-1999); to the UN interim force in Lebanon UNFIL, (1978); to the UN multi-dimensional integrated stabilization mission in Mali, MINUSMA, (2013); to the UN organization stabilization mission in the democratic republic of the Congo, MONUSCO, (2010); to the UN-Africa Union mission in Darfur, UNAMID, (2007); to the UN mission in South Sudan, UNMISS, (2005-2011; and the mission to Somalia, AMISOM, (2011).

Through the deployments, Kenya has been paid millions of US dollars by the UN as a reimbursement for the costs of preparing troops, maintaining readiness and deploying expensive equipment to support given mandates.[923] Individual soldiers have also earned allowances of up to US$.1,028 (KES.106,706) per month each, regardless of rank per month. Those under the AU such as the AMISOM troops in Somalia were initially paid much less by EU donors first US$.500 (KES.51,900) in 2007 and then US$.750 (KES.77,850) in 2009 before the rates were finally aligned to those of the UN. The allowances are paid to the Kenya government which then is required to pass them on to the peacekeepers on top of their regular monthly emoluments. However, this has not always been the case. There have been instances in which the money intended for the soldiers has disappeared never to be traced.

Corruption in military recruitment

But there is another form of corruption that has dogged the Defense Ministry for years: corruption in the recruitment of personnel. The practice has been rampant and known to the top military officials. On 14 September 2005, the Provost Martial, Col. Sylvester Chirchir, shocked colleagues during a media briefing when he said KES.52 million was the estimated amount spent on corrupt deals during recruitment exercises since 2009.

The EACC ranked the Ministry of Defense as the most corrupt department in 2012. Twenty-five percent of those who sought services from the Ministry were likely to pay a bribe. During the same period, the Auditor General faulted the Defense Ministry of importing 181 armored personnel carriers (APCs) between 2008 and 2011 in violation of procurement regulations.

According to the Stockholm International Peace Research Institute (SIPRI), Kenya bought 32 APCs from China in 2007, 67 from South Africa, and ten infantry-fighting vehicles from Serbia in 2012 at a cost of US$.20 million (KES.2 billion). Some of the vehicles had flaws including faulty breaking systems, faulty gear selection systems, rust and worn-out turret covers, the Auditor General said.[924] The tender involving the South African purchase amounting to KES.1.6 billion was reportedly manipulated and snatched from a winning bid under shady circumstances.

John Githongo, the former Kenyan anti-corruption czar believes “defense is the last refuge of grand corruption,”[925] but the secrecy surrounding the establishment has made it difficult for the public to determine the extent of graft in the sector.

That secrecy is what stopped open debate in Parliament in 2011 when an MP and former military officer, Gideon Konchellah, claimed the Defense Ministry was "corrupt and shrouded in a lot of underhand deals," saying he had a dossier containing some damaging information in the armed forces that could have links to the dismissal of five senior officers. The officers were sent home a few months earlier on allegations of irregular procurement of 15 sub-standard F-5 jets from Jordan for use by the Kenya Air Force against the advice of the American aircraft manufacturers. The aircraft were expected to conduct a fly-over to usher in the new constitution on 27 August 2010, but only one was airworthy enough to fly.

The country reportedly parted with KES.2.3 billion on a fleet that was said to be old and unserviceable kicking off suspicions of corruption during the tendering process. The procurement was done when Njenga Karume was the Minister of Defense in 2010. However, his successor, Haji, told MPs not to link the departure of the officers to the jet purchase because the five – Maj. Gen. Enock Sasia, Brig. Arthur Owuor, Col. Joseph Ojwang, Lt. Col. Rono and Lt. Col. Machasiu – had retired voluntarily.[926]

And when top military officials led by the Vice Chief of General Staff, Gen. Julius Waweru Karangi, went before the Parliamentary Committee on Defense and Foreign Relations in a rare appearance to answer questions about the jets, proceedings were held in camera to preserve the secrecy of the military dealings.

Kenya has bought aircraft and military parts from a diverse number of countries including Serbia, Russia, Ukraine, and China, apart from its traditional markets of the US, Britain, Germany, Spain, and France. Several helicopters bought from Russia for the Kenya Police Service have crashed and some are no longer in service.

Digital migration tender wars

In 2011, when Kenya was in the process of migrating from analogue to digital broadcasting, the government-run Communications Commission of Kenya (CCK) floated a tender for digital distribution signals as part of a worldwide trend to modernize the mode of broadcast communication. Numerous companies sent bids, among them two local media houses, Nation media group and Royal media services. The others were Signal distributors Ltd., African link Agencies, Mayfox Ltd., Globecast Africa, and Pan African Network Group (PANG).

Only PANG, a Chinese company qualified, and on 23 June 2011 was awarded the tender and joined Signet, a subsidiary of the State-owned Kenya Broadcasting Corporation (KBC), which had been licensed in 2009 in the new initiative. But the entry of PANG was contentious with local broadcasting companies complaining about foreign companies taking control of broadcasting services in the country. Nation media group, Standard group and Royal media went to court and said the process to issue the tender to PANG violated the constitution because it was conducted by CCK, a body which under the constitution was to be replaced by the Communications Authority of Kenya (CAK) in June 2014.

In its ruling on 28 March 2014, the court agreed that the tendering process was not legal and quashed the award to PANG. It also ordered fresh tendering and issuance of license to the three complainants. However, court battles continued up to the Supreme Court which in November ruled that 21 licenses be issued to the Africa Digital Network (ADN) a consortium of the three local companies, against 120 licenses for PANG. CAK hit back by raiding transmission stations of the three stations and switching off their broadcasts resulting in a complete black out of signals on 14 February 2015.

In the meantime, opposition politicians accused the government of ignoring tender procedures by irregularly issuing the tender to the Chinese company. And the Kenya Union of Journalists (KUJ) expressed concern at the way the government handled the matter.

That controversy was not the only one involving Chinese companies bidding contracts in Kenya. Early in 2012, the Ministry of Provincial Administration and Internal Security floated a multi-billion tender for the supply of the Kenya Police Service with a communication and surveillance system. Since the contract was part of the Chinese aid agreement with the Kenya government entered during President Kibaki’s visit to China in May 2010, companies from other countries were not allowed to bid.

When the tenders were opened on 20 February, the offer from ZTE Corporation (formerly known as Zhongxing New Telecommunications Equipment Co.) was accepted though allegations were made that some government officials had been bribed to favor it. One of the losers, Huawei technologies, challenged issuance of the tender to ZTE arguing the process was improperly handled. Its 14 January 2013 request to have the decision reviewed by the Public Procurement Administrative Review Board (PPARB) was denied.

Subsequently, the Huawei technologies went to court to obtain orders barring the Ministry of internal security from signing the contract pending hearing of its application. It claimed ZTE planned to use outdated technology. The court complied and issued an order stopping the government from committing to ZTE. But in an unexpected turn of events, the Head of Civil Service, Francis Kimemia, announced the cancellation of the tender, explaining that the country was hard-pressed with other commitments such as the rising wage bill and the upcoming 2013 general elections to fund the project.

In a letter to the Treasury PS Joseph Kinyua and Internal Security Minister Katoo ole Metito dated 11 February 2013, Kimemia noted that the tendering process "had been conducted unprofessionally," adding there were allegations the tenderers had influenced the evaluation by bribing some officials who received varying amounts of kickbacks to influence preferred outcomes.[927]

By early 2013, the cost of the project – officially known as the national surveillance, communication, command and control system, which was part of the KES.60 billion Anglo Leasing contracts – had ballooned from between KES.7 to KES.10 billion to KES.18 billion. The project was to include the supply of telephone facilities, digital recording equipment, video tracking systems and vehicles.

The Chinese connection marked the second time the tender to supply police with modern communication equipment had failed. The first time, the tender was issued to Simoco, a British company, but the controversy of the Anglo Leasing scandal made the continuation of the process untenable.

Posta corruption

In 2009 after KP&TC was renamed Postal Corporation of Kenya (PCK), the Post-Master General was sacked following investigations into misappropriation of funds. It was discovered that fraudsters were taking advantage of irregularities in a contract between the Corporation and Afripayments, the company contracted to manage the money transfer service

– to milk PCK of huge amounts of money. It was found customer remittances were retained by Afripayments beyond the agreed settlement period and that the American company owed the Corporation KES.156 million. Two checks Afripayments wrote to the Corporation amounting to KES.16.2 million bounced.[928]

Several other managers were sent on compulsory leave and grilled by KACA. One of them, the General Manager Finance and Strategy, Andrew Tanui, sued the Corporation in 2009 for unfair and unlawful termination of service and was paid KES.5.9 million in compensation, gratuity and other expenses after the Judge ruled the dismissal was unfair.

Crooked intelligence officers?

In 2010, the American embassy in Nairobi made some rattling allegations against the Kenya intelligence community. In a cable to Washington, Ambassador Ranneberger, claimed one or more crooked spy officers received kickbacks from a Chinese company to influence the awarding of a tender for telephone monitoring equipment.

The envoy alleged "the deal was done after the Kenya Telecommunications Company was pressured to do so by the intelligence services," through an officer who visited China. He further claimed another officer "received monthly payments of over US$.5,000 (KES.519,000) from the company which were used to pay his medical bills."[929] The Ambassador neither named the Chinese company nor the officers involved.

The report was sensational enough to attract the attention of the Kenya government. Its spokesman, Alfred Mutua, dismissed the allegations as "preposterous and out of sync with reality. Allegations of money being given for medical purposes are baseless," he said, adding they were either based on assumptions or manufactured analysis.

US embassy cables, many of which were subsequently released by Wikileaks, often criticized the Kenya government on a myriad of issues including graft, arms smuggling to South Sudan, involvement in international narcotics trafficking, and Kenya's relations with China. In one cable in December 2010, for example, Ranneberger reported to Washington about "rampant, high-level corruption" and "a culture of impunity" as the main obstacles in the path to reforms. He criticized the "old guard" team of Kibaki and Raila in the grand coalition which, he said, had vested interests in the culture of impunity.

In another cable during the same month, Ranneberger painted the Kenyan Cabinet as the most corrupt in Africa. Kenya officials lashed back telling the envoy to stop interfering in Kenyan affairs, and some politicians even called for his removal.[930] Some analysts compared him to Hempstone the ‘rogue ambassador” who spent his tenure in Kenya lambasting Moi about human rights violations.

The security institutions in general have always been in the eye of criticisms over matters of corruption and extortion. In the recruitment of personnel to the Kenya Defense Forcess (KDF) and the Kenya Police Service (KPS), twenty-three cases of bribes were reported in 2013 amounting to KES.5 million. In 2014, sixteen cases involving KES.4 million were recorded and in the following year, the amount of kickbacks dropped to KES.2 million due to increased vigilance indicating some success in curbing corruption in the service.[931]

A survey done by Afrobarometer in November and December 2014 showed Kenya security forces were “marred by allegations of widespread corruption, extortion, and human rights abuses.” The survey linked security forces to activities of Al-Shabaab, the Somali terror group.

The National Intelligence Act provides a code of conduct which governs ethics, leadership, and integrity for members of the service and sets stiff punishment for officers involved in corruption or other misdeeds. Occasionally, however, members of the service are mentioned in travesties such as the murder of Dr. Robert Ouko and JM Kariuki or extortion of money from drug barons and other criminals.

More information about the participation of security forces in smuggling and corruption is provided elsewhere in this narrative.

Looting on the railway

In 2006, the governments of Kenya and Uganda signed a 25-year concession agreement for the rehabilitation, operation and maintenance of the railway track length of 2,350 kilometers of which 1,920 kilometers is in Kenya and 430 kilometers in Uganda. The works were to be carried out by the respective railways organizations: Rift Valley Railways (RVR) in Kenya and Rift Valley Railways Uganda Ltd (RVRU).

All the necessary protocols were signed, and the inventory of wagons and locomotives was determined in preparation for a five-year modernization plan. The African Development Bank (AfDB) and the World Bank (WB) together with other international donors were to finance the project, with the WB pumping KES.2.2 billion in 2014 and 2015 for the purchase of 20 locomotives from the US-based National Railway Equipment Company (NREC) in an opaque manner.

Other donors were the AfDB contributing US$.40 million (KES.4.1 billion); Germany's KfW Bankengruppe US$.32 million (KES.3.3 billion); Dutch Development Bank FMO US$.20 million (KES.2 billion); Kenya's Equity Bank US$.20 million (KES.2 billion); Cordiant's infrastructure crisis fund US$.20 million (KES.2 billion); and the Belgian Investment Company for Developing Countries US$.10 million (KES.1 billion).

Also in the loop was a company known as Qalaa Holdings – a majority shareholder of RVR – which in 2011 raised US$.287 million (KES.29.7 billion), towards the rehabilitation of what was once known as the Uganda-Railway and which had been neglected for years. The project was intended to reduce the cost of travel to and from the port of Mombasa and lower costs for users, and more than double the current volume of 1.5 million tons per year by 2015.

What officials didn't know was that the RVR – which took over the management of the Great Rift Valley (GRV) in 2005 – was destined to become yet another addition to the long list of cash cows for greedy individuals. A WB audit report claimed "RVR executives bribed public officials, manipulated accounts, and created convoluted ownership and operational structures with the aim of defrauding lenders, including the IFC."[932] An estimated KES.16.5 billion could not be accounted for and the project was still moribund as at the end of 2017.

Qalaa previously known as citadel capital, created "an offshore structure of shell companies which has extracted millions in advisory fees from RVR despite the railway suffering losses in recent years."[933] The Cairo-based organization's Chief Executive officer was Karim Sadek who, together with the Chairman and founder Ahmed Heikal, were the driving force behind the project.

In addition, it was discovered that instead of buying new locomotives, the RVR chose used standard gauge wagons which were bought at KES.17.1

million each and then modified at a cost of KES.99 million each. Yet a single unit of a used locomotive is estimated at between KES.4.5 million and KES.11 million depending on the year of manufacture.

A media investigation by the WB integrity office, simply referred to as INT, found evidence that some officials in the RVR group engaged in corrupt, fraudulent, collusive and obstructive practices in the procurement, financing and importation of the refurbished locomotives.[934] They were also accused of bribing KRA officials to avoid paying VAT amounting to KES.377.4 million.

In 2016, an audit report revealed that most of the money disbursed through its private sector arm, the International Finance Corporation (IFC), and others had been misappropriated. There was also a maze of cash transfers, mysterious subsidiaries and inappropriate leases of RVR locomotives to other entities.

All those matters were a subject of investigation by the WB. Six present and past officials of the RVR were on the spotlight.

As the modernization process became bogged down in bureaucracy, the Kenya government signed a US$.5.2 billion (KES.539.7 billion) agreement with the Chinese government for the building of the Standard Gauge Railway (SGR) line between Mombasa and Nairobi.

Chapter 26

Currency scavengers

ONE OF THE most bizarre non-violent robberies took place at the CBK in 2003. No one expected people entrusted with safeguarding the monetary currency of the nation could turn rogue and steal millions of shillings of notes destined for destruction. Every ten years or so, the CBK gathers all damaged notes and marks them for destruction through a carefully scrutinized system known only to bank insiders. Initially, the notes are punched with multiple holes, then shredded, made into briquettes, and then taken to a secluded area of the city for incineration.

In mid-2003, staff from five departments of CBK reportedly colluded to hijack the notes before they were punched, and hid them in trash bins before sneaking the bins out like any ordinary litter. While this happened, the CCTV cameras installed to monitor activities within the bank were either not functioning or "deliberately interfered with."[935]

It was undetermined how much money was involved in the theft and no serious government investigation seemed to have been carried out. Thus, some people got away literally scot free.

CBK in bank mess

The CBK has always found itself at the center of mega financial scandals. With every collapsed bank, and with every big financial mess such as the Goldenberg fiasco, the CBK has featured prominently for the simple reason that it is the regulator of financial institutions and administers foreign exchange.

In December 2016, it was reported that senior CBK officials had colluded with executives at the collapsed Imperial Bank to hide unauthorized loans and overdrafts amounting to KES.35 billion between 2012 and 2014. Britain's *Financial Times* reported that those fraudulent facilities involved payment of school fees, jobs, and a luxurious spa vacation in Thailand, to officials and relatives of CBK apparently with the knowledge of bank's chief executive Abdulmalek Janmohamed.

Even the auditors who were supposed to raise the red flag were induced with low-interest loans totaling KES.500 million, says the Kenya Deposit Insurance Corporation (KDIC), the bank's receiver manager. When the matter was brought to the attention of the CBK higher authorities by a whistleblower, the bank chose not to take any action.[936]

Imperial bank was placed under the CBK receivership in October 2015 after a forensic audit revealed shocking fraudulent activities which some described as "one of the biggest theft syndicates in the industry."[937]

In March 2016, two former Imperial Bank executives, head of credit, Naeem Shah and Chief Finance Officer James Kaburu along with the directors of W.E. Tilley Limited, were charged for stealing KES.29 million from the Imperial Bank, part of the KES.34 billion the firm's Chief Executive Janmohamed was said to have stolen over a period of ten years. W.E Tilley Limited directors, Zulfikar Haiderali Jessa and Nargis Aziz Jessa faced charges of conspiracy to defraud, engaging in an organized criminal activity, fraudulent accounting, theft and money laundering. They all pleaded not guilty.

Janmohamed who died in September 2015, transferred the KES.34 billion from the bank-to-bank accounts he kept in numerous shell institutions. They included companies in Kenya, Uganda, and Tanzania, and ranged from fishmongers to mining establishments. He also opened 12 fictitious companies at the bank into which millions of shillings were deposited before being moved elsewhere and the account closed.

In 2015, the bank and former customers sued Imperial Bank for recovery of their money and got a court order to have all assets belonging to Janmohamed and associate companies frozen. With the stolen money, the former chief executive invested heavily in real estate in the region and bought shares in several companies including Butali Sugar Mills, Old Mutual and Apex Securities.

In papers given to the court, Shah and Kaburu alleged CBK was complicit in the activities leading to the bank's collapse. "CBK officers were compromised not to inspect books," they said, claiming further that the CBK Governor at the time had built "a rather cozy relationship" with Janmohamed which undermined the interests of the bank. The collapse of the bank affected 50,000 depositors.

The roller-coast at CBK

The seat of the Central Bank of Kenya (CBK) Governor has always been hot. In 2006, Andrew Mullei – who had been appointed Chairman and Governor on 4 March 2003 – was charged on court on four charges of abuse of office. He was accused of using his position to appoint his son, Sila Mulei, a computer expert, and three others, Melville Smith, a forensic auditor, Terry Ryan, a member of CBK's monetary policy commitment, and Titus Mwirigi, to investigate tax evasion and money laundering at the troubled Charterhouse Bank without board permission. He was also charged with awarding his son a contract worth US$.30,000 (KES.3.1 million). He left office in March 2007 and was replaced by Prof Njuguna Ndung'u.

The history of the bank has been characterized by a high turn-over at the top. When Moi took over office, one of the things he did was not to ruffle feathers at the CBK which, between 1967 and 1982, was led by Duncan Ndegwa, a Kikuyu - the first African to hold the position. He was therefore a highly placed public servant when Jomo Kenyatta in 1964 tipped him to take over CBK from a European, Dr. Leon Baranski, who had served for only one year. Ndegwa, a graduate from the University of St. Andrews in Scotland, served for 15 years under Kenyatta and Moi.

Picking a Kikuyu replacement for Duncan Ndegwa made strategic sense for Moi. The country was recovering from a coup attempt by the Kenya Air Forces that August, and there was fear the Kikuyu could stir trouble to the already shaken Moi. "Moi's fear was that replacing him with an 'outsider' (from a non-Kikuyu tribe) would have led to a hue and cry causing economic sabotage on grounds that the community controlled the country's economy."[938] So, to be on the side of the biggest community in the country, he picked Philip Ndegwa, a soft-spoken wealthy Kikuyu technocrat who was also his business associate.

In 1987, when Philip Ndegwa was ready to leave, Moi was confident enough to appoint a trusted fellow Kalenjin, Eric Kotut, to be governor. He served from 1988 to 1993 and was followed by another Kalenjin, Micah Cheserem, who was in office from 1993 until 2001. Cheserem, an accountant, was succeeded by Nahashon Nyagah who served for only two years, the shortest stint by any governor.[939] When Kibaki took over from Moi, he went to the University of Nairobi and picked up a fellow Kikuyu, Prof. Njuguna Nd'ungu, an economics professor, who worked for eight years.

In 2014, Nd'ungu was charged for irregularly awarding a security tender to a UK company, Horse Bridge. It was alleged he inflated the award from KES.800 million to KES.1.2 billion thus occasioning a loss of KES.400 million to the government. He denied the charge and said the tender process was properly executed. The matter reached the High Court where a Judge ordered Nd'ungu to appear before a trial court while still in office. But following hearings at the Court of Appeal, conservatory orders were issued stopping the EACC from arresting him. After his tenure expired early in 2015, President Uhuru Kenyatta chose another Kikuyu, Dr. Patrick Njoroge, to head the institution, after being subjected to competitive nomination for the first time in the bank's history.

In the meantime, the CBK was reorganized to reduce the influence of the governor by making him, the CEO of the bank, answerable to the Chairman of the CBK board. Previously, the governor and his deputy served as chairman and deputy chairman respectively. Mohamed Nyaoga, a prominent lawyer, became the first Chairman of the CBK Board.

Other than Mullei, Kotut and Cheserem, the Kikuyu have dominated the top layer of the institution since independence. Controversy followed each one of the CBK Governors. Philip Ndegwa left on accusations of foreign exchange abuses and tribalism in the recruitment of CBK staff, while Eric Kotut's name was mentioned in the Goldenberg scandal.

Nahashon Nyagah, on the other hand, was accused of failing to prevent the loss of a large amount of money deposited in the collapsed Euro bank. His name was also linked to the multi-billion-shilling Tatu City project, an ambitious 2,500-acre industrial park in Ukambani, which was designed to decentralize development. Instead of turning into a metropolis and a job haven for thousands of Kenyans, the Tatu City became a fiasco of "row power, power abuse, suspicion, mistrust and boardroom wars which spilt into boardrooms."[940]

As for Cheserem, he was hounded out of the bank in 2001, and blamed political interests for his woes.

In 2015, the DPP, Keriako Tobiko, ordered the prosecution of Prof Ndung'u for irregularly awarding a US$.1.2 billion (KES.124.5 billion) tender to Horsebridge Networks Systems East Africa Limited for the installation of a security software system at CBK. EACC which investigated the case said the Kenyan public lost KES.400 million arising from inflation of the bid price by Horsebridge. Ndung'u denied the charges. Since the case first emerged in 2014, it has been bogged down by legal issues, including the withdrawal from the case of the Presiding Judge, Lady Justice Agnes Murgor, who disqualified herself in September 2016 saying she had acted for CBK when she was in private practice.

In March 2017, the former CBK Governor went to the Court of Appeal to bar his prosecution saying it was an abuse of court process. His lawyers Cecil Miller and Peter Wena said a lower court erred in allowing the DPP to prosecute him and claiming there was no sufficient evidence that a criminal act had been committed by Ndung'u. The ruling was still pending by the end of 2017.

Ministers and tender schemes

In January 2005, a local newspaper revealed a scheme in which a top Kibaki Cabinet official was said to have used his office to grant two multi-million-shilling tenders to a company in which he was a shareholder. The tender was for the supply of insurance services worth KES.6.5 million to the Kenya Cooperative Creameries (KCC), a government Corporation. One of the bid losers complained that the process was not transparent because the winning firm was "owned by a very senior officer in the Ministry." The Cooperatives Minister, Peter Njeru Ndwiga, admitted he had shares in the company, but said the firm won the tender fairly. In defending itself from unfair practices, the KCC Managing Director, David Namu, said the institution did not know at the time of issuing the tender that Ndwiga was a shareholder in the firm.

In addition, a stamp duty waiver to another of Ndwiga's companies roped in the Finance Minister, David Mwiraria, who had extended the KES.6 million-facility to Kimondo holdings limited after it had acquired a 73.5-hectare farm in Embu District. The Parliamentary Finance Committee promised to investigate how Ndwiga's company was awarded the tender and how he was exempted from paying stamp duty, said the shadow finance Minister Billow Kerrow. Transparency International Kenya described Ndwiga's dealings as "abuse of power and unprocedural, while the opposition LDP called for the resignation of both Ministers.

“This system is so rotten under-ground and it has now started floating. There are so many scandals in the government,” added the chairman of the Law Society of Kenya (LSK), Ahmednassir Abdulahi.[941]

The Ndwiga expose came on the heel of reports by the Auditor General and Parliamentary watchdog committees showing that at least 15 members of Kibaki’s 30-strong Cabinet were adversely mentioned in corruption scandals.[942] In another case in April 2006, the AG Amos Wako declined a recommendation by KACC to prosecute another Minister in relation to senior appointments he had made at two parastatals which the anti-corruption body said contravened the law.[943]

Money Laundering

In September 2004, a fire broke out at the Nairobi headquarters of the Charterhouse Bank (CHB) offices burning to ashes a large tranche of financial documents. The cause of the fire was not discerned but its connection to questionable activities at the bank could not be ruled out. The inferno, which reportedly wiped out the bank’s data bank, occurred at a time when the institution was drowned in suspicions of money laundering and tax evasion.

Established in 1996 by members of a merchant Asian family of Sanjay Shah, Manish Shah, Manoj Shah, and Artur Shah, the Charterhouse Bank (CHB) was a small bank – rated at number 26 in the banking sector – but with considerable political weight behind it.

In January 2001, the CBK questioned a US$.30 million (KES.3.1 billion) international transfer into the bank from Liechtenstein, Europe, in favor of a company called crucial properties, one of the bank’s clients. Ironically, it was the CHB which notified the CBK about the huge transaction, and the CBK immediately made and received orders from the Kenya High Court to freeze the account on suspicion the money could be proceeds from illegal sources. Crucial Properties said the transfer was legitimate and was meant for “property development and trading in Africa.”[944]

Before the CBK had a chance to freeze the amount, Justice Samuel Oguk, lifted the order on 10 May 2001, and the owners of crucial properties quickly withdrew the money and trans-shipped it overnight to an undisclosed destination.[945] The AG Amos Wako who had planned to appeal was left dumb-folded. That court decision did not surprise many because of the bank's deep connections within the Moi government. "It was not a normal bank," a WikiLeaks report leaked from the US embassy was to say later in 2017, "and it "appears to enjoy protection at the highest levels in Kenya."[946]

Thereafter, leaks began to emerge about the bank's alleged illicit activities. Whistleblowers who leaked the information on the operations of the CHB were either moved off the case or were forced to flee the country for their own safety. One of those who blew the whistle about illegalities in the bank was Peter Odhiambo, an internal auditor at the bank, who asked and was granted asylum in the US after receiving letters threatening his life. The same fate befell another whistleblower, Titus Mwirigi, who fled to the US. An American embassy cable leaked by WikiLeaks in 2004 said Odhiambo examined 85 accounts and found US$.573 million (KES.59.4 billion) had been lost to tax evasion. Moreover, he said, while the bank owners were said to be south Asian Kenyans, "some of them (Asians) were proxy holders of shares owned by two MPs."[947] Incidentally, the MPs were among persons named by the US embassy as being involved in international drug trafficking.

On 2 and 3 April 2006, the *Daily Nation* published a comprehensive report about a bank (it did not name) which it said was linked to a large supermarket chain. It said the bank was involved in tax evasion and possible money laundering. At the time, the only bank with branches situated in supermarket branches was CHB. It had outlets within Nakumatt Supermarkets – then one of the largest chains in Kenya – which the Shah family owned along with Kingsway Tyres. Both Nakumatt and Kingsway were operating under the umbrella of Ram trust, Ram being the nickname of Ramniklal P. Shah, the original owner of Kingsways.

On 20 March 2006, Finance Minister Amos Kimunya wrote a letter to the CBK drawing his attention to the unsavory activities at the CHB and asking the bank governor to cancel its license. Those activities included suspicious transactions, unavailability of customer records for 45 accounts, and offshore money transfers involving splitting of transactions. It was also found that checks drawn on a customer's account were cleared through a lawyer's account and the same lawyer's account was used as a trading account for some customers."[948]

In the months and years that followed, what came to be known as the Charterhouse scandal grew larger. On 23 March 2006, three days after he wrote to Kimunya about the tax evasion and money laundering at CHB, the CBK Governor, Dr. Andrew Mullei, was charged in court on four counts of abuse of office unrelated to the CHB scam. He was accused of employing four people as consultants without following correct procedures.

On 22 June 2006, shadow finance Minister, Billow Kerrow, tabled documents in Parliament – including an interim report of the inter-agency task force investigating economic crimes by Charterhouse and related banks – to prove that the bank was indeed involved in illegal activities. The task force was appointed in October 2004. On 23 June 2006, the CBK took over the bank and named Rose Detho, then assistant director at CBK as receiver manager. Towards the end of the year, the CBK asked KACC to seek the opinion of the AG on how to deal with the CHB issue even though, according to Kimunya, the CBK had in April and July 2005 recommended renewal of the bank's license on the basis that the "overall financial co-ordinations of the bank were satisfactory, and the bank was fully complaint with the requirements of the Banking Act and the Central Bank of Kenya Prudential Regulations."

In the latest communication to KACC, CBK reversed its position on the status of the bank saying: "This bank mainly runs fictitious accounts for some of the big businesses in town for the purposes of tax evasion, siphoning money out of the country into offshore accounts and money laundering."[949]

Charterhouse was known to operate offshore accounts in Liechtenstein, a small doubly landlocked German-speaking country in central Europe favored by the world's billionaires where the Shahs appointed a trust company, first advisory trust, which in turn established shell companies in British Virgin Islands, Proudview Investments; and Foreman Corporation in Belize, both in the Caribbean. The two companies held 27.7% shares each in Charterhouse.

On 7 July 2010, MP Charles Kilonzo presented in Parliament a petition from 35 depositors requesting that the bank be re-opened. Three months later, the Parliamentary Committee on Finance, Planning and Trade, opened a fresh investigation over the Charterhouse scandal during which time the Commissioner General of the Kenya Revenue Authority (KRA), Michael Waweru, absolved the bank from any wrong doing which was a reversal of a decision it made in July 2006 accusing the bank of massive tax evasion. The CBK Governor, Prof Njuguna Ndung'u and the acting director of KACC, John Mutonyi, too told the Committee they had no objection to the reopening of the institution. Mutonyi said money laundering was not an offence in Kenya and the evidence so far unearthed could not sustain a conviction.[950]

In 2011, the Center for Open Governance (AfriCOG) released a report entitled “smoldering evidence,” insisting CHB was involved in tax violations and money laundering and that it facilitated a flow of money to companies and persons through unregistered and illicit transfers.

The AfriCOG cited an example of an Italian businessman, Paulo Sattanino, who held several accounts at CHB and received money from several Kenyan companies. He would then instruct the CHB to transfer the money overseas without any relevant documentation. In one transfer of €5,270 million (KES.635 billion) on 7 July 2005, Sanjah Shah, the Managing Director of CHB, followed it up with an email to Sattanino: “Kindly note the above amount has been remitted to your account by Hon…”[951] (name of the MP withheld). Another individual identified by AfriCOG as being in the habit of making illegal money transfers to Sattanino’s accounts was Italian businessman Francesco Tramontano based in Dar es Salaam, Tanzania. According to a Belgian Parliamentary Committee, in 2003, Tramontano was convicted in absentia for defrauding the Belgian Development Office of €2,235 million (KES.269 billion) in aid funds. A typical *modus operandi*, it said, was to split a large amount of money into smaller transactions so as not to raise suspicion of money laundering.

AfriCOG’s assessment of the money laundering situation in Kenya was backed by another report in 2015 by the African Network of Centers for Investigative Reporting (ANCIR) which cited widespread cases of money laundering and tax evasion by Kenyan companies including banks, supermarket chains, oil companies, and even law firms, worth an estimated US$.1.5 billion (KES.155.7 billion). The report included the CHB.

An audit by the PriceWaterhouseCoopers (PwC) reported numerous cases of unusually large cash transactions involving certain customers which it did not name. The customers would make unusually large cash deposits and withdrawals of up to KES.1 million indicating an intention to conceal the true source or beneficiary of the payments made. AfriCOG cited a case of Sailesh Prajapati, account no. CA 01-00148:

> Between the time the account was opened in January 1999 and when it was closed in August 2004, it had a debit turnover of

KES.2.2 billion. There were numerous transactions of exactly the same amounts. There were over 1,300 cash deposits of KES.1 million each out of 1,570 total credits during the period. Of the remaining credits, KES.105 million was received from Nakumatt in 28 equal transactions of KES.3.76 million each. The auditors (PwC) observed that transacting business in cash throughout the history of the account was very unusual. Neither the account opening forms nor details of the mandates to operate it were found within the banking system.[952]

Another account cited by AfriCOG belonged to Odesys Enterprises, account no. CA 01-000740, which had a turnover of KES.554.8 million debits and KES.556 million credits respectively over a 10-month period to 23 June 2006. Again, all transactions were in cash. The auditors found no commercial rationale to such cash transaction which, they said, were inconsistent with a business operating from Butere, a small town in western Kenya.

Since the bank take-over in June 2006, the CBK has taken no action either to reopen the bank or declare its eventual demise despite recommendations by PwC, auditor of the bank, to close down the bank.

Abacha connection

In 2009, the CBK anti-fraud unit officials announced they were investigating a Kenya-registered bank that could have laundered US$.100 million (KES.10.3 billion) allegedly looted by the Nigerian President Abacha and transferred to banks in Switzerland, the US, and Britain, among other countries. An officer in the unit, Nicholas Kamwende, said they were examining accounts books of the bank dating back from 1997, with a focus on up to four companies belonging to influential officials connected to Moi’s government.

Investigations commenced after Swiss authorities reported to Kenya way back in 2001 that some of the Abacha money was wired from the Kenyan institution. Some reports said the Nigerian dictator could have looted up to US$.4.3 billion (KES.446.3 billion) from his country’s treasury.

The chief executive of the Transnational Bank, Dhirendra Rana, admitted knowledge of the investigation involving several accounts at his bank but declined to give details. He confirmed the bank received instructions to credit a 'substantial' amount of money into the accounts of their customers and was later asked to wire it to some foreign accounts." [953] However, Rana told the *Voice of America* that "until the investigations prove there was laundered money, I cannot really make any authoritative statement that it is laundered money."[954]

Under Kibaki, efforts were made by the government to recover illegally obtained assets stashed in foreign banks. In 2003, US$.1 billion (KES.103.8 billion) of taxpayers' money looted mostly during Moi's tenure was recovered and returned to the Kenya treasury.

Banks were also ordered through a circular published on 15 November 2005 to be vigilant over large deposits and withdrawals of money and conversions of large amounts from one currency to another.

Kenyan money was also laundered through untraceable shell companies abroad. A study by the University of Texas, Griffith University, and Brigham Young University in the US, found that out of 182 countries, Kenya was the least likely to ask for identification documents when people opened a shell company.[955]

Kenya is vulnerable to money laundering because of its thriving economy and a wide network of cash-based, unrecorded transfers, used by expatriates to send and receive international money remittances.[956] For example, Somalis have, since the overthrow of Siad Barre in 1991, used an informal system of money transfer called *hawalas* which is untouched by formal regulations. This system allows Somalis in the Diaspora to transfer millions of dollars every day from Europe to relatives in Nairobi without being detected by authorities.[957] Such money could be used to fund terrorist organizations and illicit drug trafficking, and could be laundered locally for use in purchasing assets such as real estate. In April 2015, Kenya shut down 13 *hawala* shops allegedly to prevent financing of militant groups. The large number of Asian merchants in Kenya with connections across the globe as commission agents of overseas companies could also be conduits for money laundering without authorities knowing.

The government has taken measures to curb money laundering such as requiring deposit institutions to verify and identify customers wishing to open an account and conduct a transaction; and requiring banks to submit detailed reports of all transactions greater than US$.100,000 (KES.10.3 million). On 1 January 2009, President Kibaki assented to The Proceeds of Crime and Anti-

Money Laundering Bill which had been passed by Parliament in December intended to trace, freeze, and seize illegally obtained funds

In 2012, a report of the Swiss National Bank (SNB) – the Central Bank of Switzerland – revealed Kenyans had KES.72 billion stashed in Swiss bank accounts. Not all of it was dirty money, however. Some of it belonged to genuine investors, but for some reasons, Kenya appears not to know how the money got there in the first place, according to finance Minister Robinson Githae. "Treasury has no idea of the source, the owners, and how the money ended up there," he told *The EastAfrican* in 2012.

Looting in Parliament

In 2008, EACC announced investigations against seven seating and former MPs on allegations of claiming illegal allowances totaling US$.250,000 (KES.25.9 million). Among them was a Minister who was accused of "improper use of his duties, status and power for personal gain" by claiming about US$.35,000 (KES.3.6 million), in 2006 and 2007, while an Assistant Minister was said to have claimed twice that amount. The other five were alleged to have pocketed the equivalent of US$.145,000 (KES.15 million).

Even with their high income, many MPs normally "augment their salaries through corrupt deals, backhanders and extortion rackets."[958] A case in point was allegations that a leading international tobacco manufacturing company in Kenya had bribed MPs to "kill" anti-smoking regulations that Parliament was contemplating to enact. One of them was said to be a Kenyan Cabinet Minister and another, a senior politician who reportedly received KES.7.3 million while campaigning for the presidency in 2013.[959] The money was allegedly to stop a rival company from winning a multi-million-shilling contract and for supplying Kenya with technology to combat cigarette smuggling.[960]

Most of the bribes to Kenyan officials included money as well as all-expenses paid holidays for some Ministers, MPs and government officials. The chairperson of the Parliamentary Committee on Health, Rachael Nyamai, admitted in 2015, for example, that the tobacco company had offered to send members on a lavish retreat in Britain, but they turned down the offer. The trip would have cost up to KES.100 million, a local daily claimed.[961] It took 13 years of haggling and bribing for the Tobacco Control Act 2007 to pass through the Kenya Parliament.

Parliamentary Committees have particularly been on the spotlight over graft allegations. The shenanigans at PAC were not isolated. The Agriculture Committee and the Lands Committee also had to fight off graft allegations involving huge amounts of pay-offs. Jakoyo Midiwo, the Minority Leader in Parliament raved that "corruption in the House has slowly evolved from the traditional cash for questions to more sophisticated system where MPs get money from big firms that are subject to committee investigations."[962]

The Senate Public Accounts and Investments Committee too has been accused of corruption and extortion. In 2016, County governors complained they were often summoned to Nairobi and asked for bribes. In one instance, they claimed, the 12-member Committee demanded from the governors KES.2.5 million each to "overlook" audit queries. The Council of Governors' Chairman, Peter Munya, called it "institutionalized blackmail."

To win the coveted position of Parliamentary Committee Chairman, a contestant has to bribe. Figures of between KES.200,000 and KES.1 million have been quoted depending on the importance of the Committee.

But corruption in Parliament also manifested itself in the management of the National Assembly itself. When in 2012 the House spent KES.920 million in refurbishing the Chamber, including KES.300,000 each for 350 cushy, fireproof, seats, Kenyans smelt corruption, but the Speaker Kenneth Marende said the renovations were intended to propel Parliament into the digital age.

The works took three years instead of the anticipated one-year completion period due to internal infighting within the Parliamentary Service Committee (PAC) – the administering body – over tendering. Kenyans complained in the media about the extravagance given the fact that most of them went to bed hungry. A sleight of the hand was seen when members of the PAC travelled to Israel and China to window-shop for furniture for the new chamber only for the Prisons service to win the tender for the job. The trips afforded the legislators an opportunity to win hefty allowances.

Parliament could not also explain why it used a commercial bank instead of the CBK to bank KES.64 million from the treasury intended for refurbishment of the National Assembly, a decision which violated government regulations.

Chapter 27

Pyramid schemes

SOMETIME IN 2006 a man with no known public profile burst into the limelight. His name was George Donde, a Luo from the shores of Lake Victoria and a businessman in Kisumu and Nairobi. Officially, he called himself an "Independent Financial Services Professional" but his actions showed he was much more than that.

Together with a relative, Donde registered a company called DECI Capacity Building and Entrepreneurship Limited, an investment company that offered high returns to its investors. Already, that was an early warning sign about the company's portfolio.

Kibaki was two years in office when DECI was formed. He had managed to reverse President Moi's economic negatives into promising positives. From almost zero growth when he took over, the economy was now flourishing at 5%. Tourism was recovering from the adverse effects of terrorism, and transport and communication were showing signs of renewed growth. In other words, most of the economic indicators were showing good signs of growth despite the lingering drought in northern and eastern parts of Kenya.[963]

Kenya's diaspora community estimated at half a million were pumping into the country more than US$.1 billion (KES.103.8 billion) per year, a significant increase over the past decade. Piracy on the Horn of Africa was increasing in intensity yielding huge amounts of money in hostage fees for the pirates. Because of stability in Kenya, a good portion of that money was finding its way into the East African country and laundered in real estate deals and other major purchases.

There was so much money circulating outside financial institutions – a staggering KES.71 billion against only KES.40 billion in bank vaults – forcing the CBK to post a notice warning of "excessive liquidity." And, because of high liquidity and low bank interest rates, Kenyans could afford to buy cars, new household items, and even real estate.

So, when Donde emerged with his DECI, he found a ready clientele. The company was only one of hundreds of others preying on unsuspecting Kenyans. What the owners called investment companies were ponzi or pyramid schemes. They ranged from small ones like Brucobi with only four investors with an investment of KES.2,000, to massive organizations like DICE with 93,485 investors and a portfolio of KES.2.4 billion.

Somewhere in between was CLIP Pyramid run by Peter Alfred Ndakwe with investments worth KES.1.9 billion and a file of 5,846 investors. Ironically, Ndakwe was author and publisher of religious books, a position he used to lure his victims to put money in his bogus company. By the time the law finally caught up with him, he had formed two offshore companies in Panama which he used as a front to deposit money.

The government was concerned about the proliferation of pyramid schemes and the amount of investments involved. In February and May 2007, the CBK warned the public against investing in the schemes, but the warning fell largely on deaf ears of Kenyans hungry to make a financial kill. The public reacted negatively terming the warnings "a government interference to otherwise legitimate investments."

People were enticed to deposit money for phenomenal returns within a short period, and were supposed to earn a commission every time they introduced a new member. During the early part of the scheme – like in all ponzi scams – investors were promptly paid what was due to them, but as the market of new recruits dwindled, payments became difficult to make because of reduced inflows. It was at that point that owners closed shop and vanished with what they had already made. Ndakwe is a good example. He fled to South Africa after his company collapsed. The whole process looked legitimate to those determined to make quick money. One of them, Jane Musimbi, a former banker, said she lost a total of KES.31 million to the schemes between 2006 and 2007.[964]

A government task force on pyramid schemes appointed on 14 January 2009 to investigate the scam found some of the schemes were owned by several prominent politicians, and some of the KES.34 billion lost in 270 pyramid schemes over a four-year period could have found its way to political parties and may have funded the 2007 general elections. Twenty people committed suicide after losing their wealth to the fraudsters.

Chaired by a legislator, Francis Nyenze, the task force was mandated: “To establish the number and nature of pyramid and other related schemes in existence and the identities of its directors.” The panel was to make recommendations that would help recover the lost money, formulate legal measures to deter future pyramid schemes, prepare a strategy of public awareness campaigns, and form regulations to guide financial institutions in dealing with pyramid or related schemes.

The task force identified a total of 270 pyramid schemes operating across the country. It named the following as the top ten institutions in terms of money invested:

1. D`ECI: 93,485 investors - investment totaling KES.2,405,518,832.00
2. Clip Investments: 5,846 investors - investment: KES.1,993,866,422.00
3. Kenya Business Community Sacco Ltd: 921 investors: investment: KES.780,698,218.00
4. Sasanet Investments Sacco Ltd: 629 investors - investment: KES.739,948,412.00
5. Jitegemee Investment Sacco Ltd: 3,828 investors – investment: KES.494,401,600.00
6. Circuit Investment: 1,392 investors – investment: KES.348,943,103.00
7. Family-in-need Organization: 4,580 investors – investment: KES.157,280,553.00
8. Global Entrepreneurship: 9,206 investors – investment: KES.139,006,632.00
9. Spell Investment: 544 investors – investment: KES.120,326,860.00
10. Mont Blanq Afrique: 774 investors – investment: KES.82,834,000.00

In total, the 10 companies had a total of 121,205 investors who risked KES.7.2 billion. Some of the company owners invested the money in expensive real estate both in Kenya and overseas which they held in the names of third parties. The task force recommended that such properties be forfeited.

The Nyenze report was never implemented because it “touches on who is who in the country. The report ruthlessly named the culprits behind the schemes and the property bought with the money. But there is totally no goodwill to implement it,”[965] said the man who chaired the task force, in 2015. There were accusations in Parliament that the government was protecting the culprits but in response, the Minister for Cooperative Development and Marketing, Joe Nyagah, said he could not confirm whether those mentioned by legislators were masterminds of the schemes.[966]

However, two former Cabinet Ministers whose names had been mentioned as connected with pyramid schemes, and a senior officer in President Kibaki’s Office vehemently denied any connection to the fraud. They called the task force probe a circus and a waste of public resources and told the police to go for the “real masterminds of the schemes and stop using us as scapegoats.”[967]

MPs had also named church leaders, prominent lawyers and relatives of politicians as the kingpins of the pyramid schemes.

Eleven people connected to the schemes were taken to court. None was successfully prosecuted. Because of shoddy investigation, some of those acquitted filed suits and were awarded compensation for wrongful prosecution.[968] Parliament was told the scams involved “highly connected individuals; some of them politicians, members of the Cabinet and Honorable Members.”[969]

The National Pyramid Schemes Victims’ Association (NPYVA) sued the CBK. It wanted the money frozen in commercial banks transferred to the CBK, and for the bank to release the documents relating to the case. Early in December 2016, the CBK said since it was not a member of the task force, it was not, therefore, a custodian of “most of the documents.” The litigants claimed they lost KES. 4.1 billion to the plotters.

Even with what had happened a decade earlier, Kenyans never learnt, it seems. In 2016, another Ponzi scheme hit town and took Kenyans by storm. Newspapers reported a well-known Russian conman, Sergey Mavrodi, had set up a branch of MMM Global in Kenya – a get-money-quick scheme – to fleece Kenyans. MMM for Mavrodi, his brother Vyacheslav Mavrodi, and

Olga Melnikova, was established in Russia in 1989, initially as a computer and office equipment importation company. It switched to financial services after running into money troubles, and in 1994 began the Ponzi scheme.

It grew rapidly and within a few years it was taking in approximately US$.50 million (KES.5.1 billion) each day from selling shares to the public. Mavrodi even tried to run for the presidency of Russia in 1996, but was disqualified on technical grounds, and in 1997 the company went bankrupt. By then, he had scammed thousands of people of at least US$.5.5 million (KES.570 million). In 2003, he was arrested and charged with fraud and jailed for four and half years. MMM went under with US$.100 million (KES.10.3 billion) of investor's money.

It was then that Mavrodi travelled to South Africa to continue with his fraudulent activities, stretching them to other African countries, including Kenya. He established operations in Nigeria and Zimbabwe where he conned thousands of people.

The firm was not secretive and held public meetings in hotels in Kenya promising rewards to those who paid a fee to help the needy including older members. Members also received bonuses for recruiting others into the scheme. In return, they earned points in bitcoins, an electronic currency, enjoyed some measure of financial freedom and an opportunity to 'change the world.' The CBK quickly issued an alert about the risks involved in the use of bitcoins as currency saying they were not legal tender and therefore "no protection exists in the event the platform that exchanges or holds the virtual currency fails or goes out of business."[970]

Bitcoin described as a cryptocurrency, was invented in 2008, and is used to buy things electronically. Others call it a 'fools' gold…a fantasy… resembles a ponzi scheme."[971] No single institution – including banks – controls the electronic payment system; it is transferable electronically and instantly with low transaction fees.[972] The use of bitcoin was therefore an innovation in Kenya. It was less understood and because of its mystery Kenyans were attracted to it like magnet.

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One criminal case that raised a specter of hope about official immunity during Kibaki's rule involved the arrest and prosecution of two senior officials in the Ministry of Tourism, Rebecca Nabutola and Dr. Achieng

Ong'ong'a; and a businessman Duncan Kuguru in a 2009 case in which they were accused of defrauding the government of KES.8.9 million. The money was paid to Kuguru's company in 2007 to coordinate a visit to the Maasai Mara Game Reserve by President Kibaki and other government officials to observe the wildebeest migration.

In September 2012, Rebecca Nabutola who was the Ministry's Accounting Officer was jailed for four years, and fined KES.2 million; Ong'ong'a, the Managing Director of the Kenya Tourism Board (KTB), was sentenced to three years in jail and fined KES.1.5 million, and Duncan Kuguru, a tour operator, was jailed for seven years and ordered to pay back KES.17.8 million in fines. *In October 2016, the two government officials lost an appeal they had filed, and were each sentenced to one year in jail or pay a fine of half a million shillings. They paid the fine and were set free.*

Victims of gambling

Looting – call it stealing – is also rampant in registered betting and gambling companies. Although, some adhere to the stipulations of their licenses and support charity organizations, a good number engage in fraudulent activities, including cheating, money laundering, financing terror organizations, and tax evasion. There have been cases of suicides, like the one involving a teenager who killed himself in Nyanza after losing KES.9,000 through gambling, and of lynching after a game went awry in other parts of the country.

One Kennedy Kosgei of Eldoret in western Kenya was found hanging from a tree after losing KES.50,000 of a loan he took from a bank to wager on Real Madrid, the Spanish football team which lost to Athletico. There are also many cases of divorces after husbands mortgaged family property to gamble.

Sports gambling is most favored by ordinary Kenyans. They bet on horses, on local as well as overseas sporting matches. Foreign investors too, among them Chinese and Bulgarians, have jumped in to cash in on itchy Kenyans dreaming of hitting the jackpot. One of them is Vasil Popov who operated through 92 agents around the world including Singapore, Malaysia and Bulgaria.

From high-flyers like former Chief Justice Chesoni who was a regular feature in local Casino houses to politician J. M. Kariuki, a gambler, and later Chairman of the Betting Control and Licensing Board (BCLB) where he became a millionaire through questionable deals, to *wanjiku* who scratches KES.50 cards in a stake of a few hundred shillings, the gambling fever has been growing since the 1960s when Kenyatta registered the Kenya Charity Sweepstakes (KCS) in 1965. “Kenyans are gamblers of the future,” boasted one investor, Alessandro Scarci, who ran a gambling den in Nairobi.

As much as gambling has negatively affected enthusiasts, it has also made some poor Kenyans instant millionaires. Cases like the one of Peter Mbugua Kabaiku, a struggling mechanic, who won KES.2 million in the KCS are far too common in a country with hundreds of gambling houses. With his millions, Kabaiku expanded his business and bought real estate instantly jumping from the low ranks of society to the middle-class category. However, self-made billionaire Chris Kirubi is opposed to gambling claiming the “easy money” mentality was entrenching a culture of corruption.

> “We have allowed gambling to take the center control of the mind of the young people and for them to spend the little money they have buying luck slots. They lose, one of them wins and through the media you show the guy who won but don’t show you the people who lost. By the time one wins, there are 10,000 who lost.”[973]

The Kenya Control and Licensing Board (KCLB) which was established in 1966 and was supposed to control the industry lacks the technology to do its work and relies on human inspectors who are unable to ensure compliance with the law which includes a requirement that at least 25% of the cash generated is contributed to charity within two months of the final draw.

The KCLB has been blamed for corruption where money changes hands in exchange for casinos and lotteries licenses. In 2011, KACC moved into the offices of KCLB and carried stacks of documents for forensic audit to establish the procedures used by the board when licensing gambling houses. The investigation followed years of complaints from operators and applicants that violators were not being punished according to the law. In 2011, gambling operators forced the removal of the KCLB chief executive accusing him of usurping the powers of the board and tampering with its minutes.[974]

Questions were also raised about the distribution of revenue from mobile Short Message Service (SMS) lotteries between phone providers, the tax collector, and lottery promoters. It was suspected that not all taxes were being remitted from the revenues.

A bloody legacy

President Kibaki left office in 2013 with a mixed bag of positive and negative results. While he squandered many opportunities that would have helped enhance his legacy such as prosecuting President Moi and nailing corruption, he nevertheless performed relatively well. When Kibaki took over in 2002, the Gross Domestic Product (GDP) was at its lowest ever, around 0.2%. By the time he left, the country was enjoying an unprecedented performance of close to 7%. Manufacturing, agriculture, commerce, tourism, and infrastructure, all performed remarkably well during the ten years of his rule.

His biggest credit was on constitutional reforms. In 2010, through a referendum, Kenyans voted in a new constitution establishing a devolved government of 47 Counties although Kibaki reluctantly supported the referendum document. The new arrangement diluted the excessive powers of the presidency shifting them to independent institutions. Following closely behind constitutional reforms was the successful provision of free primary education. Close to nine million pupils were attending primary schools by the time he left, many of them who, hitherto, could not go to school due to various reasons. He licensed more institutions of higher learning meaning more high school children managed to attend university.

The Commissions of Inquiry he formed to probe malfeasance in his government like the Ndung'u Commission of Inquiry into Illegal and Irregular Allocation of Public Land and TJRC failed to eliminate the evils of land grabbing, but they left a lasting imprint on his legacy.

His biggest failure was on the corruption front. With all his promises, Kibaki could not contain one of the biggest menaces in the national conscience. He allowed his cronies to grab land and steal from government with impunity. Despite all the corruption scandals under his watch, only a handful of senior officials, three to be precise – Rebecca Nabutola, Achieng Ong'ong'a and Sylvester Mwaliko – were convicted for abuse of office during his tenure. Serious infractions were committed by dozens of politicians, senior civil servants, Judges, and Ministers but Kibaki took no action. In some instances, cases were filed, but they were dropped for a myriad of technicalities.

The post-election events of 2007/2008 left an indelible blot on Kibaki's legacy. History will remember him as a man who blundered in executing a free and fair election leading to over 1,000 deaths, many injuries, rapes, and destruction of property. Similarly, he left tens of thousands of Internally Displaced Persons (IDPs), uprooted from their localities by tribal clashes and political violence, still in holding camps waiting to be resettled.

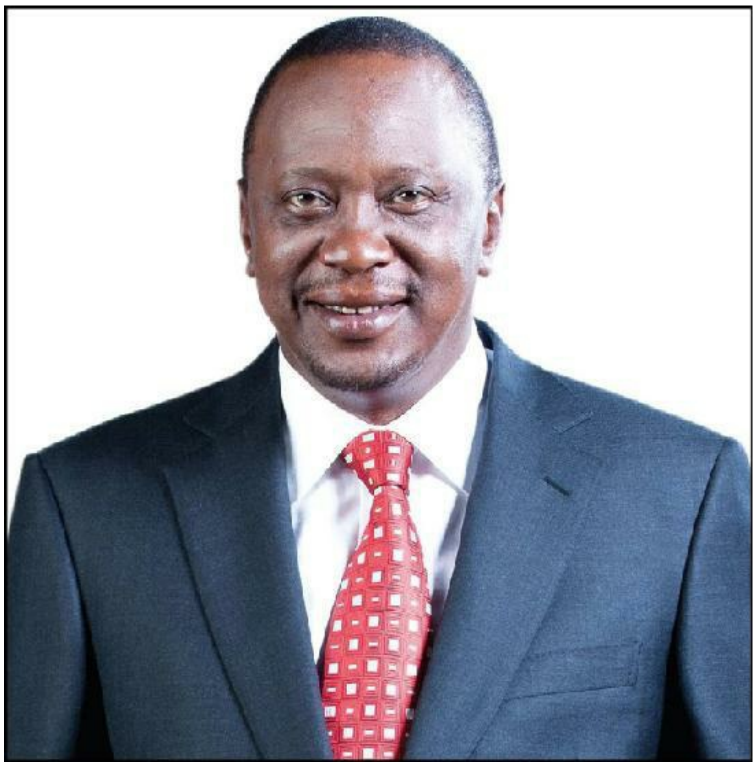
In his commitment to end terrorist intrusions into the country, Kibaki sent contingents of the Kenya Defense Force into Somalia amid murmurs of complaints from his critics. By the time he left, terrorist attacks against Kenyans had not stopped, but the message had filtered through: that the country would not tolerate insurgency from across its borders.

Kibaki would also be remembered for helping rejuvenate the East African Common Market. On 20 November 2009, Kibaki and other regional leaders from Uganda, Rwanda, Tanzania, Rwanda and Burundi, signed a treaty to facilitate free movement of people, goods, labor, capital, and services. Although little progress was made in implementing the treaty during his tenure, the fact that the signing took place during his presidency marked him as a leader committed to regional cooperation.

Had he been tougher and more action-oriented and not laid-back and lethargic much more would have been achieved by his presidency.

PART IV

THE BOOK OF UHURU MUIGAI KENYATTA



Chapter 28

Uhuru the man

UHURU KENYATTA, THE fourth President of Kenya, had the shortest curriculum vitae when elected in March 2013 compared to his predecessors. At 50, he was also the youngest president ever elected in Kenya and the only one who had enjoyed a privileged lifestyle. His father was the legendary and wealthy Jomo Kenyatta, and his mother, a rural woman full of ambitions. Uhuru was born two years before independence and had the unique opportunity of experiencing a dual upbringing in the rural Gatundu outside Nairobi, and in the opulence of State House.

His early years were shrouded in secrecy, but he remained in the public eye. Occasionally, as his father went about his official duties, Uhuru would stand or sit quietly nearby; observing and perhaps listening to what was taking place at that moment. Often, he would be seen hand in hand with his father. He had begun, at that tender age, to learn the fundamentals of leadership from none other than his own gallant father.

His name Uhuru (meaning freedom/independence) was bestowed on him at birth on 26 October 1961 at the suggestion of Mwai Kibaki who also became his godfather. Though brought up as a Catholic – through the determination of his mother Mama Ngina Kenyatta – there are no records to show he took up a Christian name at baptism.

Uhuru went to St. Mary's Catholic School in Nairobi where he was a keen rugby player. At 17 years old and still in school, his father died in office, and Uhuru and his brothers and sisters, were left in the care of their protective and passive mother. He worked briefly as a teller at the Kenya Commercial Bank (KCB) in Nairobi - the only private employment Uhuru is known to have had - before proceeding to Amherst College, a private liberal institution in Massachusetts, United States of America (USA).

At Amherst, Uhuru shared an off-campus apartment with three Kenyan students, and during holidays, invited students from around the USA who had nowhere else to go and charging them US$.20 (KES.2,076), each for "booze and food." His more frequent visitors included his mother, Mama Ngina, "who would fly in from Kenya and stay for a month at a local hotel," and his younger brother Muhoho Kenyatta who was a student at Williams College, also in Massachusetts, USA. To get around, he drove a Toyota sedan which he bought for US$.2,000 (KES.207,600).[975] As a son of a rich father, Uhuru did not have to work to support himself, but at one time, he had a stint, flipping burgers at Burger King, a fast-food joint[976] in Amherst, getting paid minimum wage.

Because of his status as son of a prominent African leader, his "enrolment at Amherst was…top secret." What is known is that he smoked and drank a little too much, a trend that became evident later in his political life. His roommate was Martin Yeboah, who later became the Commander-in-Chief of the Ghana armed forces. Amherst boasts a long list of accomplished alumni including Albert II, Prince of Monaco, two former Prime Ministers of Greece, and several members of the US House of Representatives.

He graduated in 1985 with a bachelor's degree in political science and economics and almost immediately returned home and co-founded, together with his brother Muhoho and another relative, James Magana-Muigai, an export company called Wilham Kenya Limited, which traded in agricultural produce. Other than that, he lived under the shadows of his family enterprises and Moi's patronage as he prepared himself for a career in politics.

In his journey, Uhuru tried to preserve the moral values handed over to him by his father, though he liked to hang out in selected bars and nightclubs with former school mates and siblings of rich, prominent Kenyans. He said in 2014 that "growing up in the Kenyatta household taught us many things. My father taught us to treat everyone fairly. He taught us the essence of justice and fairness, he told us to learn from history but not to live in history."[977]

In 1990, Uhuru joined a group of elite young people to ask Moi in a petition to "allow multi-party democracy." The group comprised of Peter Mboya, son of the pre-independence politician Tom Mboya, Francis Michuki, son of politician John Michuki, Caesar Argwings Kodhek, son of pioneer nationalist C. M. G. Argwings Kodhek, and Alfred Getonga, son of former Nairobi town clerk, Simeon Getonga. In a statement read before the

KANU electoral review committee at the Kenyatta International Convention Center (KICC) which was also the KANU headquarters, on 31 July 1990, the youngsters called for an expanded democratic space.

The statement was a brave move at a time when the Kenyan leader was escalating a crackdown on dissidence and human rights violations. The KANU committee led by George Saitoti was collecting views from Kenyans following opposition's incessant demands for change. It is not known whether their petition included reference to "multi-party democracy" as claimed in some narrations. A leading human rights activist and founder of the Kenya National Commission on Human Rights (KNCHR), Maina Kiai, recalling the event, said there was no mention of multi-partyism in the protest letter. "They were scared shitless of Moi," he says. "They did not go as far as they should have."[978]

Nevertheless, that exposure gave Uhuru a voice and a platform to high-profile his political ambitions. It was around that time that Moi noticed Uhuru's political potential and wooed the young man to his camp. After consulting her mother, Mama Ngina, Uhuru agreed to join the ruling party KANU and began participating in fund-raising activities in various parts of Central Kenya, ostensibly to mobilize the youth but, in fact, to sharpen his skills in preparation for a political entry.

In 1989, Uhuru got married to Margaret Wanjiru Gakuo, daughter of a former Director at the Kenya Railways Corporation (KRC), Dr. Ephantus Njuguna Gakuo, and his German wife Magdallena, at the Holy Basilica Catholic Church in Nairobi. The event was attended by the who-is-who in Kenyan elite society including President Moi, and was officiated by Maurice Cardinal Otunga. The best man was Uhuru's brother, Muhoho Kenyatta. An economics graduate, the elder Gakuo was one of the first educated Kikuyu to take important positions in the parastatal sector as Managing Director of the Kenya Railways during Kenyatta's time. The Kenyattas and the Gakuos became close friends, and that is how Uhuru and Margaret met.

In 1997, Uhuru became Chairman of the Gatundu KANU branch, and that year, he made his first serious attempt at elective office but lost the Gatundu South seat to Moses Muhia, a little-known politician. Two years later in 1999, Moi appointed Uhuru Chairman of the Kenya Tourism Board, a position that gave him an opportunity to travel the world and mingle with players in the tourism sector. In 2000, Moi gave him additional responsibilities as Chairman of the Disaster Emergency Response Committee, a key body in mitigating drought and famine.

His political profile rose further when he was nominated to Parliament in 2001 and made Minister for Local Government. In 2002, he was appointed one of the four KANU Vice Chairmen; and that same year, Moi shocked Kenyans when he chose him as his heir apparent. "I have analyzed the qualities of the people around me," he told a public meeting as he pointed a finger towards Uhuru, "and I have seen the potential of this young man. I am not running again for office, but when you vote for Uhuru, you will be voting for me."[979] Vice President George Saitoti, and KANU Secretary General, Raila Odinga, who had been eyeing an endorsement from Moi were shattered by the announcement.

However, when the elections were held in 2002, Uhuru was humiliated by Mwai Kibaki who won by a large margin despite KANU propagandists printing and displaying posters comparing the youthful bodily integrity of their candidate, to the old, decrepit body of opposition candidate Mwai Kibaki, who was 30 years older than Uhuru.[980]

Moi's choice of Uhuru, a Kikuyu, to contest the presidency was a political blunder especially after the opposition offered Kibaki, another Kikuyu, as their candidate. The fact that Uhuru was being rammed on Kenyans by a disgraced Moi also worked against him. Other communities in Kenya were openly expressing frustrations over Kikuyu domination, and the fact that two Kikuyu were the main presidential candidates caused discomfort. It had been expected that Raila, a Luo, would represent the opposition NARC. Instead, it was Raila who declared "*Kibaki Tosha*" (Kibaki it is) during a mammoth opposition rally in Nairobi in October 2002, thus giving a second Kikuyu after Kenyatta, a chance to rule.

The choice of Kenyans was obvious from the very beginning of the campaign. Kibaki was considered a reformer, and therefore a better candidate, to move the country away from autocracy embedded by Moi; while Uhuru was considered a candidate of the status quo who represented all the ills of the past KANU regime. But not everyone thought so. In a diplomatic cable of June 2009 leaked by WikiLeaks, the US Ambassador Michael Ranneberger praised Uhuru as a "potential reformer."[981]

When the results came, Kibaki had won by more than 3.6 million votes against Uhuru's 1.8 million. He quickly conceded. "I accept the choice of the people, and in particular, I now concede that Mr. Mwai Kibaki will be the third President of Kenya," Uhuru said well before all the votes were counted. His defeat put him back on the queue of potential presidential candidates.

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Since he knew he could not beat Kibaki in the 2007 contest, Uhuru followed the advice of his family and supported the incumbent for the second term. In turn, Kibaki appointed him finance Minister, the third most important portfolio in the Kenya Cabinet after the presidency and the vice presidency.

From his Treasury office, next to the CBK, Uhuru worked hard to endear himself to MPs by fast-tracking legislations intended to further their interests. For example, when an MP brought a Bill to expand the Constituency Development Fund (CDF) - an initiative which allocated money to lawmakers for development projects in their respective constituencies - Uhuru made sure the money was included in the budget. The only criticism he got from legislators was that he failed to allocate the equivalent of 2.5% of revenue as required by the CDF Act. Instead of giving CDF KES.13 billion, he offered only KES. 10 billion. However, a compromise was eventually reached, and he paid out KES.12 billion.

As Minister for Finance, Uhuru's reputation took a hit in May 2009 when he presented in Parliament a budget with a KES.9.2-billion "typing error." The embarrassing mistake involved more than 200-line items in the 2008/2009 appropriations bill, many of them under the line "personal allowances." A lobby group, Mars Group, claimed it had discovered another error in the budget involving as much as Ksh.10 billion. There was a feeling that the discrepancy was deliberately conjured by officials to scheme off public coffers. Legislators called for his resignation, but Uhuru claimed he was "sabotaged by a clique` of treasury mandarins and his political rivals,"[982] who injected the wrong figures in the budget. The Parliamentary Finance Committee summoned him to explain what caused the errors. Subsequently, it recommended a forensic audit and ordered that the mistakes be corrected before presentation to Parliament. Although the Parliamentary Budget Committee exonerated Uhuru on the supplementary budget "error" the allegations left him with a rotten egg on his face.

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In a 2009 diplomatic cable leaked by WikiLeaks, the American Ambassador

Ranneberger informed Washington that Uhuru “appeared to be working towards a presidential run in 2012.” He added however that “replacing President Kibaki, a Kikuyu, by another Kikuyu would be unlikely due to what he called anti-Kikuyu sentiments prevalent across much of Kenyan society.”[983]

Ranneberger noted “several major strengths” in Uhuru but also “important weaknesses. Uhuru is bright and charming, even charismatic,” the envoy told his seniors in Washington. “He is enormously wealthy, and therefore has not had to engage in corruption…his wealth is the inheritance from his father’s corruption…” However, Ranneberger cautioned that Kenyatta “drinks too much and is not a hard worker…Perhaps more importantly, Kenyatta has been closely linked to *mungiki* which emerged in the aftermath of the Mau Mau and began as a movement in defense of Kikuyu traditional values, but which has since morphed into a well-organized mafia-style criminal organization.”[984]

Knowing that the Kikuyu alone did not have enough votes to win the seat, Uhuru teamed up with an old friend in KANU, William Ruto, leader of the Kalenjin-dominated United Republican party (URP), and made him his running mate against the ticket of Raila Odinga and Stephen Kalonzo Musyoka, a Kamba politician.

The contest for the 2013 elections was fierce and Uhuru won by the slimmest of margins – 50.07% of the vote against Raila’s 43.31%. While Uhuru’s supporters danced on the streets in his strongholds, tension enveloped Raila’s areas of support. It was a contest between scions of two of Kenya’s most prominent liberation leaders. Uhuru’s elevation to the presidency was received with a mixed bag of emotions though. Some felt he was too young and too inexperienced for the job. But there were those willing to give him the benefit of doubt. Philip Ochieng, a notable Kenyan journalist wrote in the *Sunday Nation*:

> Uhuru Muigai Kenyatta is extraordinarily intelligent; even if you voted against him, Uhuru Kenyatta is your President; you owe him deep respect; for although he is the son of Jomo, he is not Jomo; we must use words that encourage him to offer the olive branch to the communities that voted against him; if we give him space, the President may surprise you by doing just what the doctor ordered for Kenya; and become even more popular than Jomo.”[985]

True, Uhuru was not Jomo. But many thought he was a “nice guy” with the looks, a hearty laughter, and demeanor of his late father, even though he didn’t possess anything like Jomo’s oratory eloquence in public and was devoid of the booming voice that was the signature trait of his famous dad. What Uhuru shared with his father and Kibaki before him was his penchant for slurs, insults and profanities. He called a County governor “a fool,” the Supreme Court officers “thugs,” and opposition politicians “devils.” But those responding to his foul language were arrested and jailed. In January 2015, a Kenyan student, Alan Wadi Okengo, was slapped with a one-year jail term for calling Uhuru an “adolescent president.” And in October 2017, the Mwingi Central legislator, Gideon Mulyungi, was arrested and charged in court for spewing “unprintable” insults against the President.

The youngest leader

Uhuru was the youngest Kenyan President when he took over government. He was also the most technology savvy, the digital candidate. He was amongst the top Twitter users in Africa, and utilized the social media vigorously to communicate with his followers. He was such a magnetic leader that between 1 January and 31 March 2013 he managed to attract 76,000 followers to his Twitter account.[986]

Uhuru entered State House with vivacious energy promising to deal with graft. He made strong statements against the evil during the first year of his rule and even unveiled a corruption reporting website. But the platform soon became inactive because of unsatisfactory public participation. And that was easy to understand. Many Kenyans don’t report crime because they believe no action is taken when they do. Moreover, no government in Kenya has taken measures to protect whistleblowers. As we saw with the Charterhouse Bank whistleblowers who fled the country for fear of their lives, those who report crimes often become targets of attacks or even assassination. John Githongo who unearthed the Anglo Leasing scandal had to remain in London – where he had gone on official duties – for months until things cooled down in Kenya.

As part of his drive to digitalize public service, Uhuru on 7 November 2013 opened the first e-government service center in Nairobi called Huduma (meaning service) “a one-stop-shop” aimed at centralizing the issuing of public documents including driving licenses, seasonal parking services, university student loan applications, and a counter where citizens can report corruption. In his address at the launch, the President said inefficiency in public services "bred corruption…which has cost the country billions."

In addition, Uhuru directed his officers to start digitalizing services, reviewing procurement laws and procedures, strengthening internal and external audit, and getting people involved in the fight against corruption. Kenya has relatively strong laws of dealing with corruption, but lack of political will, "failure to fully and effectively enforce its anticorruption laws," and poor coordination between the police, the anti-corruption body, prosecution and the Judiciary, are undermining efforts to end graft. Often EACC sent poorly investigated files to the DPP for prosecution only for the files to be returned with instructions for additional investigations.

Eric Ng'eno, Uhuru's speech-writer wrote an article about corruption in the civil service in March 2014 in which he said, "Public sector thieves are not even looking behind their shoulders before dipping their hands into the till. The civil service is inert, complicit, anachronistic and comfortable as ever."[987] Ng'eno's statement was the strongest condemnation of public graft made by anyone within the executive offices. It was emblematic of the frustrations that some senior officers felt about the inability of the ruling class to rein in abuse of public trust.

Like Kibaki and Moi before him, Uhuru made tough speeches against corruption. What he didn't understand – like his predecessors who were equally vocal about the matter – was that corruption cannot be terminated by mere bluster but by courage, a strong determination and personal sacrifice.

For example, on 12 June 2013, a few months after taking over, Uhuru warned crooked civil servants that their days were numbered. Addressing a National Leadership and Integrity Conference in Nairobi, Uhuru admitted corruption was on the rise and that it had become a major hindrance to progress, and called on all anti-corruption agencies to set up surveillance to map out corrupt officers. As he spoke, Transparency International (TI) was declaring the Kenya Police Service (KPS) to be the country's most corrupt state institution in the eyes of the public. Ninety-five percent of Kenyans described the KPS as either "corrupt" or "extremely corrupt;" and 77% of households had bribed a police officer within the previous 12 months.[988] In any normal day, police set road blocks not to enforce traffic laws but to coerce bribes from motorists. Dozens of them have been arrested but once arraigned in court, nothing more is heard of their cases.

It was during Uhuru's first term in office that the Kenya police was ranked the third worst institution in the world. The 2016 World Internal Security and Police Index ranked Kenya at position 125 out of 127. Below it was the Democratic Republic of Congo and Nigeria with Uganda taking the fourth position.

November 2015

During his State of the Union speech in November 2015, Uhuru declared corruption "a national security threat…I will lead a national coordinated effort to bring together all arms of government to seal loopholes used by dishonest people," he said. That never happened.

List of shame, 2015

Early in 2015 the Ethics and Anti-Corruption Commission (EACC) released a long list of 175 officials allegedly involved in corrupt practices. Soon thereafter, Uhuru suspended four Cabinet Secretaries – Davis Chirchir, Energy and Petroleum; Michael Kamau, Transport and Infrastructure; Kazungu Kambi, Labor; and Felix Koskei, Agriculture and Fisheries – and 17 other senior officials including Francis Kimemia, Secretary to the Cabinet, pending investigations into corruption allegations. Another Cabinet Secretary, Charity Ngilu, in charge of Lands, resigned the following day after her name was mentioned adversely.

As he stepped aside to pave way for investigations, Kambi told a press conference on 29 May 2015 that he was ready to lose not only his job, but to face the firing squad if found guilty of corruption. The DPP, Keriako Tobiko, confirmed there was no sufficient evidence to prosecute the former Cabinet Secretary, and therefore, rejected EACC recommendations to charge him. Kambi had allegedly made irregular appointments to the NSSF board and had illegally authorized infrastructure projects worth KES.5 billion belonging to the same organization.

On 25 May, EACC cleared Koskei and Ngilu of corruption allegations against them and ordered their files closed. In July, abuse of office charges against Kamau were dropped when Appellant Judges Milton Makhandia, William Ouko, and Kathurima M'inoti, ruled the former Cabinet Secretary had been charged illegally, and it would be an injustice to continue with his prosecution. Chirchir was also cleared of corruption allegations due to lack of evidence, and in July 2017, the ruling Jubilee party appointed him its chief agent in the 2017 general elections.

Senior government officials caught in corruption scandals have invariably been asked to step aside to pave way for investigations. Yet, such investigations often don't yield any high-profile convictions. Githongo, the anti-corruption activist, said the fact that no one had been jailed meant that the President was playing "a public relations gimmick in the war against corruption."[989] In a 2016 survey, EACC revealed that at least 50% of Kenyans believed corruption had boiled over under Uhuru's administration with an estimated US$.6 billion (KES.622 billion), being lost to corruption every year. But Kenyans were still optimistic that the President would have the courage to fight off corruption cartels and reign in his officials.

That optimism waned that October during the State House summit on governance. Looking dejected and frustrated, Uhuru lamented that he had provided all resources to institutions of government to fight corruption but that nothing had been achieved. "If there is one issue that has frustrated me, it is corruption," he said to a perplexed crowd of senior government officers.

Kenyans were angry and made their views known on social media. Using the hashtag #CryBabyPresident, the attacks were brutal. "Uhuru should stop whining about corruption…" said Abdulatif Hussein. "If only our Prezo (President) converted the meat eating energy and effort to fighting corruption, there will be no blame game," blasted Mukhebi Lusweti, in reference to Uhuru's penchant for roast meat and his statement in Kiswahili on 14 September 2016 directed at Raila: *Wachana na nyumba yangu ya Jubilee… Endeleeni kumeza mate sisi tukila nyama."* (Leave the Jubilee party alone… continue to salivate while we continue to eat meat). Douglas Daggie had this to say: "Indeed, Kenya is a crying nation! Uhuru deserves the mockery because all he has done is pull us back to protect his own interest."

Anglo-Leasing case

In the meantime, the Anglo Leasing case began in March 2015 after several former government officials and businessmen were charged with abuse of office and conspiracy to defraud the government. Those charged were: former Finance Minister, David Mwiraria; Kisii County Senator Chris Obure; former Permanent Secretaries Sammy Kyungu and David Mwangi; a former Finance Secretary Samuel Bundotich; former Head of Management at the

Treasury, David Onyonka; and former Postmaster General, Francis Chahonyo. Also charged with them were businessmen Deepak Kamani, Rashmi Kamani, and their father Chamanlal Kamani, who were not in court.

The charges before chief magistrate Hellena Ndung'u came after a decade of investigations. The DPP presented to court three files containing the charges: ranging from violations of procurement rules to making payments for services that were not delivered, to defrauding the government of billions of shillings. They all pleaded not guilty and were released on bail.

An American, Brian Mills, who was the subject of an international arrest warrant, and two companies, Sound Day Corporation and Apex Finance Corporation, were not in court to enter a plea relating to the supply of security systems to the police. The defense said it would be unfair to continue with the case in the absence of the three. Also absent was another US citizen, Bradley Birkenfed, a whistle-blower and former official of Swiss Bank UBS in Geneva, who was accused of conspiracy to defraud the government of KES.3.8 billion in a contract agreement for modernization of police security equipment and accessories project. Kenya had requested the US to extradite Birkenfed, but the process was bogged down in bureaucracy.

The case was further delayed by the illness of Mwiraria who faced four counts of conspiracy and of defrauding the government of KES.4.08 billion. The court was forced to visit him in hospital in December 2015 to take a plea of not guilty. He was eventually exempted indefinitely from attending court proceedings. He died on 13 April 2017 before he could defend himself.

There was another hitch; this time involving the Kamanis. The three had been filing court applications relating to numerous issues, one of them being to stop their prosecution. They also wanted the attorney general compelled to furnish them with contracts related to the scandal, and to stop the Kenya government from supplying information to Swiss authorities over the matter. However, a High Court ruled in September 2015 that the Kamanis should take a plea to allow the case to proceed. They pleaded not guilty on charges of conspiracy to defraud the government of more than KES.10 billion in Anglo Leasing scams.

Chapter 29

Uhuru and tribalism

IT IS IMPOSSIBLE to think of Uhuru, born at the dawn of independence and educated in elite mixed schools as one to be associated with the woeful ills of tribalism and nepotism. Yet tribalism, nepotism and cronyism, were the trademark of his first term in office even as he went around telling Kenyans to shun ethnicity. “I am the President of all Kenyans and I don’t belong to one community,” he told a church congregation in Cherang’any constituency in Trans-Nzoia County in June 2014. And in a tweet on 14 June 2017, he said: “We should preach unity, shun tribalism and ethnic politics, and recognize that Kenya needs all of us.” Uhuru denied numerous opposition allegations that he was a tribalist.

When Uhuru was born in 1961, negative ethnicity was unknown. Kenyans of all walks and tribes were united in pursuit of freedom and independence and specifically in the release of Jomo Kenyatta and other freedom fighters. The only clear-cut division among the people then was a racial and economic one between the majority Africans and the minority white settlers. And because opportunities were not available to Africans to accentuate biases, Kenyans generally lived in harmony. It was after independence that tribalism and nepotism manifested themselves and only after the Founding Father, Jomo Kenyatta, demonstrated open preferences for his community over others. “Godfatherism” became entrenched. Kenyatta’s successors, Moi and Kibaki, built networks of devoted retainers by “catapulting” loyal subordinates to higher positions in government at the expense of everyone else.[990] Jobs, education opportunities, health services, and promotions at work places, became the preserve of a selected few.

Unfortunately, Uhuru followed the footsteps of all his predecessors and embraced tribalism with all its degenerative consequences despite his inaugural speech in which he declared: “We will leave no community behind…Where there’s disillusionment, we’ll restore hope.”

When Uhuru sought the presidency in 2002 as "Moi's project" the only people he trusted to drive his campaign were members of his own family, a small clique of former GEMA leaders, and top Kikuyu members of the intelligentsia. During a meeting of Kikuyu leaders in Limuru in March 2012 to discuss the strategy for his election campaign, Uhuru warmly accepted the support of Maina Njenga, leader of the dreaded *mungiki* militia which in 2007 got actively engaged in post-election chaos. His critics lambasted him for promoting tribalism. "Let Deputy Prime Minister Uhuru Kenyatta…stop dragging Kenya back to the dark old days of ethnicity by organizing tribal meetings,"[991] lashed out Immigration Minister Otieno Kajwang of the ODM wing of the Grand Coalition.

Mungiki, which means "people united" in the Kikuyu language, was fashioned in the mode of Mau Mau. Comprising largely Kikuyu youth, it began as a religious group in the slums of Nairobi after independence. Later, it turned into an extortionist terror group and spread to other parts of the country.

Chief adviser

After Mzee Kenyatta died in 1978, Mama Ngina became Uhuru's chief adviser, counselor and financier, while former President Moi acted as his 'godfather.' "I have chosen Uhuru," Moi told a surprised crowd at Eldoret State Lodge on 28 July 2002, "to take over leadership when I leave. This young man Uhuru has been consulting me on leadership matters. I have seen he is a person who can be guided." Uhuru has not stopped consulting Moi since then especially at times of crises. He did so on 4 April 2013 when he was facing charges at the International Criminal Court (ICC), and on 16 February 2017 when he was trying to lure Gideon – Moi's son and leader of KANU – to his Jubilee coalition. So, has his mother, Mama Ngina. Periodically, she drives across town from her home in Gatundu to Moi's residence at Kabarnet Gardens on the fringes of Kibera slums in Nairobi to get counsel from "the professor of politics."

Uhuru's successes in politics would have been impossible without her mother's stewardship. A generally shy but shrewd businesswoman, Mama Ngina is the "rock" of the family. Before and after her husband's death, Mama Ngina was the one who held the family together and presided over the family businesses. She inherited and helped to create a conglomerate of businesses that include banks, commercial and residential real estates, hotels, farms, insurance, media, and manufacturing firms. In November 2016, she was named one of Africa's top billionaires by the Nigerian-based *Ventures* financial magazine. Her net worth was given as US$.1 billion (KES.103.7 billion),[992] but *The Africa Investor*, a South African investment magazine, estimated the Kenyatta family wealth to be US$.10 billion (KES.1 trillion).[993] As Jomo Kenyatta's companion for 37 years, Mama Ngina also built her own credentials as a liberation fighter, and in 2015 was feted in South Africa as one of the 15 foremost African heroines in the pre-independence struggle. On 31 July 2015, during the 25th graduation ceremony of the Jomo Kenyatta University of Agriculture and Technology (JKUAT), she was awarded an honorary degree of Doctor of Science in entrepreneurship (*honoris causa*) for her "immense success in the business sector."

Among family members playing a major role in Uhuru's political life were his uncle and Mama Ngina's brother, George Muhoho, his younger brother Muhoho Kenyatta, cousin Kathleen Kihanya, nephew Jomo Gecaga, and Njee Muturi son of Jomo's one-time personal assistant, Harun Muturi. Uhuru appeared not to trust outsiders. After he won the presidency in 2013, it was Jomo Gecaga whom he picked as his personal assistant, and Njee Muturi as the Solicitor General.

Jomo Gecaga is the son of Jeni Wambui, Uhuru's sister married to Udi Gecaga. Udi, a Princeton University graduate was the Chairman of Lonrho Africa, the British conglomerate led by Tiny Rowland which ran operations in more than 40 countries in Africa, the Middle East and Europe. Among its assets was the Consolidated Holdings Ltd, which owned the *East African Standard* newspaper, the *Tanzania Standard,* and the *Uganda Argus.* His appointment in 1973 – first as a member of the London Board of Lonrho and then as Chairman of the local Lonrho entity – gave Rowland access to the President and a chance to influence policies beneficial to the company. In return, Rowland told Kenyatta: The paper is yours to do what you like with, just say the word."[994] And Kenyatta did use the *East African Standard* extensively during the early part of his rule to propagate his policies.

Like his father, Uhuru followed the path of favoring his family in State appointments. In 2016 he appointed Nana Gecaga, his niece and brother to Jomo Gecaga, to head Kenyatta International Convention Center (KICC). That is the same public institution where Uhuru's cousin, Catherine Mwangi, once worked as deputy CEO before she was appointed Ambassador to Ireland in 2007. After six years in Europe, Catherine was posted to Ethiopia in 2014 in the same capacity, a position previously held by her sister Beth's husband, Nicholas Mugo, in the 1960s.

Among those associated with the Kenyatta family who benefitted from Uhuru's government appointments included Major (Rtd) Marsden Madoka, one-time aide-de-camp to Kenyatta who was appointed in 2015 as Chairman of the strategic Kenya Ports Authority (KPA). Madoka's wife, Elizabeth Mumbi, was Kenyatta's personal assistant, and one of the people who cared for Uhuru as he grew up in State House.

Lucy Karume, daughter of Kenyatta's long-time confidante, Njenga Karume, was appointed to the board of the Kenya Civil Aviation Authority (KCAA); and Kibuga Kareithi, son of Geoffrey Kareithi, Civil Service Head during Jomo's and Moi's regimes, to the Board of the National Oil Corporation (NOC). Uhuru also appointed to various senior parastatal positions five members of the family of Simeon Nyachae, a man who served for many years in his father's provincial administration.

Nepotism in health scandal

In October 2016, controversy surrounded several members of the Kenyatta family who were named in a KES.5.2-billion scandal at the Ministry of Health. The money was part of a 2013 stimulant program launched by Uhuru to benefit underprivileged groups. Under the scheme, 30% of all government tenders were to be offloaded to groups comprising the youth, women and the disabled.

Somehow, a company associated with the President's sister, Nyokabi Kenyatta Muthama, and his cousin, Kathleen Kihanya, called Sundales International Limited, was also included in the list of the disadvantaged groups and registered with the Public Procurement Oversight Authority (PPOA). That allowed it to qualify for multi-million-shilling tenders from the government in a clear violation of the laid down conditions. It was alleged that the company won five tenders worth KES.270 million between September 2014 and February 2016.

Media reports said Sundales International Limited – registered five months after Uhuru became president – was paid KES.41 million as part-payment for several tenders to supply merchandise to the Kenya Medical Supplies Authority (KEMSA). The media classified it as a scandal and the

ODM leader Raila went further and labeled it “President Kenyatta’s scandal” and told him to take full responsibility. “He must tell the country what he knew, when he knew it and what he did when he knew it,” Raila told a press conference on 29 October 2016. However, the company directors denied charges of influence-peddling and insisted they won the tenders properly.[995] Kihanya said all their tenders were above board.

Container clinic puzzle

As we have seen throughout this narrative, the Ministry of Health has been among government institutions on the frontline of corruption scandals. In 2015, it imported 99 container mobile clinics at a cost of KES.800 million. The 40-foot clinics – equipped with a bed, a table unit, an air-conditioner, and other clinic requirements - were to be used to provide maternal and child health services, HIV/Aids and TB care, and family planning and outpatient services. They were imported from China by a private company through a KES.1 billion-tender issued on 17 July 2015.

Although reports said they were bought from funds budgeted to reimburse the Countiesfor free maternity medical services, the Council of Governors (CoG) – the counties’ umbrella organization – denied they ordered any such clinics. And even after the clinics arrived at the Port of Mombasa, they were left to waste at the yard of the National Youth Service (NYS) with no clear indication as to the actual owner.

Questions were: Who ordered the clinics? Why were they left to rot in a yard without being collected? And why was no one prosecuted? No one had answers.

The puzzle of the clinics became even more complicated when the Kenya Revenue Authority (KRA) gave the value of each unit together with shipping costs as KES.1.4 million each, an amount that should have totaled KES.145 million for the 100 containers. However, the purchase price was listed as KES.1 billion for the units, meaning the supplier may have reaped KES.8.5 million for each container.

On allegations that the whole thing appeared “fishy,” a Director of the contracting company, Njage Makanga, said they were “a figment of a fertile imagination without any iota of truth.”[996]

The matter reached the Parliamentary Committee on Health which summoned the Health Cabinet Secretary Cleopa Mailu, on 10 November

2016 who said an audit had been commissioned to investigate the matter. The public was never appraised of the outcome.

Kikuyunization in government

For Uhuru, Kikuyunization of the civil service continued from where Kibaki had left. It followed the same pattern of his father's strategy in the 1960s and 1970s and Kibaki's in the 2000s: disregarding criticisms and appointing in government as many Kikuyu as possible. For Kenyatta and Kibaki, it was easy to understand why they felt strongly about the preeminence of the Kikuyu, a potent community even during the colonial times.

Both were strong adherences of Kikuyu tradition which centered on an ancient belief that the founding fathers of the Kikuyu held God's (*Ngai's*) authority. Legend has it that *Ngai* beckoned Gikuyu, father of the Agikuyu to the sacred mountain and said: "You shall carve your inheritance from this land, it shall belong to you and your children's children."[997] So, traditionalists believed in the supremacy of the Gikuyu people and transferred that belief to the generations that followed. As the founding President, Kenyatta felt emboldened by those traditions and endeavored to ensure members of the Kikuyu ethnic group…dominated politics and economic realms…"[998] According to Charles Hornsby in his book, *Kenya: History since Independence*, Kenyatta was the "patron of the Greater Kikuyu Community."[999] Kibaki, on the other hand, was not known to have taken the traditional Kikuyu oaths, and at no time did he profess his traditional beliefs publicly, but he was automatically tied to them by tribal affiliation.

For Uhuru, he was a child of "modernity," having been born at a time when the world was at the threshold of the computer age. He went to school with people of mixed tribal and racial composition and married a wife born out of Kenyan and German heritage. *The Economist*[1000] in 2013 described Uhuru as "A chip off the old Kikuyu block." It is therefore jarring to see how he could cling to an outdated form of social existence at a time of globalization by espousing tribalism.

During his first term in office, Uhuru chose largely Kikuyu compatriots to fill important positions in government and in the parastatal sector. Like his predecessors, he found comfort in numbers, by associating with old friends from St Mary's school such as Njee Muturi and Alfred Getonga; some remnants of the Kibaki government such as his devolution Minister Mwangi

Kiunjuri; and close friends with connections to the Kenyattas such as David Murathe, son of a pioneer businessman, Gatuhi Murathe. When he was made finance Minister by President Kibaki, the one-man Uhuru found in the government financial sector was the PS, Joseph Kinyua, a career civil servant. Upon becoming President, he took Kinyua with him to State House and appointed him Chief of Staff and Head of Civil Service, making him one of the most powerful individuals in government.

At the time of announcing Kinyua's appointment in 2014, Uhuru also appointed Arthur Igeria to be head of the Nairobi Center for International Arbitration Board; Mutahi Ngunyi as senior political advisor; John Mututho as Chairman of the National Authority for the Campaign Against Alcohol (NACADA); Lee Kinyanjui as Chairman, National Transport Authority (NTA); Kiragu wa Magochi as Chairman of Teachers Service Commission (TSC); and Nancy Gitau, head of Uhuru's political advisory unit, all from his backyard. Except a few "outsiders" like Abdikadir Mohammed, in charge of constitution and legislative affairs, a Somali, and Joshua Kutuny, a political advisor, Kalenjin, most of the 20 special advisers at State House hailed from that same region. The others from the Mount Kenya region were James Nyoro, the presidential advisor on agriculture and food security; Kilemi Mwiria, special advisor on education; and Joe Nyagah, special advisor on regional integration. The list goes on and on.

Many of them were well-placed personalities with notable political and business credentials. To a large extent, Uhuru drew his appointees from the moneyed and the famous. "The best way to describe Kenyatta (Uhuru)," one writer said, "is a president who does a lot for people who are well off but not much for those who need government help."[1001]

A 2015 report by the Public Service Commission (PSC) – the body charged with staffing the bureaucracy – found 297 out of 654 employees at State House belonged to the Kikuyu tribe. In his Cabinet Office, 35% of the 210 employees belonged to his tribe. His Deputy, William Ruto, a Kalenjin, managed to influence the appointment of 96 employees, representing 45.4% and 15% respectively. In the Deputy President's office three tribes dominated – the Kikuyu, Kalenjin, and Luhya – each took 54 positions. The report called for a more equitable distribution of jobs among all Kenyans.

Another report by the intergovernmental steering committee for capacity assessment and rationalization of the public service the same year showed that out of 72,923 government employees, the Kikuyu were leading with 18,617 workers. The Luhya had 8,822 (12.2%) and the Kalenjin 8,275 (11.4%), followed by the Luo at 10.4%, Kamba at 10.3%, and the Kisii at 8%. Six tribes occupied more than half of all civil service jobs.

To put the population distribution by tribe in perspective, the 2009 census put the Kikuyu at 17%, the Luhya at 14%, and the Kalenjin at 13%, the Luo at 12% and the Kamba at 10%. All the other tribes individually fall below 7%; yet the Kikuyu held more government jobs than any other by far.

A good example is this list which shows a sample of some top Kikuyu individuals who held critical positions in Uhuru's first administration:

1. General Julius Karangi, Chief of Kenya defense forces
2. Major General (rtd) Philip Kameru, Director of the national intelligence service
3. Muhoro Ndegwa, Director of the criminal intelligence department
4. Major General Samuel Ng'ang'a Thuita – Commander of the Kenya air force
5. Lieutenant General Jackson Waweru – Commandant of the national defense college
6. Githu Muigai – Attorney general
7. Bernice Wanjiku, Registrar general
8. Patrick Njoroge – Governor of the central bank of Kenya
9. Nelson Githinji – Director general of the national youth service

Many of the parastatals were also controlled by the Kikuyu and to some extent the Kalenjin. At the National oil board, for example, out of the eleven board members in 2016, eight were Kikuyu, two were Kalenjin, and one was from the Coast. A local newspaper analyst wrote with a measure of disappointment that only two ethnic communities had an elevated chance of clinching plum State jobs than Kenya's other 42 ethnic communities and warned that tribal appointments were a "path to self-destruction."[1002]

At the Geothermal Development Company (GDC), a government parastatal, the Kalenjin and the Kikuyu had the lion share of managerial positions during the reign of the Jubilee government. Three out of seven managers in 2017, heading human resources and administration, finance, and company secretariat, were Kalenjin. The other three: strategy, research and innovation; drilling and infrastructure; and corporate services; were from the group of GEMA community. The only "outsider" was the Head of Geothermal Resources Development who was from Nyanza.

In an audit report by the Auditor General, Edward Ouko, in 2017, 42% of employees in parastatals came from the Kikuyu and Kalenjin communities, 25% and 17% each respectively. That was against Article 130 (2) and Article 132 of the constitution which call for diversity in the composition of the national executive.

Some of those who campaigned for Uhuru in 2013 were livid at the skewed appointments. "We cannot hold the Jubilee cow for others to milk and leave us high and dry," complained MP Mohamed Shidiye, after the appointment in 2013 of Francis Muthaura, a retired civil servant of many years, as Chairman of the LAPSSET Corridor Development Authority. A member of GEMA, Muthaura had served in Kenyatta, Moi, Kibaki and Uhuru governments.

The choice of people Uhuru travelled with on his overseas trips also reflected a bias towards the Kikuyu. In his visit to Japan in 2015, more than 50% in his entourage comprised people from his own backyard.

In 2015, MP Bonny Khalwale circulated a long list of names of senior personnel in government and parastatal organizations which showed the domination of the GEMA community in the public sector.[1003] That list has never been disputed.

Tribalism under Uhuru was not demonstrated only in civil service jobs. On 29 November 2016, coffee farmers in the Mount Kenya region were overjoyed when the President wrote-off debts amounting to KES.2.4 billion that farmers owed to financial institutions. Addressing a meeting in Kirinyaga, Uhuru told them to go to the institutions and redeem their title deeds. What was shocking was that when the following month, Luhya farmers in the western Kenya sugar-belt asked for a similar concession to offset their KES.3.5-billion debt, Uhuru procrastinated. It was only after incessant complaints and the realization that the 2017 elections were around the corner that the government agreed. Most of the owed money were loans to out-growers' organizations.

As he campaigned for his re-election at the Coast in September 2016, Uhuru promised to revive the Kilifi Cashewnuts Factory and revamp the cashewnut farming which in the 1990s was the mainstay of the region's economy. By the end of his term, no such thing had been done.

But in a typical form of greed and theft, in February 2017, the government gave KES.9.5 billion to Meru Coffee Associations as a waiver. Part of the money disappeared into people's pockets. Coffee associations claimed in February 2017 that only KES.437 million was received by six associations: Dhabiti Sacco (KES.80.2 million); Capital Sacco (KES.90.7 million); Ntiminyakiru Sacco (KES.64.8 million); Meru North Cooperative Union (KES.35.8 million); Meru Central Dairy Cooperative Union (KES.103.7 million); and Meru Central Multi-Purpose Cooperative Society (KES.62.4 million). The County executive officer in charge of cooperatives, Ntoitha M'Mithiaru, called for an audit of the funds.[1004] *It could not be ascertained whether that was done.*

Surprisingly, in July the same year, the government waived KES.1.5 billion farmers' debts owed to the Agricultural Finance Corporation (AFC) in Kajiado, Narok, and Baringo counties. Many of the wheat, sorghum and livestock farmers in those areas are not believed to belong to the indigenous Maasai and Kalenjin tribes.

Unfortunately, the biggest problem with tribalism, some say, is that "it requires you to hate the other group so as to be part of the one you're in… When you are afraid that the 'others' might steal the 'fruits' you worked so hard for, you start hating them, protesting against them, creating a division that is mostly in your head."[1005] That is probably what is happening in Kenya. The tribal clashes that have erupted in the country since 1991 were caused by fear of domination of smaller tribes by big tribes as well as the struggle over resource distribution. However, while there is no evidence that any of Kenya's past presidents hated other tribes, the fact that they were comfortable not to discourage ethnic divisions suggest tribalism is more than just about hate. It is a conflation of intrinsic ego and incorrigible self-esteem.

Uhuru uses every moment to lambast tribalists and those promoting ethnic sentiments because he fails to see that deficiency in himself. "The politics of tribalism," he said on a tweet on 15 December 2016, are no longer viable in modern Kenya. "For us in Jubilee, our actions and development record are there for all to see." Yet he repeatedly did the opposite. During campaigns for the 2013 elections, both Uhuru and his deputy, Ruto, "invoked the tribal formations of KAMATUSA (Kalenjin, Maasai, Turkana, Samburu) and GEMA.[1006] which had long drifted into oblivion, to foster their political ambitions. The two were highly tribalized organizations formed by Moi and Kenyatta to defend the interests of their communities.

In the 2013 campaign, Uhuru appealed directly to the Kikuyu to vote for him to preserve the interests of “our people.” In 2017 as he campaigned for a second term, the word “*muthamaki*” – king – often described President Uhuru and became a rallying call among his Kikuyu supporters. The Kikuyu were told to choose ‘king’ to maintain domination. And in January 2017, Uhuru went on radio, Kameme FM, a popular Kikuyu language station he owns, to plead for votes using his mother tongue. He even sang a Kikuyu hymn, “*ngoro yakwa*,” (Let my heart sing) accompanied by a guitarist, to the amusement of some listeners and disgust of others. In July 2017, Kameme FM was cited by the elections observation group media monitoring unit, as leading in the use of hateful and inflammatory language, in a survey conducted between May and June.

Chapter 30
Land grabbing 2

WHEN PRESIDENT UHURU Kenyatta received the Truth, Justice and Reconciliation Commission (TJRC) report in May 2013 after four years of work, Kenyans breathed a sigh of relief thinking that, finally, the land grabbers of the eras of Presidents Jomo Kenyatta, Daniel arap Moi, and Mwai Kibaki, would be rounded up and punished.

After receiving it, the President was supposed to circulate the report and get the National Assembly to debate it within 21 days, but that did not happen. Instead, Parliament amended the TJRC Act of 2008 in December 2013 – against local and international protests – giving MPs powers to dilute it. The Washington-based Freedom House condemned the move and said no government in the world had ever altered a truth commission's final report. The Parliamentary action was followed by a mute silence. In 2017, as Uhuru completed his first term in office, the country was still waiting for truth to be revealed and justice to be meted out.

The Commission, created under Agenda 4 items negotiated by Koffi Annan in 2009, was so damaging to top government functionaries including Uhuru's own family that he refused to implement it and gave no explanation for his refusal. His Deputy President William Ruto, who was himself adversely mentioned in the report in relation to the 2007/2008 post-election violence, claimed in July 2017 that implementation of the TJRC report would open old wounds and trigger fresh tribal clashes. "This country is not ready to go back to the past. It wants to forge ahead," he told a rally in Kilifi on 17 July as he campaigned for the re-election of the Jubilee party. The following day, the *Daily Nation* called the TJRC report a "political hot potato," and a political scientist allied to the opposition, Dr. Adams Oloo, said for the ruling Jubilee government, implementing the report would be like "a dog eating its own puppies."[1007]

The document covered a wide range of issues, from the historical injustices at the Coast, to land grabbing, extra-judicial killings by police, corruption and bribery, tribal violence, massacres of innocent Kenyans, and the 2007/2008 post-election violence, among several others. Christopher Ndung'u, an official of the International Center for Transitional Reconciliation Commission (ICTRC), said in 2014 that the report exposed "Kenya as a State whose institutions are frequently exposed as corrupt and in callous disregard of the fundamental human rights of citizens."[1008] In its final report, TJRC recommended further investigations and prosecution of those involved, including politicians, top army commanders, senior police officers, and civil servants.

Was the non-implementation of the report another example of a cover-up scheme by Uhuru's government on the injustices that took place during his predecessors' regimes? That is how it looked like.

The Kenyattas and land

Land was not on top of Uhuru's priorities when he took over government in 2013. The only times Uhuru talked about land was when he presented title deeds to the landless at the Coast and in the Rift Valley. When in January 2016 the Kenyatta family "voluntarily" donated 2,000 acres to squatters – part of his father's massive 30,000- acre land-holding in Taita-Taveta County – Uhuru did not appear personally to make the announcement. He sent his spokesman, Manoah Esipisu, to do the job. Why Uhuru shunned such a landmark announcement is a matter of conjecture.

The land donation followed intense pressure from squatters who had invaded the land bordering the Tsavo National Park which Kenyatta acquired during his tenure in office. The actual circumstances under which Kenyatta registered the vast open land in his name are unclear. What is generally known is that the savannah belonged to the government and the President merely ordered that it be excised in his favor. That was standard procedure which was applicable even during Moi's time. In 2001, for example, MP Patrick Muiruri, claimed in Parliament that while victims of tribal clashes were living as squatters in Thika, 5,000 acres had been allocated to Uhuru and Mama Ngina[1009] under circumstances that were suspect.

The admission of ownership of the sprawling Taita-Taveta land was given by Uhuru himself during intense questioning in a live presidential debate in February 2013. In that interview, he said 4,000 acres had been donated to squatters, but that turned out not to be accurate as the official announcement three years later showed. He said every piece of land the Kenyattas got was acquired legally: “My family and I own land,” he said. “We’ve not acquired it illegally but through willing buyer-willing seller basis. There is nothing to prove that my family has illegally acquired land,”[1010] he told the interviewer. The land had a 99-year lease which was renewed in 2014, according to the chairman of the national land commission, Muhammad Swazuri.

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There is one question President Uhuru has been unable to answer definitively, despite heightened public curiosity. How much land does the Kenyatta family own? And how much of it was acquired legally? “I don’t need to answer that question because that’s not the issue,” Kenyatta responded when asked by the BBC in 2008. He said “Land reform is not about a person; land reform is about a nation. It’s not that I won’t tell you. It’s that I don’t need to tell you.”[1011]

That response partly explains why Uhuru refused to implement the recommendations of the TJRC report. Land is a sensitive matter for the Kenyatta family. However, there is no concrete evidence that Uhuru personally benefited from illegal actions, but the fact that his parents expropriated huge pieces of land belonging to the public makes Uhuru culpable at least by association.

His incapacity to stop people around him from engaging in corruption has exposed him as a weak leader and as Moi said, “easy to manipulate.” It is easy then to understand why the so-called ‘tenderpreneurs’ and cartels ran wild through the government stealing and plundering resources during his first term as he looked on impotently. In the economically important coffee industry, 30,000 kg of coffee went missing in 2016 alone, according to the Kenya Coffee Board (KCB) as marauding gangs swept through the Mount Kenya coffee growing zone stealing the produce. Arrests were rare. Coffee contributed 10% of the GDP and employed more than 600,000 farmers, most of them smallholders. One would think maximum protection would be accorded to the industry.

The “tenderpreneurs” formed groups and colluded with avaricious government officials to ensure State tenders were given exclusively to their members on a rotational basis to crowd out other bidders. Using insider information, they offered attractive bids and provided all the technical information required to beat the scrutiny of auditors and anti-corruption investigators.[1012] In return, crooked government officials were paid hefty commissions based on the contract amount.

Throughout Uhuru's first term, the devious cartels occupied prominent headlines in the media: "Revealed: How powerful cartels steal prime land," shouted the *Daily Nation* on 24 January 2015; "How Jubilee government plans to crash public tender cartels," screamed the *Standard* on 13 July 2015; "How corruption cartels operate in Kenya government," said the *Kenya Confidential* on 23 May 2016; "Land officials colluding with cartels to steal from public coffers," announced X News on 5 July 2016, among others. A Kenyan economist, Sitati Wasilwa, described Uhuru's regime as the era of "cartelism, Mandevilleanism…(and) robber barons."

He quoted a book by Mathew Josephson, "The Robber Barons", published in 1934, which explained how American capitalists were "milking dry" the citizenry of that country, and said the "situation is not in any way different from the 'state of corruption' in Kenya at the moment." He also likened graft in Kenya to what is documented in Bernard Mandeville's "The Fable of the Bees: Or, Private Vices, Public Benefits," about the 'sinful rich," saying "the Mandevilleanism doctrine has been fully embraced in the Republic of Kenya."[1013]

Cartelism, Mandevilleanism and barony have taken root in various spheres of the Kenyan state. The situation is catastrophic especially to the majority of the public coffers whose coins are plundered by an uncaring lot, a minority whose voracious appetite for public resources is well known.[1014]

One of the more active "tenderpreneurs" was identified by media reports as a son of a prominent former politician known to be active in bribing senior political leaders to win favors. A Kenyan newspaper reported in June 2017 that the man in question "has grown in 15 years of shady deals from an ordinary hustler to a continental oligarch with a flat in London's Park Lane, a massive mansion on five acres on Muthaiga Road (a posh part of Nairobi) just yards from the residence of the US Ambassador, homes in Zurich and bolt hotels in Dubai."[1015]

Members of the crude cartels have been accused of everything from manipulation of government financial systems to murder, and to obtaining illegal wealth through any means. In the process of enriching themselves, they have also ruined lives and collapsed State-owned firms such as the Kenya Cashewnuts Factory (KCF); and weakened the once financially strong "Pride of Africa, the national airlines, Kenya Airways. Cartels were also at the center of the debacle over the printing of ballot papers in both the 2013 and 2017 general elections. The 2013 elections created what came to be known as the "chicken-gate" scandal. In 2017, they unleashed total confusion as officials argued over the KES.2.5-billion printing contract.

There were allegations that the favored company, Al Ghurair printing and publishing company, had direct personal connections to Uhuru, and that company executives hosted the President when he visited Dubai in February 2016. It was at that time that the deal was reportedly sealed, according to various media reports. The Chairman of the company, Majid Al Ghurair, in turn visited Kenya in October 2016 and was warmly received by President Uhuru at State House. Company representatives made a detailed presentation to President Uhuru of their vast printing empire to convince him that the deal was in good hands. According to *The Star*, quoting a source familiar with the events, Uhuru even introduced Majid to a top IEBC official. "That is how IEBC became hell-bent on delivering the printing tender to Al- Ghurair,"[1016] the report claimed. The Opposition NASA went to court to stop the contract, but it was ruled out and Al-Ghurair delivered the ballot papers a week before the elections on 8 August 2017.

There are all sorts of cartels in Kenya: oil cartels comprising of big petroleum companies that manipulate gas prices; crime cartels that deal in drugs and human trafficking; land cartels that connive with crooked government officials to alter title deeds for resale; and even medical cartels involving doctors who make money through referrals to foreign health institutions.

Continued "plundering of state and other resources over previous decades have made Kenya one of the poorest countries in the world despite its development potential,"[1017] said one development expert.

It appears contemporary Kenyan leaders have not read the story told by a one-time Mayor of Nairobi, Charles Rubia, during the opening of the "Kenya we want" conference in Nairobi on 12 July 1963. Quoting ancient literature, Rubia narrated:

> Three men were in a boat, none of whom could swim. When they reached the middle of the river, one man took out an auger and

> started to bore a hole in the bottom of the boat. The other two shouted: ‘What are you doing?’ ‘Mind your own business,’ said he. ‘I am boring a hole beneath my seat only, and not beneath yours.’ ‘But,’ shouted his companions, ‘we are all in the same boat.’

We are all in the same boat – all of us. The ship of the state called Kenya is going to be launched in the near future, a free vessel under an independent flag, and we are the crew. We are dependent on one another. If the ship sinks in the rough waters we can already see ahead, then we all go down with her.

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Land grabbing did not cease during Uhuru’s time. In Laikipia in August 2015, the Eng’ape E Maa Association complained their land amounting to 2,300 acres was grabbed by the North Tetu cooperative society. The Maasai group said they had lived on the land for more than 30 years, but the society had put up a fence, dug a trench barring access to the river, and asked them to leave. The Maasai responded by destroying the fence after which the police intervened, beating the residents and killing one of them Joel ole Ntayia by drowning while his 10-year old child watched. Six protesters were arraigned in court.

In the report, the Maasai residents expressed anger and frustration at the failure of the government to protect them. Loirrusha Meshami claimed the Maasai had less value “than wild animals in this land. We are called squatters in our own land. We are beaten up and robbed and there is nothing we can do about it. I have never seen a government like this. It made promises to solve the matter, but instead it sent police to torture us.”[1018]

Laikipia is a much-sought after area because of its cool climate and flat grazing terrain. Most of the big pieces of land owned by colonial settlers now largely belong to influential Kenyans most of them beneficiaries during President Moi’s rule. With increasing demands for land for holiday homes, horticultural production and high end private homes, the County has become a hotbed of conflicts, according to the report.

In Nakuru County, residents of Rurii and Piston villages took to the streets in mid-2015 to protest the allocation by the authorities of a three-acre public cemetery to a private developer. They blocked the Njoro-Neissuit road and caused a massive traffic jam as they blamed the local authority for colluding with private developers to steal the land. In Kajiado in February 2014, two County officials were found with hundreds of title deeds intended for use in illegal land transactions. One of them was connected to a senior lands officer. They were arrested.

An MP who allegedly grabbed land meant for settlement of landless in Chembe Kibabamche and Kilifi/Jimba settlement schemes was the cause of a demonstration in May 2015 in Kilifi. Although the MP claimed he inherited the land from his grandfather, residents of the two areas said he grabbed the land meant for settlement of the landless. The DPP ordered that the MP and a Kilifi lands official be investigated to establish the truth. *The controversy which started in 2010 remained unresolved in 2017.*

According to NLC, the disputed land at Chembe Kibabamche and Kilifi/Jimba settlement schemes was illegally allocated to politicians, foreigners and tycoons. During public hearings in September 2015, the NLC was told some portions of the land had more than four title deeds obtained illegally. Settlement schemes were created during President Kenyatta's reign to benefit the landless, but most of them ended in the hands of elites who either sold them to third parties or erected residential homes.

Land-grabbers' haven

In 2011, three elderly brothers took to court a company associated with Raila Odinga alleging it grabbed their seven-acre beach plot at Chembe Kibabamche. Ezekiel Kai Mwambo, Habel Kambu Mwambo, and Benjamin Mwambo, accused Kango Enterprises and a foreigner, John Frazer Unsworth, of obtaining illegally a title deed to the Chembe/Kibabamche/327. They claimed Odinga and Frazer used political connections and money to snatch the plot on which they had lived for 70 years. However, Frazer said he bought the land in 2007 from Kango Enterprises and paid KES.13.4 million after which he received a title deed for it. In February 2009, four people including a former mayor of Malindi, Frederick Kazungu Diwani, were charged with seven counts of stealing the land from Raila and selling it to John Frazer Unsworth. The others were: Elizabeth Thoya, Davis Oduor and Moris Machache. Raila told the court he bought the plot from Diwani in 1999 after inspecting it and finding it to be vacant. The former mayor died in 2012.

In the meantime, a report released on 24 February 2016 by the Land Development and Governance Institute (LDGI) showed that 85% land grab witnesses failed to report what they saw. Carried in 21 of the 47 Countiesbetween 15 September and 2 October 2015, the study expressed concern about people's lack of action in reporting illegal acquisition of public land. It also noted that only seven Countiesmaintained an inventory of public land and that Kajiado was the only County that kept data in the Geographic Information System (GIS), a system that stores and analyzes geographical data.

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An attempt to grab 200,000 acres of land in Narok County belonging to Maji Moto group ranch with the help of a local chief was thwarted in May 2016 following a peaceful demonstration by residents of Maji Moto. The Narok County Commissioner, Moffat Kangi, suspended the chief after finding his name on the register as owner of a 1,000-acre piece of land owned by the ranch. Several public utility facilities in the area including a clinic, school, a water point and trading center, sit on grabbed land, according to the Kenya News Agency (KNA). In Mombasa, the daughter of a former Minister had to run for her life when villagers of Bububu area of Mtongwe descended on her with sticks as she and a group of people attempted to erect a fence on a piece of land alleged to be community land in November 2016. When she arrived with a lorry full of construction materials and workers to erect a fence, residents were waiting. They said the land was subdivided to them by the government a decade earlier, but that it had been grabbed by politicians from Mombasa and Kwale.

In Kilifi County, one of the areas with one of the most serious land-grabbing problems, hundreds of demonstrators destroyed a perimeter wall surrounding a 20-acre farm reportedly belonging to investors. They entered the land and settled on it in March 2015. They also carried away building materials and sold them. One of the investors with a plot on the land, Major Chris Gountier, said he was the legal owner of a half an acre parcel which he bought from a British settler for KES.2.5 million. The 20 acres are part of a controversial 270 acres in the Kiwandani Bofa area which have been contested by investors and locals for years.

And in Magarini further north, a land-grabber accompanied by police and a lorry-full of material arrived at the area ready to put up a perimeter wall. The grabber claimed he had a genuine title deed. He told them: "I have the title deed and was given by well-known people in the government so there is no place you can take me…I have valid papers."[1019] *The matter remained unresolved by mid-2017.*

An investigation of County properties in Kisumu in December 2016 revealed MPs, MCAs and County officials, had grabbed large portions of land and houses owned by the local authority. A committee appointed by Governor Jack Ranguma found that apart from some land parcels having been allocated to investors more than once, some of the houses owned by the previous Kisumu municipal council had been renovated and allocated to individuals.

In Turkana County, north of the country, individual land barons and government institutions rushed to the area to buy parcels of land for future development and for speculation purposes when oil was discovered there in early 2000. By 2016, 95% of public land in the area had been grabbed, including a 28-acre piece occupied by the Lodwar police station and the detention cell of founding President, Jomo Kenyatta, which became a museum. In the same County in March 2017, hundreds of people carrying twigs demonstrated to protest land grabbing and pulled down a fence surrounding a parcel they said contained graves of their ancestors.

Kisii and Nyamira Counties, according to Kenya Diaspora Radio and Television (KDRTV) in January 2017, had become a land-grabbers' haven. A gang of criminals working with corrupt land officials was reportedly going around grabbing unoccupied land and obtaining tittle deeds using fake documents. In 2017, Kericho County began a process of recovering land grabbed by officials in the present and previous governments. It created a land register and began the process of redeeming large pieces of land carved out of the Mau forest, including a 1,017-acre land in Samburet in Mau Forest meant for the resettlement of the people of Talai clan which was grabbed by influential government officials.

If you thought only private citizens engaged in land grabbing, this narrative of a massive land grab by the Kenya Defense Forces (KDF) in Nakuru will change your mind. The Rumuruti Farmers Company in Nakuru took KDF to court in June 2017 accusing it of grabbing 3,105 acres of land in Gilgil belonging to it. The company wanted the court to stop any developments by the army on Gilgil-Karunga Block 9 until the court determined the matter. They also demanded compensation of KES.1 million per acre for losses incurred when they were evicted. The army had already constructed a perimeter wall around the land. The company told the court it owned the land and at no time did it sell it to the KDF. In response, the lawyer representing the State said it issued a gazette notice indicating an intent to acquire the land for public use, but Rumuruti Farmers Company said it had no knowledge of the notice.

On 17 July 2017, the NLC announced cancellation of hundreds of title deeds held by officials in the previous regimes. Former Cabinet Ministers were on the list, which also had MPs, diplomats, and County officials. The 77-page Gazette Notice by NLC linked a Minister to a public utility plot at Woodley in Nairobi, and his father to the Kakamega Golf Club land, and another to a parcel in Kisumu. Former Minister Mudavadi described the grabbing allegations as “utter rubbish, sickening and malicious,” while former Minister Nyagah who was contesting the presidency in the 2017 elections, dismissed them as a political witch-hunt.

The same year, NLC announced that all the 151 title deeds held by grabbers in Karura Forest had been recovered and returned to the Kenya Forest Service (KFS). “No matter who you are, what you have done, how they acquired it, the land belongs to Karura Forest and remains so,” said the environment Cabinet Minister, Judy Wakhungu. However, lands belonging to some government institutions such as prisons remained in the hands of grabbers. Kitale Prison, for example, lost 4,579.54 acres to illegal occupiers, while Nairobi Remand Prison, Lang’ata Women’s Prison, and Kamiti Prison lost 36.99 acres, 27.67 acres and 50.16 acres respectively. The government also managed to revoke 117 parcels of land belonging to Eldoret Prison. Beneficiaries of the prison lands included two former Prisons’ Commissioners, a former MP, businessmen and companies.[1020]

Cartels terrorizing people

The Kenya constitution, 2010, empowers Counties“to take over key aspects of land administration including oversight of public lands, construction of transparent land registries to combat land-grabbing, corruption, and management of community land.”[1021] Each of the 47 Countiesis responsible for overseeing community forests, grazing areas or shrines; ancestral lands, lands traditionally occupied by hunter-gather communities, and land lawfully held as trust land by the County governments. Counties are also in-charge of mapping and land surveys, boundaries and fencing, housing, and public works and services, within their areas, leaving the central government with adjudication and settlement, searches, registration, and planning.

Consequently, Counties have important responsibilities to ensure proper management of community lands to avoid illegal land allocations and land grabbing. With historical injustices bearing on the welfare of locals in many areas, the quest for fairness in land allocation is one of the biggest challenges facing devolved units. *But evidence suggests that land-grabbing and illegal allocations of lands have continued even after promulgation of the new constitution under President Kibaki in 2010, and continued throughout Uhuru's first term in office.*

In Machakos County, land grabbing cartels continued to harass local land owners for the control of large swathes of land there. The epicenter of their activity has been Athi River (Mavoko) Municipality because of its proximity to Nairobi. Grabbers, some of them prominent names in the political establishment and the civil service, have been sub-dividing land and selling it to developers. In 2015, the cartels sent armed gangs to terrorize workers at the East African Portland Cement Company and took over 13,000 acres belonging to the firm. They succeeded in grabbing part of it and sold it illegally to unsuspecting individuals. On 13 November 2015, Governor Mutua asked the EACC to investigate the matter and prosecute those who had built structures on the land illegally, and warned that "the cancer of corruption, theft and land grabbing, if left unchecked, will destroy Kenya forever." However, the lands Cabinet secretary, Jacob Kaimenyi, denied the existence of cartels grabbing land in Mavoko.

Allegations of land grabbing in the County have roped in names of political bigwigs including a former Vice President, a Governor and a Senator, and have at times led to public protests. A senator has also been accused of building a residential complex on riparian land.

In November 2016, Governor Alfred Mutua of Machakos appeared before the Senate Public Accounts Committee and tabled a dossier, he said, was of people who grabbed land in the County. He accused a former Vice President of influencing the allocation of pieces of land totaling more than 4,000 hectares. Two of them, LR No. 22278 and LR No. 130409, according to a letter he sent to EACC on 24 February 2015, were allocated to a company allegedly registered in the name of the former Vice President and his wife. The other plots, No. LR No. 201185 and LR No. 67338 were allegedly owned by the Vice President. Mutua also cited in the letter allegations made in the report of the Commission of Inquiry into the Irregular and Illegal Allocation of Public Land, that one of those officials had irregularly acquired 200 acres of land belonging to the national youth service (NYS).

That month, the Senate Public Accounts and Investments Committee under the Chairmanship of Senator Anyang' Nyong'o recommended that a sitting Senator, an MP, and several Lands Ministry officials be investigated for involvement in land grabbing in Machakos County. As the Machakos Governor made those claims, his own County was being accused of excising 2,000 acres belonging to the Agriculture, Livestock and Fisheries Ministry meant for livestock disease surveillance, an animal genetic center, a gene bank, and for disease control programs. The County dug boreholes and tarmacked a feeder road which the Minister ordered destroyed. The Governor denied grabbing the land.

The establishment of County Land Management Boards as agents of NLC in consultation with County governments, helped to thwart many incidences of invasions of community lands by squatters, and managed – with some success – to stop corruption in the Ministry of lands offices and to protect public lands from grabbers. The main target of grabbers – after the decimation of forests and large swathes of land belonging to public institutions – were schools, cemeteries, recreational facilities, and public beaches. The grabbing took place because many of the schools and public institutions did not have title deeds. When the Nairobi County Education Task Forces visited 50 schools in its jurisdiction in 2014, for example, only three schools had title deeds.

The invasion of schools by grabbers led the NLC to prepare 2,400 title deeds early in 2016 to shield the facilities from unscrupulous land thieves. However, a school such as Kampi ya Moto Primary School in Nakuru did not escape grabbers. Its fifteen acres were snatched by developers, so was land belonging to 157 other schools in various towns including Nairobi, Mombasa, Nakuru, and Eldoret. The grabbers did not only steal the land, but also colluded with officials in the land registry and acquired title deeds. A survey done by the NLC showed out of 29,404 public schools in the country, 83% did not have title deeds or lease certificates, 41% did not have allotment letters, and 55% were yet to be surveyed.[1022]

However, none of the lands grabbed from schools received as much national media coverage as that belonging to Lang'ata Primary School in Nairobi. On 19 January 2015, hundreds of pupils arrived at their school compound – a stone's throw away from the Nairobi National Park – to find an iron and concrete fence had been erected by developers while they were on December recess. Pupils as young as 6 years old joined adult protesters on the front line to pull down the wall, and entered the grabbed playground. A nearby hotel claimed it owned the one-acre playground, and that it wanted to turn it into a parking lot. As the mayhem got out of hand, the police wearing riot gear arrived and tear-gassed the protesters who were chanting "*Haki Yetu*" (It's our right), and carrying banners reading: "Kenya: Land of the shameless grabbers," and, "Land grabbing is terror against children." Some of the pupils, their eyes burning, had to take shelter at a nearby bridge. Five pupils were seriously injured and rushed to hospital.

News clips of scampering children drowned in a heavy cover of fuming gas shown on television that day angered Kenyans who condemned both the politician behind the attempted grabbing – a senior member of the Jubilee government – and the government for allowing such a thing to happen. The following day President Uhuru described the incident as "despicable" and said action would be taken against the officers responsible. The Interior Minister, Joseph Nkaissery, hastily went to the school to apologize. It was not clear what action was taken to punish the police officers who ordered the raid.

Opposition ODM leader, Raila Odinga, said: "This is brutality beyond words and greed beyond description."[1023] The sad event was widely covered internationally including by the cable network, CNN, the *Chicago Tribune* in the US, the *Daily Mail* and *The Guardian* in the UK, and by all the major news agencies. The incident coincided with Pope Francis' visit to Kenya in November 2015. The Pontiff took an opportunity in one of his addresses to lash out at "private developers" accusing them of hoarding land and "even attempting to take playgrounds away from schools."

According to one report posted by an online news bulletin, the land had been allocated illegally to a former mayor who then sold it to a politically-connected Indian businessman who reportedly transferred it to a hotel owned by a former Minister. Following a public uproar, the developers were eventually forced to hand back the land to the school.

The Lang’ata incident triggered a rush for title deeds and a spate of condemnations. The NLC Vice Chairperson, Abigael Bagaya, reported in June 2015 they had received complaints of land grabs from 350 schools across the nation.

Chapter 31

NYS, Eurobond and more scandals

IF THERE WERE two financial scandals that shook Uhuru's government and exposed bare impunity during his first term in office, they were the KES.791-million loss at the National Youth Service (NYS), and the KES.215 billion Eurobond mystery.

It all started after Cabinet Secretary for Devolution and planning, Anne Waiguru, invited the Directorate of Criminal Investigation (DCI) after "discovering" suspicious Integrated Financial Management System (IFMS) transactions at the NYS in June 2015. She told investigators that the transactions took place between December 2014 and April 2015 through the manipulation of IFMIS. Crooks had added zeros or other numbers to 18 transactions related to the supply of road construction and building materials. The DCI found that several companies – many of them controlled by a woman, Josephine Kabura Irungu – were fraudulently paid substantial amounts of money.

In one brazen case of manipulation, a local purchase order (LPO) of KES.15.4 million was altered and entered in IFMIS as KES.154.9 million. On 10 September, the DCI recommended the arrest and prosecution of 21 people including some of the officials at the NYS and the Devolution Ministry. A former Chief Executive of the Family bank, Peter Munyiri, and a representative of the bank, John King'ori, were charged along with the bank for failing to report suspicious transactions on accounts of a company, reinforced concrete technologies, owned by Irungu.

The scandal was earth-shaking enough and led to Waiguru's resignation, and the sacking of the Principal Secretary Peter Mangiti and the NYS Director General Nelson Githinji. The two were charged in November 2015 along with businessman Benson Gethi, said to be the master-mind of the scheme. Charges ranged from cover-up, tampering, threatening and intimidating a senior civil servant, and conspiracy to defraud. The accused denied the charges and were given bail.

Before the revelations of the scandal, the Treasury had warned the Ministry officials against "engaging in improper financial procedures" and had raised a red flag on the activities in the Ministry and ordered various LPOs to be recalled.[1024]

Ministry officials and the key individuals named in the scandal appeared before the Parliamentary Public Accounts Committee (PAC) in separate sessions and blamed each other. Mangiti, pointed a finger at Waiguru saying she was the one giving instructions on the payments. On the other hand, Waiguru blamed Irungu who, in an affidavit, linked the former Cabinet Secretary to the scandal. Waiguru said she was only a whistleblower and had nothing to do with the scandal even as allegations emerged that two companies she owned were given tenders by the NYS worth KES.3 billion.

In an interview on Citizen TV in May 2017, Waiguru revealed shocking details about how some PAC members in the House had asked for a KES.10-million bribe in exchange for a favorable report. She didn't have the money for the bribe; she said, and told them to "write what they wanted." Nevertheless, Waiguru said KES.1.8 billion of the stolen money had been recovered. The PAC recommended that Waiguru be barred from contesting political office, but she went to court to challenge the PAC decision. On 2 June 2017, the IEBC cleared her. The former Uhuru confidante contested the governorship of Kirinyaga County in Central Kenya in the 2017 general elections and won.

The most compelling of the witnesses before PAC was Josephine Irungu, a former hair dresser whose bank balances before the scandal broke out was reported to be less than KES.500, but ended up with KES.1.674 billion after her 20 companies got tenders from NYS. Evasive at first and offering only curt answers to MPs' questions, Irungu eventually opened-up before the committee and explained how she won tenders from NYS and accumulated wealth. She said she provided construction materials to the organization through LPOs and sourced some of the material from NYS quarries, a revelation that stunned the legislators meeting in closed sessions because NYS was a government body. Once paid, she would go to the bank and withdraw millions of shillings and carry them in sacks to a secret destination. "I was using a bag, one bag at a go," she told the astounded committee in explaining an episode involving KES.56 million. She said she carried out tens of transactions involving millions of shillings in her dealings with NYS.

When she was summoned to court in July 2016 to face money laundering charges, she failed to appear, and an arrest warrant had to be issued. Others who faced similar charges were Ben Gethi, Charity Wangui, Jedidah Wangari, John Kago, and Samuel Mudanyi aka Sam Mwadime. The case had not been finalized by the end of 2017.

The NYS scandal led to the resignation on 31 August 2016 of Philip Kinisu, Chairman of the EACC following revelations that his family business was one of the firms that did business with the scandal-ridden Ministry of Devolution and National Planning. His departure – eight months into his tenure - came soon after the Parliamentary Justice and Legal Affairs Committee recommended his removal. Kinisu came to the anti-corruption organization early in the year brimming with extraordinary zeal. He promised to vet all EACC staff and vowed to complete hundreds of pending investigations. But after his company Esaki limited was linked to the NYS scandal, public pressure for disciplinary measures mounted and the Parliamentary Committee called for a special tribunal to investigate his connection to the government agency. No court action was taken against Kinisu or his company.

In another scandal at the NYS in 2017, 2,238 people were found to have been irregularly registered for training at the institution. The NYS could not explain how so many people could have been admitted in such a restrictive environment and allowed to spend nine months fully provided with uniforms, rations and a stipend of KES.700 monthly each. The country lost millions of shillings through their upkeep. “Certainly, they are imposters who gained access to NYS fraudulently,” said NYS Director General Richard Ndubai.

The NYS – a nation-building outfit for young men and women – recruits hundreds of youths every year offering them vocational training in numerous fields. But – like many other government agencies - it has had a share of scandals including bribery in recruitment.

Notably, the Devolution Ministry is where billions of shillings were used during the 2013/2014 financial year to buy expensive condom dispensers and other items whose prices were grossly inflated. The cost of the items was staggering. For example, the Ministry paid KES.450,000 for eighteen male and female condom dispensers; KES.174,000 for 20 ball point pens; and KES.28.8 million for office partitioning. It was amazing how a pen which normally sells for KES.20 ended up costing KES.435; or why a condom dispenser which goes for a few thousand shillings was bought at KES.25,000. The Ministry also inflated prices of computers and other office equipment. Another surprising purchase was a KES.235,000 Yamaha Piano. For what use would that be for a Ministry whose core task is to supervise counties? All those questions were asked, but at the end of the day, no one was held accountable and no one was prosecuted.

Eurobond mystery

In June 2014, the government floated a bond on the Irish stock exchange to raise money for general budget support and infrastructure development - one of Jubilee coalition's key election promises. During the campaign, Uhuru promised to revamp road and railway networks which he said were in pathetic condition. Through the bond, the government expected to raise KES.250 billion which, according to the contract documents, was to be repaid within seven days after receipt of the proceeds. The government believed the money would help lower interest rates, but questions were raised when – about that same time - it started borrowing money from local banks at high interest.

Trouble began when it was discovered that the money was not banked with the exchequer as required by law, but was banked in offshore accounts. According to the Auditor General, Edward Ouko, KES.199 billion and KES.53.2 billion were deposited in offshore accounts in June and July 2014 respectively. He said it was illegal for the government to bank the money abroad. Part of the KES.250 billion was however moved to the consolidated fund.

In September 2016, Ouko, announced that KES.215 billion raised from the Eurobond could not be accounted for even though the government had announced the money was allocated to ministries. He said there was no proof of "receipt of expenditure" anywhere in government. Nevertheless, it was the way the money was shifted from one account to another that raised questions about the accountability of the funds. The Auditor General said: "Investigations into the receipts, accounting and use of funds related to the Sovereign/Eurobond are still ongoing and the accuracy of the net proceeds of KES.215.4 billion is yet to be ascertained."

The government and the International Monetary Fund (IMF) contended that all the Eurobond money had been accounted for. The global organization deputy Managing Director, David Lipton, said the money was transferred to the CBK and used by the government on various projects, but leader of ODM, Raila Odinga, claimed on 5 December that KES.140 billion never reached Kenya.[1025] That prompted the Cabinet Secretary, treasury, to issue a long rebuttal statement spelling out how the money was used. He said the proceeds were correctly accounted for in the government books and faulted Raila's calculations showing KES.140 billion had gone missing.

The scandal was a rallying pitch for the opposition ODM in the campaign ahead of the 2017 elections.

Wastage of resources

There was something else that had a thread throughout the four regimes; wastage of resources. Until the 2010 constitution put a cap on the number of Cabinet Secretaries at a maximum of 22, the Cabinet was invariably bloated to accommodate regional and political interests. In his 1979 Cabinet, Moi increased his Ministries by splitting them and creating 12 new portfolios. He increased the number of Assistant Ministers to incorporate all Kenyans tribes.

In the 2008 grand coalition government of President Kibaki and Prime Minister Raila Odinga, new Ministries were concocted, and positions were created to accommodate members of both sides. There were two Deputy Prime Ministers, Uhuru Kenyatta and Musalia Mudavadi; a perfunctory Ministry of Northern Kenya for Arid and Semi-Arid Lands; the Ministry of Health was split into two, one for Medical Services and the other for Public Health and Sanitation, and so on – a total of 43 Ministries including the President and the Attorney General.

All those officials including Assistant Ministers and Permanent Secretaries had to be catered for in terms of salaries and allowances, luxury vehicles; travels; and retreats in expensive resorts around the country. Over the years, the civil service has also grown exponentially – from a lean organization in the 1960s to over 600,000 employees in 2016, many of them under-utilized and perhaps unnecessary, thanks to nepotism, tribalism and cronyism. There were also thousands of ghost workers drawing salaries from the public coffers.

Ghost workers – people who had left the service, retired or died – were gobbling KES.1.8 million annually, as per government officials.[1026] On 1 September 2014 President Uhuru launched a biometric registration of all civil servants; taking finger-prints, verifying educational qualifications, and checking identification cards. Over 12,500 workers failed to register for the exercise and were classified as ghost workers. Their names were all struck off the payroll. The government had been losing KES.7.2 billion yearly to ghost workers.

In Baringo County alone, KES.272 million was lost to ghost workers in the 2014/2015 financial year. In Migori County, ghost workers consumed KES.129 million between 2013 and 2016. In Tharaka-Nithi, 300 names of ghost workers were booted out of the salary register. In a Nairobi County audit in 2016, 2,260 fake workers were discovered causing a loss of KES.100 million in salaries every month. In Narok County an audit found 200 bogus employees were earning more than KES.100,000 monthly. *Thousands more were uncovered in state Corporations.*

The introduction of devolved government also dug into the country's financial resources costing the country millions of shillings every year, not to mention the losses occasioned by theft and misappropriation. Governors used County funds to build gyms, bought expensive residences and furnishings for the Chief Executives, paid themselves huge sitting allowances, and developed a penchant for frequent overseas travels. The result of all that was an unprecedented wage bill amounting to 12% of the GDP way above the universally acceptable threshold of 7%.

Wastage of human resources is also prevalent in all government enterprises. In 2005, for example, Telkom, the state-owned telecommunication organization, employed 40,000 people to take care of 300,000 telephone lines; and the Nairobi City Council (NCC) had 600 drivers to drive 20 cars.[1027] Some of the vehicles, one MP claimed, were allocated to "secretaries, messengers and girlfriends."[1028]

A lavish residence built for the Vice President at Karen and opened by Kibaki in 2012 at a cost of KES.430 stayed empty for years without being occupied, so was a house bought for the Chief Justice for KES.310 million in the high-end Runda area. At the end of 2017 the house was still unoccupied. In 2014, newspapers reported the house in the posh neighborhood of Karen, which originally was to be occupied by Vice President Moody Awori and then Kalonzo Musyoka, was only ready after William Ruto became Deputy

President in 2013. And even then, it was ‘falling apart” and needed an additional KES.100 million before occupation.[1029] It was also alleged that the Office of the Deputy President (ODP) spent KES.50 million to purchase lifts for the house which was much higher than what was usually the case.

Another method civil servants use to raid public coffers is to order unnecessary refurbishments for government buildings. Every year money is allocated to spruce up State House in Nairobi, the official residence of the President along with more than half a dozen other lodges spread across the country. In 2003, State House was allocated KES.130 million for that purpose. The following year KES.110 million was allocated to rework the building. In the three years that followed, the stately house on the hill received KES.350 million from the Exchequer for improvements. State Lodges located in different interior parts of the country, which are rarely used, also consume millions of shillings every year in upkeep and salaries for security officers and household staff.

Similarly, Harambee House, the President’s Office in the middle of Nairobi, has also been gobbling quite a bit in refurbishment allocations. In 2003, it received KES.30 million. The figure jumped to KES.545 million the following year. “This is suspect while people are dying (of hunger) in Turkana,”[1030] Kajiado Central MP Maj-Gen. Joseph Nkaisserry, said angrily.

Questions were asked in 2014 about an expenditure of KES.50 million for a presidential function in Kibera that lasted less than one hour. The money was paid to a private event organizer through a unit within State House called the Presidential Strategic Communication Unit (PSCU). An internal forensic audit revealed “massive misappropriation and wanton abuse” by officials in the unit. The unit had the responsibility of staging all presidential events, but it outsourced services in arrangements that were nebulous. The scandal prompted Uhuru to disband the entertainment unit.

In November 2016, the EACC announced the ODP was among departments being investigated for various financial irregularities. A total of KES.442 million was reportedly misappropriated in the ODP including money lost through procurement irregularities for a private jet hired in 2013 by the Deputy President William Ruto, to fly to four African countries on official duty between 16 and 19 May. It was alleged the process used to hire the Bombardier 850 Challenger plane was in violation of procedures because it was not signed by an authorized officer and that it was single sourced.

Moreover, it was claimed, the hiring of the jet was done on verbal not written orders from the President and was therefore acquired irregularly. The ODP however issued a statement to say the lease was done competitively and that the lowest bid among three offers of KES.18.5 million was accepted. The visit took him to Congo-Brazzaville, Nigeria, Ghana and Gabon, on an assignment for the President. Other irregularities related to the jet scandal included the failure to inspect the plane for security; failure to have a signed contract with the supplier; and awarding the contract to an alleged tax evader.

The Public Accounts Committee (PAC) was asked to investigate the matter, and eventually exonerated the DP from any wrong-doing though it recommended that four officers in the ODP be investigated for flouting procurement rules. However, Parliament voted against the report. It was clear from the time the scandal broke out that the government was opposed to the matter being investigated. It took 15 months for the report to reach the floor of the House, and even before debate began, the Speaker ruled that the title of the report, “The Hustler’s Jet Report” was inappropriate and wanted it changed. “Hustler” is the nickname the deputy president gave himself to explain his humble rural beginnings.

In November 2017, the Controller of Budget, Agnes Odhiambo, reported that Countiesand the national government had squandered KES.27 billion on local and foreign trips for the year ending June 2017. That was KES.2.78 more than what was spent the previous year, totally disregarding a treasury directive to reduce non-essential expenditure including travel. The government has been struggling to reduce spending as part of an austerity measure. But that effort has not been successful. Travel costs have increased from KES.10 billion in 2014 to the current figure, an increase of 58%.

AfriCOG did a survey on corruption in the Executive office in 2016 and found 50% of Kenyans believed corruption was rampant at the ODP compared to 46.6% who thought graft was high.

Wastage is also evident in estimates given for refurbishments of police stations. In 2003, for example, Ongata Rongai police station was given KES.18.5 million for the works. In 2004, the expenditure went up to KES.72.7 million; KES.20 million the following year and KES.10 million in 2006. “What sort of a police station is that,” the MP for Wajir North, Dr. Abdullahi Ali, asked.[1031] Given the history of corruption in similar infrastructure programs, it is easy to surmise that some of that money went to pockets of individuals.

In another case, a suite of offices leased for use by President Kibaki's wife Mama Lucy stayed unoccupied for five years during which time it accumulated rent arrears amounting to KES.2.7 million. Mama Lucy refused to work from the building on the hill overlooking the city preferring instead to be close to her husband at State House.

In the 1980s, the World Bank and the IMF recommended the outsourcing of what it called "non-essential services" in government such as the hiring of messengers and cleaners as part of financial reforms under the Structural Adjustment Programs (SAPs). Instead of saving money, the initiative provided an avenue for corrupt officials to make money illegally. The Secretary General of Central Organization of Trade Unions (COTU), Francis Atwoli, complained in a statement on 13 October 2015, that outsourcing of personnel and services was proving costly to the taxpayers and creating a platform for stealing government revenue. He suggested that the system be scrapped, and such employees be absorbed in the payroll. Under the SAPs, the government was to reduce salaries and scrap some civil service positions, stop employing university students after graduation, and cutting down on the number of parastatals. President Moi grudgingly implemented the recommendations.

During his rule Kibaki introduced an initiative to reduce the wage bill – which had skyrocketed from US$.2.3 billion (KES.238.6 billion) in 2008/2009 to US$.5.3 billion (KES.549.8 billion, in 2012/2013. The rationalization of spending by MPs and senior public officials has failed partly because of the devolved system of government which created 1,450 new elective positions of Members of County Assembly (MCAs). In addition, the Countieshave become the new centers of corruption and wastage of public resources as County officials use all manner of tricks to steal. "People are using weak accounting and procurement systems to mismanage and plunder resources at the County level," the Auditor General Ouko, complained.[1032]

In 2014, President Uhuru laid out a strategic plan under the EACC to fight corruption called: "A corruption free society that upholds integrity and the rule of law" whose main objectives were to reduce prevalence of corruption and unethical conduct; establish, maintain and strengthen partnerships and networks against corruption and unethical practices; to promote ethics and good governance; to mobilize resources for effective and efficient service delivery; and to strengthen the police and legal framework.[1033] Notices reading: “This is a corruption free zone,” were conspicuously planted outside government buildings, but that initiative did not help an iota to create a corruption free society.

Aid flows

Other than the US aid cut-off that followed the Health Ministry scandal in 2017, donors were more sympathetic to Uhuru during his first term in office than to any of his predecessors. Money continued to flow, and lines of credit were opened, more or so, after the collapse of the ICC case, though donors continued to express concern over matters of impunity, political violence, State corruption, and human rights abuses, especially by security services.

The biggest donor, according to a December 2016 report of the Global Partnership for Effective Development and Cooperation (GPEDC), were US agencies which contributed 20% of the aid, followed by the World Bank and its affiliate organizations at 18%, the African Development Bank, EU, UK, Germany, France and Japan. A US congressional report showed 60 American companies were operating in the country in 2013.[1034]

Imprests

One of the slickest methods used to loot the Treasury is by dishing out imprests of large sums of money to government officials sometimes for opaque reasons. Imprests are advances given for travel, purchase of goods and services, or for official assignments, on condition that they are accounted for within 48 hours after return from official duties. According to Auditor General Ouko, the imprest fund, sometimes referred to as petty cash account, “is supposed to be a self-checking account where a fixed balance is maintained through regular replenishment, and is used for paying small and routine operating expenses.”[1035]

However, for many in government, imprests are interest-free loans used for reasons beyond their intended purposes. Over the years, millions, perhaps billions of shillings have been lost through unsurrendered imprests. In one shocking payment, a lowly-paid driver in Moi’s State House was given an advance of KES.10 million under unclear circumstances. He could not account for the imprest and his salary could not sustain repayments, so the money was lost. In the 1995/1996 PAC report, one State House officer was given an imprest of KES.2.9 million and another KES.4.4 million. The money was never recovered.

In some cases, imprests are not used appropriately. There have been many cases of officials taking travel imprests, *but do not travel*. Instead, they pocket the money. In one case, a DC was given an imprest of KES.361 million to pay internally displaced persons (IDPs). Of that, KES.13.4 million did not reach IDPs that were on the official registered list.

The total amount of unsurrendered imprests continues to increase every year. In 2010, outstanding imprests in government amounted to KES.3.4 billion. By 2012, the figure had jumped to KES.7 billion. The worst culprit was the Ministry of Medical Services which had KES.2.8 billion unsurrendered imprests, followed by the Ministry of Public Health and Sanitation, which had KES.308 million outstanding.

The situation is not any different in County governments. In Kirinyaga County, for example, imprests amounting to KES.1.7 million could not be supported by officials who claimed they had attended various seminars and workshops outside the County. An audit of financial operations between 1 July 2013 and 30 June 2014 could not find any records of attendance or seminar reports, indicating possible misuse of funds. In Nairobi County, imprests of KES.235.9 million had not been surrendered as at 30 June 2013, and in Nyeri, advances of KES.26.8 million remained unaccounted for by July 2015.

When in 2015 the Commission for Implementation of Constitution folded, imprests amounting to KES.32.9 million was outstanding. By June 2015, KES.11.2 million remained uncollected, according to the 2014/2015 audit report by the Auditor General. In a report released in August 2016, Ouko said more than half of the government Ministries failed to collect imprests given to State officers. He noted that the Ministry of Lands, Housing and Urban Development which had KES.304.1 in outstanding imprests was the most culpable. The Auditor General could not get an explanation why the Ministry of Sports, Culture and Arts advanced KES.586,080 to two MPs, and expressed doubt about recovering the money.

A report by the Senate Public Accounts and Investment Committee released in February 2017 blamed ten County Governors for loss of millions of shillings mostly through misuse of imprests and embezzlement of public funds and wanted them prosecuted. One of them could not account KES.2.9 million.

Stealing from the taxman

The job of tax collectors is to collect money for public good. No wonder, when one 28-year old Kenyan was charged in court for “collecting” from the Kenya Revenue Authority (KRA) through a computer hacking scheme, the country gasped in astonishment. Alex Mutungi Mutuku was prosecuted in March 2017 for allegedly interfering with KRA’s system subjecting it to a loss of KES.3.9 billion. The arrest of Mutuku followed complaints from banks and other institutions about suspicious electronic transfers. The police launched an investigation on suspected dens and confiscated computers, hard drives and servers, digital video recorders, and mobile phones suspected to have been used by the hackers. The court was told Mutuku could have been working with criminals situated outside the country. He denied the charge.

In the swoop to round up suspected cyber hackers, 16 people including an American couple, Larry Peckham and Denis Hilton, were arrested for hacking the KRA, banking institutions, at least one parastatal organization, and a supermarket, stealing millions of shillings in the process. The American couple was detained by police for 35 days, but was released and deported since the two did not have valid visas to stay in the country. The hackers were operating from different locations in and outside Nairobi and were connected to criminals in Belgium, Spain and France. In one of the sites, police recovered an AK47 riffle, computer equipment and narcotics. Among those arrested was a former officer of DCI, an IT expert, Calvin Otieno Ogalo, and a KRA employee, Edward Kiprop Langat.

In a separate incidence of hacking, two people were charged in court in April 2017 for hacking into the mobile phone operator Safaricom and stealing KES.260,000 from one subscriber. Robert Nsale, a Ugandan and Morgan Makande were arrested in March and in their possession, was a SIM card suspected to have been used in the crime and a laptop computer with an unauthorized access information to the Safaricom system.

Institutions that have fallen victim of hackers include the National Transport and Safety Authority (NTSA); IEBC; and Kenya Power. Financial institutions including Equity Bank, National industrial Credit (NIC), and Diamond Trust Bank (DTB), have also been hacked. Officials of the cybercrime investigation unit estimated Kenya lost KES.17 billion from credit and debit card theft, hacking and financial scams in 2016 alone.

Looting infrastructure

On 4 June 2015, the Cabinet Secretary for Transport and Infrastructure, Michael Kamau, appeared in court in Nairobi facing four counts of corruption. He was accused of violating regulations in the management of public funds, engaging in a project without prior planning, abuse of office and flouting procurement rules.

Charged along with him were former chief roads engineer Mwangi Maingi; Philip Onyango Sika, chairman of the tender committee; Gilbert Mong'are Arasa; Raphael Weche Okubo; Sylus Wachira Gitau; Charles Oike Mubweke; and Kata Matema Kithyo, who were members of the Ministerial Tender Committee. They all pleaded not guilty and were freed on bond.

The charges related to irregularities over the Kamukuywa-Kaptama-Kapsokwony-Sirisia road. It was claimed the designs were prepared by the Engiconsult Consulting Engineers at a cost of KES.33 million, and included in a Memorandum of Understanding (MOU) under which the resident engineer redesigned the same road without following due process.

The court was told the MOU "had the effect of quantity variation for works exceeding 15% of the quantity of the original contract between the government of Kenya and Kundan Singh construction limited."[1036] They all denied the charges.

However, on 14 July 2017, Kamau was set free after the Court of Appeal quashed their prosecution. He had challenged the charges at the High Court, but the case was dismissed prompting him to appeal. A three-Judge bench of Appellant Court Judges Milton Makhandia, William Ouko and Kathurima M'inoti, ruled that he was illegally charged and any further action against him would be an injustice since at the time of his arrest, the EACC had not been properly constituted since it lacked all the three Commissioners.

Rigging the rigs

One of the biggest corruption-related cases implicating senior parastatal officials was in 2015 when nine officials of the Geothermal Development Company (GDC) appeared in court to face abuse of office charges involving a KES.142.7-million tender. A top executive and seven members of the tender committee faced several charges of violating procurement regulations by allegedly confirming a tender to Bonfide Clearing and Forwarding ltd, in respect to rig moving services.

The oil rigs were to be moved within a radius of 500 meters in the Menengai drilling area in 40 lots. The EACC found the cost of the services procured from Bonfide Clearing and Forwarding Ltd. was inflated from KES.15 million to KES.42 million per lot. The cost of moving the 40 lots came to almost KES.1.7 million. The accused pleaded not guilty and were released on stiff bail terms.

However, audit documents revealed by the *Daily Nation* showed GDC and Bonfide Ltd. did not even have a written contract for the one-and-half-years the latter worked for the former. However, a court ruled the conduct of the company was not illegal and the officials did not contravene the law.

Corruption allegations have dogged GDC for years due to the large donor funds flowing into the organization for geothermal power generation. In the 2015 financial year alone, donors pumped in KES.200 billion into the sector.

In 2013, company officials allegedly single-sourced, without the board's approval top holing services from companies to the tune of billions of shillings. Much more was stolen through illegal procurement of rigs.

In another theft, GDC's main financiers, the African Development Bank (AfDB), and the German Development Bank (KfW), agreed in 2014 to loan Kenya US$.109 million (KES.11.3 billion, to build a geothermal power project. A good chunk of the money was said to have found its way into the pockets of officials.

Government parastatals have been severely hit by corruption scandals. Two organizations, the Kenya pipeline company and the National Water Conservation and Pipeline Corporation (NWCPC) were also found by the EACC to be infested with graft. The water agency is not new to corruption allegations. In November 2015, the EACC rounded up six officials from the NWCPC including its managing director over corruption claims.

In March 2015, the government announced that KPC was being investigated for six procurement-related scandals. There were allegations of corrupt intent for purchases from biometric medical system, falsification of documents to obtain reimbursements, commissions amounting to KES.242.7 million, and procurement irregularities to companies amounting to KES.5

billion among others. The KPC was also accused for acquiring a piece of land, registered as LR209/8618, at a cost of KES.545 million. After the organization was included in the “list of shame” that month, its Managing Director, Charles Tanui, stepped aside to allow for investigations.

The EACC also claimed two prominent Kenyans attempted to influence the awarding of a US$.500 million (KES.51.8 billion, pipeline contract to a Chinese company called Sinopec Corp. In a 45-page report titled “Report on the current status of corruption matters under investigation,” tabled in Parliament in May 2015, the EACC alleged the tender was to yield a commission of US$.15 million (KES.1.5 billion, to the two individuals.

Chapter 32

Devolved Theft: Corruption in counties

A FORMER EACC Director, PLO Lumumba remarked in 2016 that almost all the Governors in Kenya were corrupt. “We have a governor in one County building expensive mansions, building hotels and buying cars in cash. These are individuals whose legitimate income is known, and yet nothing happens to them. There is a habit of issuing orders which immunizes individuals from prosecution.”[1037] That is how many Kenyans view their governors. Since the devolved system of government was created and millions of shillings pumped into counties, financial mismanagement, corruption, nepotism, cronyism and tribalism in Counties have occupied a large part of the national discourse. Although Kenyans voted overwhelmingly to devolve, questions are still being asked as to whether they “weighed all the options at hand before deciding on it as the most efficient and desirable governance system…”[1038] or that they had tried everything else and were frustrated by the centralization of development and the monopoly of the elites in decision making. Whatever the answer, devolution is a God-sent for marginalized groups that had hitherto been ignored for decades by the central government, even as County leaders including governors, used it for self-enrichment.

A year after Lumumba made his critical remarks about corruption in counties, 13 governors were named in the “list of shame” which was presented to President Uhuru in March 2015 by the EACC. The governors were implicated in various corruption-related probes and the President demanded that they step aside to facilitate investigations. Those named were Nairobi’s Evans Kidero; Mombasa’s Ali Hassan Joho; Bomet’s Isaac Ruto; Meru’s Peter Munya; Machakos’ Alfred Mutua; Garissa’s Nadhif Jama; Isiolo’s Godana Doyo; Marsabit’s Ukur Yattani, Homa Bay’s Cyprian Awiti; Kilifi’s Amason Kingi; Migori’s Okoth Obado; Narok’s Samuel Tunai and Turkana’s Josephat Nanok. All governors dismissed the corruption allegations and said they were ready to cooperate.

However, governor Jama was charged with corruption-related offences. He appeared in court on 15 December 2015 and denied three counts of approving a false and misleading Supplementary Appropriation Bill and illegally conferring a benefit of more than KES.3.3 billion by assenting to a Bill which allegedly had not been debated and approved by the County Assembly. He was charged along MCAs' David Lemantile, Deputy Speaker; Abdi Sora Balla, chairman of the budget and appropriations committee; and Boru Jirima assistant assembly clerk. They all pleaded not guilty. The case was still in court by mid-2017.

Other than the CSs and the PSs who had to temporarily vacate office among the 175 officials named in the "list of shame," the Governors remained put. The Chairman of the Council of Governors, Isaac Ruto, said the President lacked the legal mandate to ask governors to step aside. Indeed, according to the constitution, only in cases of impeachment, death, or incapacity can governors leave office.

But even then, Governors and increasingly MCAs continued to engage in acts that surprised Kenyans. At the onset of the devolution system, they demanded ridiculous salaries, other benefits and allowances to bring them closer to the perks MPs were earning. MCAs "who literally lived in their mothers' houses (before assuming political power) became instant millionaires. Furthermore, to have a free hand in this looting spree, they entered into a *quid pro quo* with governors: You let us steal and we let you steal,"[1039] said a political and social commentator, Tee Ngugi. In addition, Counties created and filled positions, some of which were purely to accommodate relatives and friends.

In September 2017, Godana Doyo, then former governor, was charged with abuse of office for allegedly appointing eight senior officials without the approval of the County public board. He denied the charges.

In September 20, news emerged that the Bungoma County Governor, Ken Lusaka was taken to task for buying 10 wheelbarrows for a staggering KES.1.09 million shillings. Ordinarily, wheelbarrows cost no more than KES.5,000 in retail shops. But the Governor, in defending himself, said the wheelbarrows were "not the ordinary wheelbarrows that we know. These are wheelbarrows made of stainless non-carcinogenic material that are also insoluble…(and) used in the food industry."[1040]

The explanation made no sense since they one-wheelers were not meant for carting food but were for carrying trash. Lusaka had been in an almost similar controversy before when his KES.8.7-billion County budget for 2013/2014 reflected an expenditure of KES.20 million for “pornography awareness” and KES.53 million for entertainment. He quickly withdrew the items and fired two officers for misuse of money. Eight officials were charged in court on the wheelbarrow scandal.

In 2014/2015, the Auditor General revealed monumental rot in all Countiesthat included illegal payments of imprests, advances to contractors with no work being done, procurement malpractices, payments to ghost workers, illegal acquisitions of bank loans, and absence of receipts to support expenditure. The EACC said in its report entitled, ‘*Corruption in devolved services: County public officers’ experiences 2015,*’ that “procurement irregularities (bid rigging, inflation of prices, splitting of tenders - meaning splitting a tender involving huge amounts of money to make it low value tender so as to meet the requirements of the law [1041] - tampering with clients’ documents, conflict of interest when awarding tenders, bribery, political influence in tendering and hiring of unqualified procurement staff), theft in revenue, shoddy construction of roads and bridges, forgery of documents, nepotism, and general embezzlement of public funds meant for development, were the major forms of corruption practiced in counties.

According to the EACC Chairman, Philip K. B. Kinisu, corruption in the Countiescontributed to poor development, poor service delivery, poor roads, budget deficits, denial of public participation in project selection and budgeting process, unfair recruitment process, hampering service delivery as public funds are embezzled, widened gap between the rich and the poor and enormous loss of government funds.[1042]

The survey found corruption was “moderately high” in County governments due to increase in high profile cases involving corruption, increase in back door deals, and lack of accountability on public funds.

In 2015, fraudsters allegedly forged the signature of Smith Mwaita, popularly known as Rufftone, and took off with KES.30 million belonging to Vihiga County. The musician was commissioned to perform during a fertilizer distribution program for a fee of KES.180,000. But after the event between 3 and March 2015, and Mwaita had left the scene, payments continued to be paid under the musician’s signature. Instead of the money being paid through vouchers, recipients signed on foolscap, and the signatures were not even identical. Mwaita denied signing the extra money. No one was arrested and charged for the forgeries.

In Machakos, ten members of the Machakos County Assembly's procurement committee and a supplier were charged in court for flouting procurement regulations by buying 60 laptops for the County Assembly. They faced a variety of counts including trading with a company that was not on the prequalified list of suppliers for the County and forging and submitting a fake tax compliance certificate purporting to have been issued by KRA. The offence took place in June 2013. The ten County officials were: Peter Wakaba, Peter Muema, Peter Kioko, Teresiah Ngina, Jonathan Munatya, Evelyne Munyira, Nancy Wambui Njuguna, and Raphael Makau, Nicholas Munyao, and Charles Kinyanjui. The suppliers were charged with exaggerating the price of the laptops. They denied the charges. The case was ongoing as by mid-2017.

In his 2017 report, the Auditor General said Machakos failed to explain an expenditure of KES.119 million meant for salaries. The amount was the difference between the annual basic salaries of KES.154 million and the amount of KES 35 million indicated in the integrated and personnel database system. And in Garissa, the County spent a staggering KES.19 million on the swearing-in ceremony of the Governor in 2017. The event itself cost KES.11.5 million but another KES.8.4 million was for allowances to members of the Assumption-to-Office Committee; while KES.4.770 went to pay for numerous services including ushers, security and first aid personnel.

Nairobi and Mombasa Counties were rated the most notorious in financial mismanagement and could not account for millions of shillings collected by their revenue departments. For example, KES.5.5 billion was collected in Nairobi between 1 January 2013 and 30 June 2013 but only KES.5.2 billion was banked – leaving a balance of KES.252.8 million which remained unaccounted for. The County also had accumulated pending bills of KES.53.3 billion as of 30 June 2014, up from KES.11 billion the previous year.

The Auditor General also queried expenditures on unauthorized overseas travels including one to the London Marathon by seven MCAs and one official costing KES.1 million. He found no official invitation for the officers to travel to the event and no approval letter from the speaker of the assembly or the clerk.

In the 2015/2016 financial year, the Kiambu County was accused by the Auditor General of paying KES.2.4 million to MCAs for a two-day seminar in Naivasha though the event lasted for only one day. The County was also cited for spending KES.17.1 million as allowances for meetings convened without any specific agenda of discussion. In Makueni County, KES.27.5 million was spent irregularly for the construction of an office block, and the installation of a drainage system, a parking bay, a cafeteria and a kitchen. In the same financial year, Muranga County received KES.5.3 billion from the treasury, but KES.155 could not be accounted for. The County also spent KES.56 million for alcoholic and drug rehabilitation projects, but could not provide any documentation to support the expenditure. In Meru County, a contractor was paid KES.121 million to build a stadium, but 18 months after the contract was signed the project stood uncompleted.

Similar cases were reported in Mombasa including one in which the County government gave a waiver of cess amounting to KES.85 million to a transport company without following laid down procedure. The County could also not explain why part of KES.1.7 billion collected by the revenue department was not banked as required by regulations. Complaints of financial impropriety were also noted in all the 47 counties.

In Kilifi County for example, KES.51 million was reportedly stolen in a scandal that shocked Kenyans. Officials said the theft could have involved as much as KES.1.8 billion in a County whose 2015/2016 budget was KES.7.3 billion. County Secretary Owen Baya told the oversight committee that the money was funneled to several accounts held by companies that had no business connections with the County and had not been pre-qualified for any business. He hinted that some banks in Nairobi and County officers could have connived to fleece the County through the IFMIS.

However, the finance chief officer, Ben Kai, said the money reportedly lost totaling KES.51.5 million represented genuine transactions made by the County government for goods and services.

Ten officials in the Departments of Finance, Health, and Agriculture, were suspended on suspicion of having colluded with the companies to steal the money. Passwords of the officials were used to manipulate the IFMIS facilitating the money to be withdrawn from the County account at the CBK and paid to the Nairobi-based companies through at least four banks. CBK managed to stop the payment of another KES.8 million after the theft was reported. When questioned by the County oversight committee, some of them implicated police officers and unnamed EACC officers as part of the cartel that planned the theft and executed it between September 29 and October 3.

Three Directors of the implicated companies – Lucy Wanjugu Kibogo of Zohali Services, Sarah Wangui Kamau of Daima One Enterprises, and Stephen Mutua Ngunzi, of Kilingi Investments – were arrested and charged in court but they denied the charges.

On 13 September 2017, ten County officials were arraigned in court in Kilifi on various counts of defrauding the County. They were John Nyamawi, accountant; Timothy Malingi, chief officer health; Jacob Konde, senior health accountant; Paul Mwazo, treasury deputy director; John Kalume, accountant, finance; Lennox Mwadzoya, inspector, roads and transport; Dickson Tembo, clerical officer, agriculture; Josephine Muramba, principal accountant, education; Daniel Baha Nguma, chief officer, agriculture; and Lillian Hariri, clerical officer, health.

Also in Kilifi, the EACC expressed concern that an 11-acre plot meant for a bus park and a market at Mtwapa was bought at KES.28 million per acre while prices of land in the area are around only KES.3 million per acre. The plot is located on a prime site in the middle of the town along the Mombasa-Malindi road. Investigations showed the County paid KES.308 million to two persons who then transferred the money to a company bank account. The money was then disbursed to persons and companies including a law firm. The title deed dated 1 October 2014 was in the name of Future Link Limited. EACC questioned governor Kingi in November 2016 as to the circumstances of the payment, but there was no follow-up on the matter by the end of the first term of the Jubilee government in 2017.

Kilifi is one of the country’s poorest Counties with a poverty level of 60.9%, according to 2006 demographics, in a population of 1.1 million, and an illiteracy rate of over 60%. It has low infrastructure development and high unemployment rate because of lack of skills and absence of opportunities. The money stolen from the County government was sufficient to build cottage industries from where women and youth could earn a living, and build skills’ training institutions from where people could learn a trade.

Six Counties at the Coast: Mombasa, Kwale, Kilifi, Lamu, Taita Taveta, and Tana River, were also found to have spent billions of shillings in projects that had major anomalies, including procurement violations and illegal tendering during the 2015/2016 financial year.

In some isolated cases, the citizenry became so incensed by the levels of corruption in their Counties that they resorted to street demonstrations. In Narok in 2015, Maasai residents poured into the dusty streets of Narok to protest against the system of revenue collection in the Maasai Mara Game Reserve. They congregated and hurled stones at the offices of governor Samuel Tunai shouting “Tunai must go” after the County government contracted a company to collect park entry fees in an arrangement deemed corrupt. At least one person was killed. Protests against misuse of money and general corruption also took place in Kakamega, Eldoret and Kitui where Governor Julius Malombe sacked five senior officials in 2015 including a County executive, a County secretary, a finance officer, a sports officer, and a deputy director of health and sanitation, for involvement in corruption. It was alleged the officers persistently demanded bribes from contractors and authorized payment for work not done.

In June 2016, after numerous technical hitches that caused delays, the Governor of Garissa, Nathif Jama, appeared before an anti-corruption court charged with flouting procurement rules in relation to the hiring of ambulances from the Kenya Red Cross. He was accused along with Abdi Sahal, Mohamed Hassan, Sofia Mohamed, Mohamed Hassan, Jawahir Keynan, and Rahma Dekow, all County officials. They all pleaded not guilty and were released on bail. On 2 July 2017, the High Court froze Jama’s KES.5.2-billion bank account for six months to scrutinize transactions that had taken place during the previous four years. Governor Jama insisted the account was not his and said the whole matter was a political witch-hunt engineered by his foes, but EACC believed the money could have been part of County revenue.

Six years, after the start of devolution in 2016, the country was still bleeding from monstrous corruption in the Counties. The previous year alone, KES.3 billion had disappeared into the hands of greedy elites, according to the annual EACC report. It said out of 78 cases it investigated in 2015, 33 involved Counties. The Counties were doing exactly what the Central government had been doing for years: decimating the little financial resources the country owned, and in the most brutal way. “It is common knowledge that corruption has been devolved where the highest ‘bidder’ calls the shots,”[1043] said one Kenyan online newssheet. Corruption has been brought down to the local level in response to popular expectations that it is “everyone’s turn to eat.”[1044]

The EACC report noted that corruption in the Counties involved bribery, abuse of office, favoritism and nepotism. Another EACC report, the National Ethics and Corruption Survey, 2015, names the most corruption-prone departments in Counties as: health, land and physical planning, public service board, roads, transport and public works; office of the Governor; along with the County assembly, agriculture, and water, energy and environment.

One Governor in Nyanza was even said to have used public funds to print his image on examination papers.

In February 2017, the Senate Public Accounts and Investment Committee recommended the prosecution of eight Governors allegedly for breach of financial and procurement laws. It named them as Sospeter Ojaamong of Busia; Patrick Khaemba. Trans Nzoia; William Kabogo, Kiambu; Salim Mvurya, Kwale; Okoth Obado, Migori; Jack Ranguma, Kisumu; Daniel Waithaka, Nyandarua; and Moses Lenolkulal, Samburu. The Committee cited them for failing to account for public money, irregular procurement practices, and paying for services not delivered, among other allegations. They all denied the allegations. At the end, no action was taken against any one of them.

Here is an example of money that was either missing or misused:

- Between 1 January and 30 June 2013, KES.1.6 billion was collected in parking fees in Nairobi County. Only KES.1.6 billion was accounted for. The rest KES.72.6 million vanished from books.
- A total of KES.147.4 million spent to buy vehicles and equipment by Nairobi County could not be accountable for because payment vouchers and procurement documents were not available for scrutiny. Another payment of KES.8.9 million meant for renovation and extension of the County secretary’s residence disappeared and the work was not done.
- In Mombasa, KES.165 million and KES.366 million collected respectively locally was not banked.
- In the 2014/2015 financial year, massive irregularities were reported

in Migori, Homa Bay, Siaya, Kisumu, Nyamira and Kisii Counties and billions of shillings squandered.

- In 2016, Auditor General Ouko reported that 24 County governments could not account for KES.140 billion received from the treasury.

In West Pokot, Governor John Lonyangapuo called in EACC and suspended 23 projects initiated by his predecessor after a report by the National Construction Authority (NCA) revealed massive corruption. Costs of projects were inflated, and tenders were issued to unlicensed contractors occasioning a loss of billions of shillings. The 2017 report also cited a payment of KES.350 million to a contractor for the construction of a tourist facility which was more than a year behind schedule and only 15% completed. The Governor asked the EACC to conduct criminal investigations and prosecute those involved.

Up to early 2017, the EACC had managed to charge in court 281 people implicated in economic crime cases in the Counties. Among them were two senior officials from Samburu County, Stephen Letinina and Peter Leshakwet, who appeared in court charged with abuse of office. It was alleged that they conferred benefit to a company called Africanity, chosen through single sourcing, to run the Maralal Samburu Lodge. They denied the charge. And in Bomet County, EACC sent 15 people, many of them members of the Tender Committee and Procurement Department, to court for fraudulently hiring six ambulances from the Kenya Red Cross at a cost of KES.600,000 each through single sourcing.

In Homa Bay County, mayhem reigned when EACC officers stormed the County offices and handcuffed an accountant on suspicion of embezzling millions of shillings. A clerk who was also being sought escaped the dragnet in which anti-graft officers recovered documents including land title deeds, log books of expensive cars, electronic equipment and an unknown amount of money. EACC wanted to find out how one of the County officials built a KES.100 million palatial home from his income.

Financial corruption was only one of Homa Bay’s problems. Rampant nepotism was another. EACC reported in August 2016 that nepotism was one of the many unprofessional conducts bedeviling Counties. One senior officer employed his wife and two children – both in finance-related positions.

Another senior officer had a daughter and a nephew; another officer a wife; and yet another two sisters, working at the County offices. That is only a small sample of the kind of nepotism at play in Homa Bay. Excessive nepotism and favoritism were also reported in Bomet, in Taita Taveta and in Machakos, where one individual employed a wife, several cousins, including several subordinate staff.

The problem with nepotism, cronyism and tribalism, is that it produces "a new layer of marginalization,"[1045] for those who cannot reach the influencers and eventually leads to disillusionment and dissent hence the protests and violent demonstrations seen in some Counties. In some areas jobs were given based on clan and family ties, something that tends to shut out qualified professionals from being considered for civic duties.

Nepotism and tribalism were also blamed for non-delivery of health services. In 2015, several Counties refused to hire doctors and other medical practitioners on tribal grounds. Mombasa rejected five doctors because they were not born there even though Mombasa had a shortage of 69 doctors. A list provided by the Secretary General of the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) Dr. Ouma Oluga, showed Murang'a, Narok and Baringo Counties refused "outside" doctors when they had a shortage of 56, 78, and 105 physicians respectively. A total of 700 doctors posted to Counties were turned away. "Counties are looking for their own yet there are no doctors of their own," Oluga said in an interview with the *Saturday Nation*.[1046]

According to Dr. Ouma Oluga even those Counties that employed doctors from "outside" paid them much less in salaries and allowances than what was paid to locals with the same qualifications. The Counties included Nyeri, Kisumu, Homa Bay, Bungoma, Nakuru, Makueni and Wajir.

Nepotism and corruption also affect development. In Kiambu County, for example, 10 out of 32 major projects failed to materialize in the financial year 2013/2014 because of abuse of office. In the Counties of Kwale, Kilifi Mombasa, Taita Taveta, Garissa, Makueni Kitui and Kisii, up to 52% of the planned roads, hospitals, water reservoirs and school building constructions failed due to political differences as well as corruption and embezzlement of funds, among other management deficiencies.[1047]

The amount of corruption was so troubling that as the 2017 general elections approached, the EACC recommended barring all Governors, County officials and members of County Assemblies who had been implicated in graft-related court cases, in line with integrity regulations that applied in the 2013 general elections.

“So as to stop the misuse and rampant wastage of billions of shillings given to counties, we will go for those who have enriched themselves using taxpayers’ resources. They will be taken to court and those hoping to vie barred from getting clearance for nomination,” said the EACC CEO, Michael Mubea.

However, the constitution says only suspects who had exhausted all appeal mechanisms could be barred. In the case of most of the cases, such mechanisms had not been exhausted and the EACC could not therefore bar candidates suspected of corruption from standing for elections.

President Uhuru said little about corruption in Countiesduring his first term in office other than to reiterate his full support for devolution; that his administration had allocated far more money than the constitutional minimum to Counties; and to promise – while campaigning for the second term in 2017 – that he would prosecute all corrupt Governors if re-elected.

Governors, however, often accused him of paying lip service to devolution while he worked to dismantle it. They cited several utterances by the President including his State of the Nation address on 31 March 2016 in which he lauded devolved units while at the same time saying they had failed the test of time by misusing public funds. He said:

> Devolution was meant to be a mechanism that would ensure no areas were left behind. Instead, we see conspicuous consumption, self-aggrandizement and wastefulness. In some cases, we have seen fleets of vehicles and palaces being acquired to benefit administrators and officials. We have not seen enough of these hard-earned resources being utilized to provide concrete benefit to the people.

Responding to those accusations the following day, the Chairman of the Council of Governors, Peter Munya, said the President was misinformed about the successes of devolution and wondered why national leaders criticized Countieson corruption while the Central government was full of graft.

Githongo appeared sympathetic to the Governors and Counties noting that there was a “well-orchestrated effort to make devolution look bad,” but added that “for *wananchi*, despite the challenges, the devolution project is one they are ready to give time to settle.”[1048] The downside however is the fact that most Counties do not publish information related to the formulation, implementation, and auditing of budgets, thus keeping the people in the dark about how their money was being used.

A study done by the International Budget Partnership, a research firm, in 2017, showed that only Elgeyo Marakwet and Siaya Counties posted their financial documents online for everyone to see. That lack of transparency fuels perceptions of corruption in the Counties and denies people knowledge in choosing leaders during elections. But the study also mirrors on a report by the Office of the Controller of Budget in the financial year 2013/2014 questioning the financial and management skills of MCAs to interrogate budgetary proposals and issues surrounding their legislation and implementation. Many MCAs had only high school education and were not versed with research and monitoring principles.

Those are only a small fraction of the malfeasance in the 47 Counties in the new devolved form of government introduced after the promulgation of the constitution in 2010.

In the 2012-2013 financial year, the Counties received KES.195.7 billion to finance their operations including hiring and training staff, establishing fiscal systems, and draw legislations. That disbursement increased to KES.231.1 billion in 2014/2015, and KES.302 billion in 2016/2017. These figures did not include billions of shillings for conditional allocations to improve service delivery including grants for hospitals, maternal health care, and others.

Thus, Counties had substantial amounts of money to take their Counties to a new level by initiating meaningful development programs. But what happened, a large part of that disbursement was squandered or outright stolen.

Then, there is the issue of useless local and overseas trips by members of the County assemblies. In 2015, a group of representatives from Makueni went on a seven-day trip to the United States. They spent one day at the US Congress and spent the rest of the days as tourists in the State of Louisiana. They then proceeded to Israel for four days and visited one fruit processing plant. An MCA, Keli Musyoka who was on the trip was unimpressed. These trips are useless, said Keli, and are of no benefit to the County.[1049] In one week, three or four delegations of County officials would be out on overseas junkets. Foreign Minister Amina Mohammed complained in 2014 that such trips were giving the country a bad name, and warned Kenya delegations could be blacklisted because the trips were overburdening host nations. The only reason County officials planned unending trips overseas was to earn allowances.

In one case, a deputy governor received imprests worth KES.8.9 million in 2014 for travel to Australia, India, USA, and Germany, but accounted for only KES.5 million leaving KES.3.92 million unpaid.

Year after year, the Auditor General noted cases of corruption including nepotism and conflict of interest, illegal payments to ghost workers, irregular disbursements of allowances, among many other malfeasances. In 2014, KES.300 million meant to buy tuberculosis drugs for the Countieswas instead diverted to pay salaries for County employees.

"They seem to be copying the 'eating' habits of members of the National Assembly who have perfected the art of feathering their nests with public resources."[1050]

In 2015, almost 60% of Kenyans saw corruption as the biggest threat to devolution, according to the EACC. It issued a report detailing the looting in Counties through irregular procurement activities, and said it was investigating 30 Counties for corruption, unethical practices, and other irregularities in fiscal management. One Governor in Nyanza spent KES.21 million on hotel accommodation, food and other hotel services, while the County paid KES.540,000 in rent for his official residence, said the Auditor General in July 2015. But even after moving to his residence on 9 July 2013, the hotel continued to bill the County for unused services between 9 July and 1 August 2013. The governor was just one of several top County officials who abandoned their homes to seek accommodation in high class hotels.

One high-profile corruption-related case was that of the Governor of Machakos Alfred Mutua in September 2016. He was accused of fraudulently purchasing 16 motor vehicles for the County government without following procurement procedures. On 8 July 2016, Mutua filed a petition in court to block his prosecution on grounds that his constitutional rights would be violated. But Justice Isaac Lenaola in a ruling in September 2016 dismissed the petition, thus opening the door for his day in court. However, he appealed the decision and on 13 October 2016, Justices G. B. M. Kariuki, Festus

Atsangalala and Ole Kantai, stayed Judge Lenaola's orders and stopped the Director of Public Prosecutions (DPP) and EACC from arresting and charging Mutua. In May 2017, civic society groups wanted Mutua and six other Governors whose names were mentioned in corruption-related matters stopped from contesting in the 2017 elections. However, IEBC ignored the call and cleared them. In the polls, Mutua reclaimed his seat.

In October 2016, a former County executive, Shadrack Mubei, and chief officer, David Nyaga, were prosecuted on corruption and abuse of office charges. They were charged for conferring benefits to the Jomo Kenyatta University of Agriculture and Technology enterprises amounting to KES.30.8 million during the 2014/2015 financial year. They denied the charge.

The Public Accounts and Investment Committee of the Senate in February 2017 issued a 314-page report asking EACC to prosecute ten Governors for financial misappropriation. They reportedly made illegal payments to the Council of Governors (CoG). They were also accused of favoritism in hiring of staff, irregularly procuring insurance covers, and failure to account for public finances.

In Nairobi, five County officials including the chief finance officer Jimmy Kiamba and County secretary Lillian Ndegwa were charged for corruption in relation to a KES.17.9 million fraud case. They were charged for allegedly forging documents and paying for services which were not rendered, among other counts. They denied the charges and were released on cash bail.

Crumbling buildings

On 24 January 2006, as people went about their businesses on the usually crowded Ronald Ngala Avenue in downtown Nairobi, a huge rumble shook Nyamakima – an area known for seedy bars and brothels. A five-story commercial building under construction had just collapsed, shooting down rubbles of mangled steel, wooden planks and unfinished concrete floors, and burying dozens of workers, some of them flung down from their work stations on top floors. More than 280 workers were inside the structure when it came down.

The collapse of the structure in the middle of the day turned out to be one of the biggest urban tragedies in the capital city. A major rescue operation got underway. Kenyan military personnel and passers-by using their bare hands rushed in. Within 24 hours US marine personnel had flown in from Djibouti and the Israeli national society, Magen David Adom, had brought in 60 specialists with search and rescue sniffer dogs and equipment to join the Kenya Red Cross (KRC) in dealing with the national catastrophe. President Kibaki, who was on a tour of Sudan, cut short his visit to return home to deal with the emergency.

The Nyamakima building collapse sparked discussion within the government and construction professionals about safety of commercial and residential buildings in general. The chairman of the engineers registration board of Kenya, Erastus Mwongera, said all the engineers who approved the building were unqualified.

At Huruma Estate on 4 January 2015, as tenants of the 48 units of plot No. 17 were preparing for the night, their seven-story abode suddenly caved in. Five people were killed and 32 injured. The property was situated in the Dandora site-and-service scheme and was managed by the Housing Development Department (HDD) of the defunct Nairobi City Council. It was registered in the name of Margaret Magiri Mwaura. Following a public outcry, the Office of the Ombudsman – the commission on administrative justice – launched an investigation into the tragedy focusing on suspected dereliction of duty by officials.

The Commission cited Justus Kathenge, director of planning, compliance, and enforcement; Jane Ndonga, a former director of HDD; and Ndung'u Ngure, former assistant director, technical section; for failing to enforce building regulations. It also accused them of failing to oversee the demolition of the building even after it was found to be unsafe.

The Commission found that the structure collapsed due to poor workmanship, a shallow foundation which was set up on black cotton soil; structural defects including cracks and deformations due to poor concrete mix; weak beams, columns and slabs; and columns that could not support a seven-story building. It therefore asked the director of public prosecutions and the director of criminal investigations to "investigate the criminality'" of Kathenge, Ndonga and Ngure, and have them prosecuted for negligence of duty. The three were charge in court but were cleared and set free. Prior to the Huruma tragedy, five County officers in the departments of planning, housing and works, had been suspended for abetting irregular constructions.

In April 2015, several Nairobi County officials were charged on various cases of fraud. County secretary Lillian Wanjiru Ndegwa; Regina Chepkemoi; the head of budgeting, Nancy Waithera; the chief finance officer, Jimmy Kiamba; and head of accounting Stephen Ogaga, faced various counts of obtaining funds from the County through fraudulent means. They denied the charges and were released on bail or cash bond.

Before the end of 2015, a five-story building collapsed in Ongata Rongai on 6 September, killing two people; and another one in Kaloleni in Nairobi where eight people perished.

In April 2016, another building – which did not have an occupancy permit – collapsed during heavy rains killing 22 people and injuring 134 others. President Uhuru visited the scene and saw the horror as people used their own hands to remove rubble to reach the injured who were crying in pain. Witnesses said the 8-storey residential building was built in less than five months and had 126 single rooms. Nairobi Governor Evans Kidero admitted corruption was responsible for the collapse, adding that City officers were taking bribes to bypass building codes. “People who have died in Huruma have died an unnecessary death,” nominated MP Johnson Sakaja, said. “That death is a product of corruption…someone is paid KES.100,000 or KES.200,000 to approve the building that cost the lives of Kenyans.”

On 29 April, a 6-storey building tumbled in Huruma estate killing 40 people. The owner, Samuel Karanja Kamau and his brother, Henry Muiruri Karanja, were arrested and charged in court with 52 counts of manslaughter. Also charged were Chrispus Ndinyo of the National Construction Authority; Justus Kathenge, director of planning and compliance in the County government; and the Mathare sub-County administrator Seline Ogallo. They denied the charges and were released on a cash bail of KES.500,000 each and a bond of KES.1 million each. It turned out that the building had already been marked by officials as unfit for occupation.

An audit done in 2016 by the government revealed that 200 buildings in the city were unfit for occupation and were recommended for demolition. Overall, an estimated 350 people have been killed due to poor designs, poor workmanship, poor materials, and lack of inspection by officials who make money through bribery. The audit showed that out of 2,035 inspected buildings, only 64% had the required structural standards while the rest required “further scientific investigation with a view to strengthening them and those that cannot be strengthened be immediately demolished.”[1051]

The following are some of the buildings that collapsed in Nairobi and its environs during 2016.

In June, 15 people were left trapped for hours after a seven-story building caved in at Nairobi's Pipeline estate. The building had massive cracks and showed signs of collapse. 121 people managed to escape before it came crumbling down. The 15 people most of them with injuries were finally rescued.

On 2 August, a five-story building collapsed in Kariobangi South only minutes after its tenants had been evacuated. There were no injuries or fatalities.

All those incidences happened despite a law called the Regularization of Developments Bill having been passed by the County assembly in August 2015, and which provided amnesty for developers. The law gave developers who had put up buildings without permission to receive post-facto approvals for a six-month grace period beginning September 2015. The new regulation applied only to structurally sound buildings. Owners of structures with minor defects were to be given time to rectify them with the help of County engineers or be demolished. It could not be determined how many of the 50,000 buildings known to have structural faults in the County took advantage of the amnesty and how many were demolished under the law.

Buildings collapse with such frequency in Nairobi and other towns that deaths from construction are a worrying trend among planners, regulators, and the citizenry. They collapse largely because of corruption among those entrusted with safety of building construction in the Nairobi County government. In 2015, the National Construction Authority found that 58% of all buildings in Nairobi were not fit for habitation. President Uhuru ordered City Hall and the lands Ministry to conduct an audit of all buildings in the country and submit a report to him within three months. But as authorities were about to embark on the work of demolishing unworthy buildings in May, tenants in some areas vowed not to vacate premises unless the government provided them with alternative accommodation. Some in the lower parts of Nairobi said they had lived in the buildings for years and saw no danger of them disintegrating. Uhuru's order was not carried out and nothing further was heard about the plan.

City officials have been accused of receiving bribes to ignore building codes thus permitting builders to short-circuit the system. In his 2008 film

"*Living with Corruption,*" a journalist, Sorious Samora, claimed he had to pay a bribe of KES.30,000 for permission to build a shack in Kibera slums. Most buildings have collapsed in the poorer neighborhoods where elites known as "developers" put up structures using cheap materials and unskilled labor then rent rooms to low-salaried people at exorbitant rents. Transparency international in its 2005 global corruption report rated the construction industry as one of the most corrupt sectors in the country behind the police.

Other reasons why buildings collapsed with such frequency included the use of cheap, unskilled workers and of use of sub-standard materials to cut costs.

In November 2017, the Architectural Association of Kenya (AAK) blamed the Judiciary for failing to prosecute those responsible for collapse of buildings, among them developers, owners and architects. AAK president, Ema Miloyo, said although there were enough laws to punish violators of building regulations, a culture of impunity hindered action by courts. "Up to now, we have not seen anyone jailed, not a developer, not a professional. There is no way this problem will be solved if nobody is brought to book," she told journalists in Mombasa on 9 November.

Violation of the Public Procurement and Disposal Act (PPDA) is another repetitive criminal activity at the Nairobi County. The common practice involves complicity between County officials and suppliers to double or triple prices of supplies. In 2013, a businessman who supplied 500 pieces of 100 watts HPS lamps was paid KES.3.8 million, amounting to KES.7,600 per unit instead of the regular price of KES.1,500 each. Thus, the supplier and his accomplices pocketed KES.3.05 million. Eight senior officials were suspended.

In another incident, five procurement officials were taken to court in May 2015 accused of stealing KES.7 million. Richard Mogoko, Edna Arunga, Janet Kitala, David Mwaura, and Esther Njeri Mwangi, abused their office in May 2012 by allegedly directing the procurement of 2,000 tons of murram without subjecting it to an open tender. They were also charged with attempted theft and conspiracy. They pleaded not guilty and were released on cash bail of KES.1 million each.

In 2015, Chinese investors had to cancel projects after they were scammed on land deals involving local and international conmen. One investor was to build several multi-story buildings, an industrial park and an assembly for Chinese products at Athi River. However, they pulled out after they discovered that the deals in which they paid huge amounts of money were phony. In another deal, Chinese investors paid KES.200 million for land only to discover the land had already been sold to someone else.

To clear cartels from City Hall, Governor Kidero in February 2016 decentralized the procurement system by establishing procurement and tender committees in each department and giving them authority to process transactions involving less than KES.5 million. He also introduced an online procurement portal to replace a manual system.

In 2016, EACC named Nairobi as one of the ten most corrupt Counties which "perceive graft practices as a normal routine."[1052]

Double or triple land sales are also common in Nairobi. Cartels involving politicians, crooked businessmen, lawyers and real estate companies, collude to con unsuspecting buyers. Victims include local and international investors, religious organizations, companies, and individuals. In some cases, such deals gone sour have led to death as it happened to Paul Kariuki, who was gunned down as he slowed at a bump in the city. Kariuki, a former employee of KRA, was at the time a suspect in a court case charged with forging title deeds and conning a land buyer of KES.95 million.

An audit done in 2003 during Kibaki's administration showed close to 800 plots in the country reserved for public use, including for purposes of public cemeteries, fire stations, schools, hospitals and parks, had been grabbed by, among others, powerful politicians. And the seriousness of the problem did not escape Pope Francis when he toured Kenya in November 2015.

Government institutions have also grabbed land that did not belong to them. A classic example are two army facilities, the Eastleigh Air Forces base and the Embakasi Garrison, both of which were bought by the Nairobi City Council in 1971.

Early in 2016, while investigating the County Governor Evans Kidero over a case in which he was alleged to have bribed a Supreme Court Judge to influence an election petition, the EACC found large amounts of money in his bank accounts suspected to be proceeds of corruption. The EACC said there was evidence "that provided reasonable suspicion that the governor was involved in corrupt conduct and economic crimes," and that the huge regular deposits were "characteristic of money laundering."[1053]

However, Kidero’s integrity test took place three years earlier, soon after taking office at City Hall, when he reportedly turned down a bribe of KES.22 million given to him by a group of sleazy businessmen in exchange for favors. The bribe involved KES.10 million in cash and a SUV car valued at KES.12 million. Kidero who had been invited to join the businessmen for “a cup of tea” did not know the bribe money had been given to his aides, and was told only after reaching home. He promptly ordered the car and the money returned.[1054]

Early in 2015, he EACC investigated the city’s chief finance officer, Jimmy Kiamba, after allegations were made that he stole millions of shillings. A letter in December 2015, EACC said it was investigating Kiamba because it had found he had “amassed wealth beyond his known legitimate sources of income.” They found out that although he earned KES.85,000 per month, he had deposited in his private and business accounts nearly KES.1.4 billion over a five-year period.[1055] He also owned real estate in various parts of the country and a fleet of six cars.[1056] Kiamba was sacked.

Also dismissed was the chief accounting officer, Stephen Osiro, who faced allegations of engaging in dubious procurement deals. Others linked to financial impropriety were the acting education officer, Millan Mirembo; assistant community development officer, Benayo Nyamweya; and, a clerical officer, Lawrence Ogindo Snr. Several senior officials have either been interrogated or prosecuted on various charges of corruption, among them the County’s chief of staff, George Wainaina, who was charged for bribing the Nairobi Senator Mike Sonko in 2015 to stop him from pursuing a matter in which city officials were accused of using public funds to construct private houses. The case against Wainaina and his co-accused, Roselyn Oluoch, was dismissed in July 2017. Also prosecuted and convicted of corruption-related charges was County works officer, Gabriel Mburu Irungu, who was fined KES.1.5 million or two years imprisonment by a court in November 2016.

And despite introducing in 2014 a cashless system of payment for an array of services including licensing, market rates, building plan approvals, land rates and parking, the County continued to lose money through crafty officials who find new ways of beating the system. In August 2015, the EACC arrested 15 parking attendants for taking bribes from motorists.

Chapter 33

Police turned thugs

DURING A PARLIAMENTARY debate in December 1999, the feisty MP for Mbita, Otieno Kajwang, startled Kenyans when he alleged police officers were hiring out guns and ammunition to criminals who committed robberies and killed innocent people. “Government officers joke about the issue of security because it is the police officers who hire out their guns and ammunition to robbers, and in the end, we are robbed with them, and they share this money with the robbers.”[1057] That was a bold statement made during the autocratic rule of President Moi’s regime. But it was also an allusion to corruption in the police service. Two decades later in President Uhuru’s administration, corruption in the police service is unrelenting.

Many stories have been written about corruption in the Kenya Police, but the article published in the *Star Tribune* by a Kenyan writer, Tom Odula in December 2014, mirrors the deadly combination of greed and brutal force. He explained how one young man, Aliyow Alinoor, was killed and another, Adan Hussein, shot on the hand by police after refusing to part with a bribe of KES.50,000 on allegation of installing cables for video transmissions in Eastleigh in Nairobi.[1058] One of them “told us we are going to see fire…(and) We soon saw fire,” Mohammed Gulow who witnessed the fracas said.

The Eastleigh neighborhood which is dominated by people of Somali ethnic community is a popular area of patrol for crooked policemen and women who frequent it to extract money from the wealthy residents who own a variety of businesses. A resident Abdullahi Mohamed says on any busy Friday evenings, police cars from all police stations converge there. “Police pick up ethnic Somali residents and threaten them with jail, unless they hand over money. The neighborhood has come to be known as a police “ATM machine.”[1059]

Corruption in the Police Service has also included torture and murders. In June 2016, a human rights lawyer, Willie Kimani, who was investigating police abuse, his client Josephat Mwenda and taxi driver Joseph Muiruri, were carjacked outside a courthouse. They were driven away, tortured and killed. A few days later, their bodies were found in a river rotting.

Three administration police officers, senior sergeant Fredrick Leliman, corporal Stephen Chebulet, and constable Silvia Wanjiku Wanjohi, were arrested and charged with murder. The case aroused protests and the involvement of the US Federal Bureau of Investigations (FBI). John Githongo, the one-time anti-corruption czar in President Kibaki's government described the Kenya Police as "the most-rotten public institution we have."[1060]

At one time, a Police Commissioner sent a circular to all Provincial Police Officers (PPOs) directing all police officers to stitch their raincoats to stop them from stuffing their pockets with bribe money, says Francis K. Sang, a former Director of CID. In his biography, "*A Noble but Onerous Duty*," Sang wondered whether that was an effective way of preventing corruption in the Kenya Police Service. "These men and women of the police service receive bribes, come rain or sunshine, and do not need raincoat pockets or other apertures for their nefarious activities."[1061]

Indeed, the corrupt elements devised other crafty moves to hide their loot. Traffic police officers would either position a car nearby to hide the bribes until they leave a site, or have an accomplice in ordinary clothes so close-by to whom they will hand over money for safe keeping. The most favorite vehicles for police officers to stop are the long-distance lorries whose drivers often carry money meant for fuel, allowances, and emergencies. They would stop the trucks, pretend to be inspecting them and declare some imaginary faults after which they would demand bribes under threats of prosecution.

There have been many attempts to cover-up the existence of graft in the Police. A good example was in November 2015 when the government reacted angrily to a report in the *Daily Nation.* Reporter John Ngirachu was arrested and thrown into a police cell for querying why the Ministry of Internal Security had spent Ksh.3.8 billion in a single day. Cabinet Secretary, Joseph Nkaissery, said the report which portrayed his Ministry as corrupt was "calculated to harm the nation," but the paper's Editor-in-Chief, Tom Mshindi, saw it as an intimidation of the media. "We don't expect this government to resort to these kinds of strong-arm tactics to try and intimidate us,"[1062] he said in rebuttal.

Also, whenever Kenyans demonstrated against corruption, the police applied brutal means by using batons, teargas, water cannons, and sometimes rubber-bullets to disperse crowds. In November 2016, as hundreds of demonstrators poured into the streets to show disgust at the spiraling corruption, carrying banners reading: "President Uhuru Act on Corruption now or resign," the police reacted with physical force. Several protestors and journalists were injured. Surprisingly, a separate group of protestors supporting Uhuru nearby was not teargassed, a glaring display of bias.

In explaining why police were corrupt, spokesman Charles Owino said graft was a societal problem. "We have been put in a situation where if you don't embrace corruption you will die," he told a press conference in Nairobi on 2 July 2017. In fact, senior police officers meeting in Kisumu blamed the public for encouraging corruption by bribing police officers to avoid being charged in court. David Kimaiyo, the Police Inspector General (IG) who was fired by Uhuru in December 2014 (he said he resigned for personal reasons) and appointed Chairman of the Kenya Airports Authority (KAA), where he was fired again in June 2016, appeared to agree that corruption was rife, and even blamed his departure from KAA on refusing to be part of a corruption cartel at the organization.

President Uhuru Kenyatta heard all about corruption in police service when he convened a corruption forum in Nairobi in February 2017. A bus owner, John Macharia, did not mince words when he came face-to-face with the President on a live TV transmission, and told him how he had to carry at least KES.800 in his pocket every time he ventured out to bribe policemen. "I believe the problem is that traffic policemen do not wake up to control traffic in Nairobi. They wake up in the morning to come and collect money from our buses," he told a crowd which also comprised senior police officers.

He was applauded, but the President remained unmoved and Police Inspector General (IG) Joseph Boinnet said Macharia should be arrested. "I wish I had time to arrest this guy," Boinnet fired back. "He should be in some police station headed to court."[1063] The Police IG did not explain what charges he would have preferred against Macharia, but the incident demonstrated the tension existing between the law enforcers and the citizenry on the issue of corruption.

Kenyan policemen are involved not only in bribery but also in serious crime including kidnapping, rape, and murder. A Kenya Police Service report released in June 2013 showed the number of police officers caught in crimes had tripled since 2011. Eighteen officers were charged for criminal activities between January and May 2011; 48 were taken to court in the same period in 2013. The report entitled “Kenya Police Service Comparative Figures” said a lot of the crimes were committed with the use of firearms. That report was supported by the economic survey of 2016 which found a quarter of all crimes in 2015 incriminated police officers. They were connected to 24,647 cases or 34% of the total number 72,490 criminal cases.

In one incident in 2015, three police officers were ambushed by officers of the CID while traveling on a road in Rift Valley after they had reportedly abducted a motorist and demanded a ransom of KES.2 million. The officers were in the company of a woman. One other officer was following behind in another car with the abductee stuffed in the boot. Two pistols were recovered.

In 2016, a police officer in Kisii County accused of raping a 12-year-old child almost escaped justice when his senior attempted to cover up the incident. It was not until a concerned citizen took up a half page advertisement in the *Daily Nation* of 29 January to lodge a complaint that Boinnet announced an investigation, and the Independent Police Oversight Authority opened an audit. The results of those enquiries were not made public. Cases of rape by officers of the GSU, the CID and regular and administrative police were also reported in refugee centers. More than 100 refugees interviewed by the human rights watch in 2012 revealed cases of abuse including rape, physical attacks, extortion, and theft of property by police officers in the Eastleigh area of Nairobi. In two cases, women were gang raped, sometimes in front of their children in their homes, in the streets and in police vehicles.[1064]

In August 2016, Chief Justice Willy Mutunga talked of the existence of illegal “parallel courts” outside law courts involving police and Judges who collected billions of shillings from motorists especially those who wished to avoid prosecution by paying fines and cash bails. The money collected went straight to the pockets of the greedy officials. The scam came to the fore when a motorist who paid the police for a traffic offence was cleared by the court but could not reclaim his money because the receipt he received from the police did not match official court records.

"I have never understood why a Judge, who is very well paid, enjoys security of tenure, has highly concessionary mortgage and car loan facilities, has an excellent medical cover, should indulge in a practice so demeaning at both professional and personal level,"[1065] Mutunga lamented.

In 2016, even the Chief Justice, Willy Mutunga, admitted there were mafia style cartels comprising of powerful politicians and prominent business people that were influencing decisions and engaging in corrupt practices. "The influence of the cartels is overwhelming," Mutunga told a Dutch newspaper. "They are doing illegal business with politicians. If we do not fight, we become their slaves."[1066]

On 10 February 2017, five police officers caught red-handed receiving bribes were charged in court for corruption-related counts. They were Inspector Seth Nalyanya Barasa, corporal Caroline Chelangat, and constables David Maina, Abdi Khalif Madobe, and Shadrack Ngatia. They pleaded not guilty and were released on cash bail. The fate of that case remained unknown by mid-2017.

Police vetting shocker

The 2015 Transparency International (TI) Global Corruption Barometer (GCB) reported that three out of four Kenyans considered most or all police officers as corrupt; and half of all Kenyans who have come into contact with the police have reported paying a bribe. Those who refuse to pay bribes are sometimes beaten or tortured.

Police reforms have been talked about for many years, but it was not until 2011 that concrete actions were taken by the government to advance that agenda. A police reforms and implementation committee was formed to enhance professionalism, accountability, discipline, and human skills, with the aim of transforming the force into "an effective, efficient, and trusted police service." Not much follow-up was made until 2013 when the task force on police reforms was formed to study the police practices and make recommendations. Several recommendations were made including implementation of organizational reforms and institutional restructuring. After the 2007 post-election violence, the process moved much faster when retired Judge Philip Ransley was appointed to chair the national accord and reconciliation agenda in 2009. The body made over 200 recommendations on improving the performance of the Kenya Police Service. Some of the Ransley recommendations, such as the delegation of the Inspector General as the overseer of both the Administration Police Service (APS) and the Kenya Police Service (KPS) were included in the 2010 constitution and in other laws including the National Police Service Act.

Those initiatives created the National Police Service Commission (NPSC) and the independent police oversight authority IPOA. While NPSC is charged with overseeing the smooth functioning of KPS, IPOA's mandate is to investigate deaths and serious injuries caused by police action, police misconduct, functions of internal disciplinary processes, policing operations, and deployment of staff.

Apart from corruption, the Kenya Police Service was also blamed for extra-judicial killings and illegal arrests, all of which were blamed on poor training, lack of effective supervision, and indiscipline. The non-government organization, medico legal unit, reported 114 cases of individuals killed by police between January and August 2016, including 101 individuals who were allegedly executed extrajudicially and 13 individuals who were killed in unclear circumstances.[1067] Even then, corruption remains the biggest challenge for the service. Often, police make no effort to effectively investigate cases and some of those that reach the courts are dismissed for lack of evidence. That explains why the rate of criminal prosecution is low, at between 13 and 16%. Both the NPSC and IPOA appear to have failed in reining in corruption.

That is why in 2013, the NPSC began a process of vetting police officers to try to weed out corrupt elements. They inspected financial records, demanded certificates of good conduct, and relied on public participation (petitions) in making judgments as to who remains and who is dismissed. Although they targeted 80,000 officers in the entire force, their focus was on the traffic division where bribery was known to be prevalent. Chaired by Johnstone Kavuludi, the NPSC was shocked by what it found during weeks of a nation-wide process to vet 80,000 officers. It discovered bank transactions and properties amounting to millions of shillings belonging to officers some of them relatively junior. There were thousands of mobile money transfer transactions flying between junior officers and senior officers, and vice versa, an indication the entire police service was tainted with corruption. In one instance, a senior police officer sent money to a junior officer 78 times within a short period of time. It was found some officers were receiving money from a till number that was constantly depositing money into their bank accounts while others were using proxies to collect corrupt money for them.

A director of operations at the Police headquarters shed tears as NPSC panelists bombarded him with questions about the sources of millions of shillings in his bank account. A constable – the lowest rank in the force – was found to have built a KES.64 million business empire after 28 years in the service. They also came across an officer considered the poorest in the force. Police constable Ibrahim Ali Abdi, a 20-year veteran of the service disclosed that he only had KES.2,026 in his bank account.

There were also moments of amusement during the vetting process. A traffic officer, constable John Ngugi, overwhelmed by questions, broke into a song to confirm his interest in secular music. When asked how he earned the KES.100,000 found in his bank account, Ngugi said he made the money from selling music online.

Many of those vetted claimed the deposits were receipts from farming and retail businesses. By October 2015, sixty-three police officers had been fired over corruption, according to the Kenya National Police Service Commission (NPSC). By June 2016, 302 police officers were out of the Police Service because of integrity matters. Kavuludi said 14% of those who appeared for vetting were found unsuitable. Many others refused to appear before the panel and chose to resign and at least one officer committed suicide for fear of being questioned. The situation got even more bizarre when a box containing the head and two human hands covered in blood were found at the NPSC's offices with a note: "You are next."

In December 2015, the Service had to cancel employment of new recruits after discovery that 80% of the candidates either had to pay bribes or used political connections to get employed. EACC boss Aaron Ringera said the bribes were as much as KES.100,000 per candidate and most of the transactions were caught on video.

But even as the exercise continued to shock Kenyans, the Interior Cabinet Secretary, Joseph Nkaissery, dismissed it as 'meaningless and a waste of time,' and that it had killed morale in the force. "To ask a police officer who has served in the police service for close to three decades why he has KES.3 million is humiliating and demeaning. Aren't police officers supposed to save?[1068] He asked. The vetting was also criticized by President Kenyatta who claimed it had created anxiety in the service.

A Judiciary "deficient in integrity"

Almost two years before Kibaki left office, Willy Mutunga was appointed the 14th Chief Justice of Kenya.[1069] A former political detainee and university lecturer, Justice Mutunga took over a demoralized Judiciary with a reputation for corruption. "People have never had as much faith in the Chief Justice as they do in Willy Mutunga," said former anti-corruption czar John Githongo in the midst of the 2013 general elections. "Before now there has never been this level of confidence in the Judiciary."[1070] Having worked with the Ford Foundation, Mutunga was familiar with the corruption cartels and greed in the Judiciary.

During a function in Nairobi on 21 August 2012, Mutunga called on Judiciary officers to promote public confidence in the integrity of their offices. "[We] must be free from the influences of nepotism, tribalism, corruption and other narrow interests. [We] must bring honor to the nation and dignity to the office…Many believe the Judiciary is corrupt. This has resulted in bewilderment and alienation, and in some cases, blatant miscarriage of justice."[1071]

That was the first and strongest statement by the Chief Justice on the shenanigans at the Law Courts. He said the Judiciary was "deficient in integrity" and made it clear corruption was one of his main targets of attack. He immediately formed a Judiciary transformation framework to simplify court procedures, created a case management system to improve accountability, and computerized courts so that information could be more accessible to Judges.[1072]

While his efforts boosted morale within the department and enhanced public confidence in the Judiciary, it did not directly mute greed and graft among officers. In August 2015, Justice Mutunga witnessed first-hand corruption in the corridors of justice as his Chief Registrar Gladys Shollei was sent packing by the Judicial Service Commission (JSC) in August 2013 over allegations that she misused KES.2.2 billion on numerous alleged irregularities ranging from paying herself illegal sitting allowances to double payments on contracts. However, Shollei argued that on matters of procurement decisions, she was accountable to the Auditor General's office and PPOA and not JSC.

Shollei denied all the allegations and went to court to protest her dismissal. The Industrial Court ruled she was unlawfully sacked and her rights violated. When the matter was sent to the Court of Appeal, it declined a plea from the JSC to have the Industrial Court's decision suspended and ruled that the order stand until the court determined the person to occupy the Chief Registrar's office. In August 2013, the JSC suspended its probe against Shollei to negotiate an out-of-court settlement.

In October 2013, Shollei, her deputy Henry Kissinger and six others, were hauled to court and charged with abuse of office for failure to comply with procurement rules over the purchase of the Chief Justice's official residence. They were charged with conferring benefit to Johnson Nduya of Muthama Holdings Limited by executing a contract and approving a KES.310-million purchase of the residence, abuse of office, willful failure to comply with laws governing management of public funds, and engaging in a project without proper planning. They all pleaded not guilty and were let out on a KES.600,000 cash bail.

In January 2016, Shollei was back in court, not for the original charges, but for others relating to the issuance of a contract for the construction of the law courts building in Mavoko County. She was charged with seven others for occasioning the loss of KES.18 million. It was alleged they increased down-payment for the buildings from 10% to 50% without the approval of the tender committee. They were also charged for improperly conferring a benefit to Timsales Ltd. on a deal to construct pre-fabricated court buildings in Runyenjes without seeking approval from the tender committee as required by the public procurement and financial procedures as contained in the 2009 manual for procurement and management projects. Shollei pleaded not guilty, and said all procedures were followed and authorizations given. Although civil society groups wanted her barred from participating in the 2017 elections, the IEBC cleared her on 30 May 2017. She contested the woman representative's seat of Uasin Gishu County and won.

In October 2017, Senior principal magistrate Felix Kombo dismissed all graft charges against Shollei and her co-accused because the EACC had not been properly constituted when the anti-corruption body brought charges against them.

After retiring from the bench, former Chief Justice Mutunga became quite vocal about the rot in the Kenya Judiciary, a place he promised to clean up but failed. He likened it “to a bandit economy full of mafia-style criminals like Al Capone’s mob in 1920s America.” Why he didn’t see that while in office is a matter that will be determined by legal historians. He was replaced by Justice David Maraga who was sworn in by President Uhuru on 19 October 2016, and immediately vowed to fight corruption. Maraga estimated that 10% of the staff in his department including Judges and clerks were corrupt. He said his office would vigorously investigate corruption cases in the Judiciary and hand them over to JSC for action. In December, he published new rules of procedure for cases of corruption and economic crime, including one mandating that corruption cases be heard within two days of suspects being charged. That was a significant change from an earlier tendency where hearings of such cases were inordinately and unnecessarily delayed.

In February 2017, Maraga sacked 11 magistrates for corruption, misconduct and under-performance.

The Pattni saga

In May 2013, President Uhuru suspended Judge Mutava and appointed a tribunal chaired by Justice David Maraga of the Court of Appeal to investigate allegations of misconduct over the handling of the Goldenberg cases. The tribunal though not able to prove that he received the money on the Pattni case, nevertheless, recommended to the President on 21 September 2016 that the Judge be removed from office. It concluded that Justice Mutava was not “an innocent bystander” in Kenya’s most famous corruption case. Mutava was the Presiding Judge on some Goldenberg cases in which the country lost Ksh.5.8 billion in fraudulent gold exportation deal.

In the Pattni case in which he faced a series of fraudulent charges, Mutava was not even supposed to hear the case which should have been heard by Justice Florence Muchemi, the vacation Judge in the Judicial Review Board. Mutava was the vacation duty Judge in the Commercial and Admiralty Division. But he took the case early in August 2012 and granted a judicial review without hearing the other side. When the case came up for hearing on 24 September 2012, the name of Pattni was nowhere on the court file. Instead it was listed as K. Damji vs Attorney General.

In the meantime, Ndung'u Wainaina, of the International Center for Policy and Conflict (ICPC) asked the court to rule against the withdrawal of the case unless Pattni refunded the amount of Ksh.5.8 billion being the lost money. By that time, Mutava had already ruled in favor of staying all proceedings relating to the Goldenberg matter.

As Mutava had already been transferred to Kericho, the case file was deposited in his former chambers. It is from there that he collected it and took it to Kericho from where he wrote a ruling suspending all prosecutions against Pattni, allowing the shrewd businessman to go scot free of all charges relating to Goldenberg cases. He was heavily criticized for that decision hence the setting up of the tribunal.

While the tribunal punished him for the Pattni ruling, it exonerated him on three other charges: of causing for a file to be retrieved from the safe custody of the High Court and taken to his new station in Kericho; of soliciting a Ksh.2.5-million bribe from Rose Mbithe of Sehit Investment to offer a favorable judgement in a case involving the company and a Josephine Onyango; and that he was seen in the residential area of Karen in Nairobi in the company of one party whose case was before him.

Justice Mutava appealed against the decision to suspend him saying the tribunal was unconstitutionally constituted and asked that its recommendations be declared null and void.

While under suspension, Mutava got another blow when the Court of Appeal set aside a judgement he made in favor of Dol International Limited demanding Ksh.712 million for breach of contract after supplying medical equipment to the government. The deal was entered in 2006 when Dol International Limited won a tender to supply X-ray machines, X-ray film envelopes and sutures at a cost of Ksh.180 million. The government cancelled the contract after the material had been delivered over allegations of fraud and corruption on the part of the company and Ministry officials. Dol International Limited went to court in 2009 demanding damages. It won but EACC filed an appeal which was accepted in 2016.

At the end, the Supreme Court also dismissed Mutava's appeal saying the highest court did not have jurisdiction to review his dismissal.

Chapter 34

SGR and Chinese scams

ON 30 MAY 2017, almost eight years after Kenya approached China to help build the Standard Gauge Railway (SGR) line from the coastal town of Mombasa to upcountry, President Uhuru finally launched the US$.3.8-billion (KES.394 billion, project in pomp and circumstance bringing to a halt the "lunatic train" service birthed by the British colonialists in the 18th century and opening a new chapter in the transportation infrastructure.

The project, initiated by the Grand Coalition government of President Kibaki and Prime Minister Raila and built by the China Road and Bridge Corporation (CRBC) with a 90% loan from Beijing, was constructed in a record period of 18 months during Uhuru's first term in office. "This is a historic day," a beaming Uhuru told an enchanting crowd at the launch in Nairobi, "a day when every one of us should be proud to be a Kenyan." But more than anything else, the SGR was Uhuru's personal achievement and its successful launch brought to fruition one of his biggest election promises.

Beginning service immediately, the passenger and cargo trains significantly cut travel time from Mombasa to Nairobi. Nicknamed the "*Madaraka Express*," the service will take less than five hours to make the journey as opposed to nine to ten hours previously. More than that, it will spur economic growth and achieve the country's long term economic goals.

But like all major, high-funded projects, the SGR was not without its controversy much of it based on speculation that the project was reportedly substantially inflated and Kenyan taxpayers were conned of millions of shillings. Critics compared the Kenya Railway project to the Addis Ababa Djibouti run, a stretch of 750 kilometers and costing KES.340 billion, while the Kenya's railway line of 472 kilometers cost KES.327 billion. Moreover, the train from the Ethiopian capital to the Red Sea port was an "electric railway system," while Kenya's was a "diesel-powered system," thought by many to be an outdated system in the modern era of transportation.

But the Kenya Railways Corporation (KRC) Managing Director, Atanus Maina, said Exim bank which lent the money would not have funded the project without due diligence on the costs. If due diligence had not been done, they could not "have financed something that has inflated figures."[1073] Comparing Kenya's and Ethiopia's railways was also irrational because the two projects were based on different needs and priorities. Moreover, no competitive tender was floated for the Mombasa Nairobi line because it was a government to government arrangement. But critics including the Attorney General, Githu Muigai, and the Director General of PPOA, Maurice Juma, said it was a violation of Kenya procurement laws. He said the arrangement should have been sealed in a treaty, according to documents seen by the *Standard on Saturday* in January 2014.[1074] A Kenyan daily, *The Star*, called it "The next big scandal"[1075] and the "scandal of the year."[1076] MP Alfred Keter claimed the whole process may have been influenced by corruption. A EACC dossier in March 2015 suspected a senior official in the Ministry of transport as being behind the plunder of money from the Chinese through awarding of the irregular tender to CRBC and for contracting one local company to handle 80% of cargo belonging to CRBC.

The second complaint about the Kenya SGR was that it was implemented without independent design, consultancy and supervision services, and that a company of the Chinese State Corporation , Third Railway Survey and Design Institute Group (TSDI) was given the contract to supervise construction and procurement along with a local firm, APEC Consortium Limited, raising questions some stakeholders could have been compromised. An Italian company, TEAM Engineering SpA, tendered for US$.73 million (KES.7.5 billion, for the construction contract complained of "serious conflict of interest in the manner in which the tender was awarded." The process, the company representative Dr. Marenzi said, was "tainted with gross and glaring instances of corruption, fraudulent practices and abuse of office." But SGR officials said the process was competitive.

Fourth, contradictory figures of the project also raised transparency issues. While the transport principal secretary Nduva Muli, said the cost of the SGR would be KES.206.7 billion from Mombasa to Malaba on the Kenya-Uganda border, deputy president William Ruto said the price would be KES.309.9 billion, a difference of KES.103.2 billion. In its original quote, while accepting the tender award, CRBC quoted a little over KES.220.9 billion for the project. Nevertheless, those estimates were off the mark and the final cost of the line from Mombasa to Malaba is expected to rise exponentially.

All those matters were investigated by the Public Investment Committee (PIC). In its December 2014 report, PIC recommended the cancellation of TSDI contract. It also asked the anti-corruption body to investigate KRC officials for ignoring a directive from Parliament in April 2014 that an independent consultant be appointed to review and oversee the construction work. PIC considered it a conflict of interest for a Chinese company to supervise another Chinese company.

In 2015, the Committee under the chairmanship of Adan Keynan summoned 17 witnesses including former and present officials to shed light on the project among them the Auditor General, Ministers, Permanent Secretaries, the Attorney General, and KRC officials. The main bone of contention was that CRBC was single-sourced which was against the public procurement and asset disposal act of 2015, which called for “fair, equitable, transparent, competitive and cost effective” process. In a nutshell, “the bidding was opaque; and the law was stretched, even skewed to allow CRBC to get the tender.”[1077] Nevertheless, the project was allowed to continue living a trove of unanswered accountability questions.

The TEAM Group which failed to get the contract to supervise the design – along with the Korean Rail Company (KRC) – sued over what it said were unfair practices favoring TSDI, which had the lowest bid of KES.4.1 billion (US$.41 million), against KRC’s KES.8.7 billion (US$.87 million) and TEAM group’s KES.7.3 billion (US$.73 million). The matter went all the way to the Court of Appeal which barred any advance payment. The two agencies involved on behalf of the Kenya government were the Ministry of transport, infrastructure, housing and urban development; and the Kenya Railways Corporation.

Critics including MPs such as Alfred Keter of Nandi Hills said the cost of the railway line had been inflated to benefit a few government officials. They claimed Ethiopia built a more advanced, electronic double track line for KES.480 billion (US$.4.8 million) per kilometer while Kenya was paying KES.560 billion (US$.5.6 million) per kilometer for a single track using diesel locomotives. It is “a waste of scarce resources especially if the deals are also tainted by possible corruption.”[1078] It was also claimed that compensation for land through which the railway line passed was riddled with overpayments to benefit corrupt officials.

Moreover, the original plan was to build ‘an electric railway system,’ but what was finally delivered was a diesel operated system, a much slower version of the former even though Kenyan officials were told its maximum speed would be in the range of 120 kilometers per hour. Reasons for the switch-over were not given. A delegation which went to China in October 2012 led by the KRC Managing Director, Nduva Muli, who was later appointed PS, transport, was happy with the new specifications.

A study by US researchers entitled ‘*African Politics Meets Chinese Engineers: The Chinese-built Standard Gauge Railway Project in Kenya and East Africa*,’ blamed the Kenya elite for pocketing “large sums of kickbacks from the SGR.” Compiled by the Washington-based China-Africa research initiative, it said Kenya government decisions on the planning, financing, and contracting of the SGR was made with little concerns for economic benefits and was “compounded by a deeply entrenched problem of corruption, rent-seeking and nepotism.”[1079]

Determined to complete the project before elections in August 2017, Uhuru plowed ahead and ignored all protests even as it emerged that KES.500 million-taxpayers’ money could have been stolen from money earmarked for land owners’ compensation on the railway path. On 4 May 2017, detectives arrested top officials of NLC for questioning over the money. In one of the homes, KES.18 million in local and foreign currencies was found.

An internal audit by KRC found what it called massive irregularities in compensations to both individuals and companies owning land along the SGR. Some of them were overpaid while others were paid for land that didn’t belong to them, yet other recipients were unknown. In May 2017, the NLC chief executive, Mohammad Swazuri, announced investigations into the matter. In one case, a plantation in Voi was paid KES.360 million for 14.96 hectares while a sisal plantation owning 32.69 hectares was paid KES.50 million. Although the NLC officials were interrogated by the EACC, they were not charged in court for any offence.

The audit also found a parcel of land owned by the Makueni County government meant for a stadium, a primary school, a slaughter house, and a cemetery, was irregularly allocated to people who ended up being compensated instead of the County.

In May, Uhuru travelled to China and secured an additional KES.370 billion in loans to extend the line from Naivasha to Kisumu on the shores of Lake Victoria. The total Chinese loans on the project were raised to KES.847 billion excluding interests, fueling debate about Kenya's indebtedness to the Chinese, and the response from Zhang Min, the Chinese Vice Foreign Minister that: "When a debt is put in the right project, it is not a burden."[1080] Chinese loans ratcheted Kenya's foreign debt from US$.2.85 billion (KES.295.6 billion, in 2011 to US$.4.7 billion (KES.487.6 billion, in 2015. It dislodged Japan, Germany and France as the biggest lender.[1081]

Chinese business and corruption

China's monopoly in the infrastructure sector in Kenya means traditional partners such as Britain and Germany no longer have clout and influence in the building of roads and bridges. Known for their soft loans and easy repayment terms, the Chinese are also receptive to corrupt practices. But the corruption they encountered in Kenya went beyond their expectations. The Chinese Business Perception Index (CBPI) survey showed high demands for kickbacks from officials at the Nairobi City County (NCC), the Kenya Revenue Authority (KRA), and the custom department. Of the 48 companies surveyed by CBPI, 60% were asked for bribes by NCC officials after being found with minor misconducts in their business practices.[1082]

Fifty-three percent of Chinese companies said corruption was a "very significant obstacle" in doing business in Kenya while 15% said graft was a "significant obstacle," according to the 2014 Kenya Business Perception Index (KBPI). Those figures are much higher than those provided by the World Bank enterprising survey in 2013 which reported that 32.33% of foreign companies in the world believed corruption was a major constraint to business in Kenya.

A 2013 survey by the Kenya National Bureau of Statistics (KNBS) showed 76.4 of respondents said corruption hurt business. "The negative perception of corruption was consistent across all sectors: manufacturing, transportation, financial services, and wholesale and retail trade,"[1083] the Bureau said.

The KBPI also found officials from KRA were more likely to visit

Chinese companies than others. In 2013, for example, KRA officials called on Chinese firms 3.1 times on average compared to only 2.2 times for all companies.[1084] Sixty % of Chinese companies reported that KRA officials asked for "informal payments and gifts during their visits.[1085]

It came as no surprise therefore when in May 2017, President Uhuru and his Chinese counterpart, Xi Jinping, signed three treaties meant to fight corruption, repatriation of criminals and recovery of unlawful assets around the world. The agreements were signed during the belt and road summit in Beijing.

At independence in 1963, trade between the two countries favored Kenya, but over the years China has increased its trade and investment 40-fold. By 2017, it had taken control of major infrastructural projects including the Jomo Kenyatta International Airport (JKIA), the Nairobi-Thika highway, the SGR, and the Lamu port-South Sudan-Ethiopia Transport Corridor (Lapsset) project in Lamu. The increase in Chinese involvement in Kenya through loans and grants has also fueled corruption.

While President Uhuru opened doors for China's entry into Kenya, the World Bank has bad news. It says, "China spells doom for the Kenyan economy," saying the Asian country planned only to exploit Kenya's resources. China always brings into the country large numbers of Chinese workers to work on its projects. For the SGR project, the CRBC brought in 2,000 workers against 20,000 Kenyans. Early in 2017, 300 Kenyans working as welders, coach attendants, and ticketing operators at the SGR threatened industrial action if they were not given contract terms. In August, CRBC, which has a 10-year operations, maintenance and service contract with the Kenya railways, agreed to give them one-year renewable contracts. The lowest worker would get KES.84 per hour.

For the LAPSSET project, 1,400 Chinese workers were imported from China. At a power plant in the same County, Power China, a company contracted by Amu power to build a coal power company, 40% of the workers were Chinese.[1086] China understands the importance of exporting labor because such a move grows the economy and reduces unemployment pressure at home. "The Communist Party of China (CPC) knows that if its economy slows, then they will have to face the wrath of millions of disgruntled and repressed citizens."[1087]

However, Kenyans employed by Chinese companies continue to complain of long working hours and poor pay, sometimes below the minimum wage of KES.12,926 per month certified by the government. On 2 September 2015, workers at a Chinese Construction Company, Jiangxi CJIC Kenya Limited in West Pokot, downed their tools complaining of poor working conditions. The company was building a KES.7-billion Muruny-Siyoi water project in Murkokoi area of Pokot South sub-County.

Carrying twigs and placards outside the company offices, the workers said the non-English speaking supervisors brought in from China were a hindrance to communication since there were no interpreters. In addition, the company did not have a defined pay structure and salaries changed from month to month. The area MCA, Paul Yaraki, visited the site and said the matter would be addressed by the County. It could not be determined if that was done.

In Narok County, residents stormed a Chinese construction site on 2 August 2016 and attacked Chinese workers with clubs demanding to be employed. Fourteen Chinese workers were injured as angry citizens shouted *Haki Yetu* (Our Rights). They claimed they were promised jobs as plant operators and drivers by CRBC, but were given only manual jobs. In the same week as the incident in Narok, CRBC workers in Nakuru downed tools and blocked traffic demanding more pay. They wanted the pay of KES.250 per day pay doubled. There was no indication the situation was rectified.

Also in Narok on 4 May 2017, workers temporarily halted the construction of the 82-kilometer Narok-Sekenani Gate road leading to the Maasai Mara Game Reserve, demanding better pay. Two-hundred workers comprising masons, plant operators and drivers protested outside the offices of China Wu Yi Company at Loita plains. They claimed after deductions for food, their monthly salary came to only KES.6,000 per month. However, they had to return to work after the company threatened them with dismissal.

Thika Superhighway

As heavy rains pounded Nairobi and its environs one June week in 2015, parts of the so-called Thika Superhighway linking the capital city to the northern and eastern parts of the country started to crumble, then huge sink holes emerged as tens of thousands of gallons of water raced through and washed away what many considered a signature project. The drainage system had collapsed and soon a huge lake formed trapping cars and causing a major traffic jam.

The highway – an eight-lane, 50 km long stretch of road – was inaugurated by President Kibaki in November 2012, and was built to eliminate chronic traffic congestion and frequent motor accidents on the road that links the metropolis with far-flung northern towns of Marsabit, Isiolo, and Moyale, and an important connection to the Great North-Trans African Highway connecting Cape Town and Cairo. It also provides a route into Ethiopia in the north and Tanzania in the south.

This was the first major project undertaken by three Chinese contractors – China Wu Yi, Sinohydro Corporation and Sheng Li Engineering Construction – at a cost of US$.360 million (KES.37.3 billion. The money came from AfDB: US$.180 million (KES.18.6 billion; Exim bank of China US$.100 million (KES.10.3 billion; and Kenya government US$.80 million (KES.8.3 billion.

At the launch on 10 November 2012, Kibaki described the project as a source of "national pride." The Chinese called it "the ultimate emblem of the Sino-Kenyan friendship."[1088] For about three years, the traffic flowed smoothly save for vandalism of signs and the destruction of side barriers by scrap dealers, that is, until that cold, rainy day when a large mass of water popped up.

Kenyans were livid and blamed poor designs. There were no pedestrian crossings, and the roundabouts along the highway were designed in such a way that made it difficult for trucks to negotiate passage. In one year alone, KES.1.1 billion had to be allocated for maintenance. Writing in the *Daily Nation*, Maina Muchara, the director of the Kenya Institute of Governance (KIG), an NGO, called the highway an "unmitigated disaster.[1089]"

The Thika super-highway was one of the first major developments born out of continued relations with China. President Kibaki performed the ground-breaking ceremony for the 50.4 kilometer-long, eight lane super-highway in December 2009. In April 2010, he travelled to Beijing and after talks with President Hu Jintao and other officials, the two countries signed agreements for the funding of Vision 2030 flagship projects, the construction of Lapsset, and development programs in health and education.

In August 2013, President Uhuru visited China and Russia, the first trip outside Africa since his inauguration in April. The Kenyan presidential visits to the East cemented relations between the two countries after President Moi's visit to China in 1980.

The other Railway

Before the Standard Gauge Railway (SGR), there was the Rift Valley Railways (RVR), a consortium managing the railway system in Kenya and Uganda which in 2005 was given the responsibility of running the old Kenya-Uganda railways previously known as the East African Railways and Harbors. RVR's original owners were a South African company called Sheltam Rail Corporation which had majority shares. The RVR was replaced on 9 October 2009 by an Australian company called Toll Holdings after failing to meet freight goals and fears of political violence after the post-2007/2009 chaos. More changes followed and in July 2017, the 25-year contract between the Kenya government and the RVR was terminated and the Kenyan portion of the railway reverted to the Kenya Railways Corporation (KRC).

Early 2017, an ethics audit report disclosed gross malpractices at the RVR. Top officials of the organization were found to have conspired to bribe public officials, manipulate accounts, and interfere with operational structures to defraud lenders. One of the lenders, the International Finance Corporation (IFC) – a World Bank affiliate – had loaned RVR KES.2.2 billion towards the purchase 20 locomotives in 2014 and 2015.

According to the agreement, the money was to be used to buy the locomotives from the National Railway Equipment Company (NREC) of the US. But after the money was received the RVR bought refurbished wagons at KES.17.1 million each instead of buying new ones at KES.99 million each. That was done after the concession holder, KRC, rejected the price of KES.2.3 billion committed by RVR for the locomotives.

The officials, Karim Sadek, Hassan Massoud, Carlos Andrade, Bong Yoon, Sammy Gachuhi, Fabio Steffler, and the RVR Group, allegedly engaged in corrupt, fraudulent, collusive and obstructive practices, in the purchase of the locomotives. They were accused of inflating the price of the locomotives and bribing KRA officials to avoid paying KES.377.4 million in Value-Added Tax (VAT), and misled the IFC on the status of the RVR operations. The World Bank Integrity Office which undertook the audit also claimed the officials attempted to cover up the transaction by failing to provide documents and not cooperating with the bank's staff.

The INT's operations office manager, David Fielder, reported that the World Bank had written to the officials asking them to show cause why they should not be sanctioned which meant being barred from all World Bank-financed projects.

Chapter 35

Diplomatic blunders and corruption in Parliament

OF ALL THE government departments in Kenya, the Ministry of Foreign Affairs and International cooperation has always been considered the most elitist in terms of the composition of its staff and the international role it plays. In the 1970s and 1980s, it had the most educated, most brilliant cadre of officers, most of whom were foreign-educated. There were PhDs even at the relatively low position of assistant secretary – equivalent to Third Secretary in a mission – underscoring the high quality human resources material in the diplomatic service.

Even Presidents Jomo Kenyatta and Daniel arap Moi who were known for their nepotism tendencies saw no reason to interfere with the hiring of the rank and file, leaving the Public Service Commission (PSC) to exercise its mandate without outside interference. When it came to ambassadorial positions, however, they used their prerogative and appointed envoys based on tribal and political affiliations. The result, at times, was the appointment of unqualified candidates to fill positions that required a high level of educational and professional qualifications. But in almost all times, the envoys were selected on the basis of their ethnicity and personal relations with the Head of State. Let us take the London High Commission as an example.

During the entire duration of Kenyatta's rule, the top diplomat came from the Kikuyu community: Joseph Njoroge (1963-1970); Ngethe Njoroge (1970-1978). When Moi came to power in 1978 up to the time he left in 2002, seven out of eight High Commissioners were Kalenjin: Shadrack Kimalel (1978-1981); Bethuel Kiplagat (1981-1983); Benjamin Kipkulei (1983-1986); Sally Kosgei (1986-1991); Simon Bullut (1991-1992); Josephat Ruto (1992-1997); Nancy Kirui (2000-2005). Mwanyengela Ngali, a Taita, (1997-2000), was the only non-Kalenjin. President Kibaki replaced Ngali with Joseph Muchemi, a Kikuyu (2005-2009); Ephraim Ngare, a Kikuyu

(2009-2014). President Uhuru appointed a Luo, Lazarus Ombai Amayo in 2014, who served beyond Uhuru's first term in office.

In the early days after independence, diplomatic missions abroad were manned by patriotic professionals who put the country ahead of all considerations. The Foreign Service Regulations, the bible of operations in missions, was followed to the letter which meant proper accounting and fairness in hiring and firing of staff. It specified how money received from issuance of visas was to be accounted for.

Over the years, however, the rot in society has not spared the foreign service which has become yet another den of corruption, maladministration, and theft of public funds. Financial scandals have dogged Kenyan embassies and consulates from Tokyo to Berlin to Washington and everywhere in between, roping in senior officials at the Ministry in Nairobi and officers in the field.

There has also been rampant wastage of funds through irregular and unnecessary purchases of goods. In the 1967/1968 financial year, one embassy bought 11 Sofa sets costing KES.11,143, another bought carpets for KES.45,367 and KES.20,535 was spent on furnishings of an office, amounts the Auditor General thought were at the time excessive. No action was taken against the officers concerned, something which may have encouraged impunity. In the same financial year, K£.1,093,165 (KES.21,863,300) was spent without the authority of Parliament by the Ministry of Foreign Affairs. In 1970/71, unauthorized expenditure rose to K£.2,645,598 (KES.52,91,960). Thousands of Kenya Pounds were also spent on purchases of goods without authority from the Central Tender Board (CTB).

In 1976, a tourist officer in London was singled out for irregularly negotiating an increase of rent for his official office from GBP.20,000 (KES.2,753,722), to GBP.51,955 (KES.7.1 million). The unauthorized raise took place at the end of the first 5 years of a 10-year lease. One MP described the transaction as "the pinnacle of greed and benefit."[1090]

Many officials have quietly been dismissed from the diplomatic service in a way that smells cover-up. In 1997, an officer who stole FF. 246,000 (KES.4,5 million), from the embassy in France was surreptitiously dispatched back home but no action was taken against him despite recommendations of detectives that he be prosecuted. Twelve years later, he was appointed managing director of a parastatal despite opposition from some MPs.

In September 2005, the *Daily Nation* reported that two envoys at the embassies in Germany and China had looted a total of KES.83 million. Nothing more was heard about that scandal. In yet another incident, a financial attaché, Mary Ayuma Katungu, at the Kenya embassy in Zimbabwe was arrested and charged with 11 counts of stealing KES.6.6 million between 2009 and 2010.

Financial irregularities have been reported in almost all Kenyan Embassies abroad. In London in 2010, a little-known organization called Kenyans Diaspora Corruption Watch (KDCW), wrote a petition of allegations against the high commission and demanding a government audit. The group alleged loss of funds in building refurbishment works and issuance of personal interest loans as some of the issues requiring audit.

However, the petition was followed by a letter from the commission's solicitors denying the allegations and threatening to file a defamation suit against KDCW. The mission also issued a press statement calling the allegations "a mudslinging campaign" to portray officers at the high commission as "corrupt, unethical and unqualified."[1091] However, KDCW aggrieved by the legal threat filed a complaint with the British legal complaints services called the solicitors' threat as intimidated and uncalled for and announced protests at the high commission to advance their cause.

In another fiasco that could have turned ugly for the Foreign Ministry took place in 2010. After complaining that foreign visitors were consuming colossal amounts of public money in accommodation expenses, the Ministry requested and was granted close to KES.500 million to build guest houses for government dignitaries. A plot was even identified near the prestigious Windsor Hotel, but prime Minister Raila Odinga intervened objecting to what he called "the greasy idea of buying guest houses." The project – which could have been used to siphon money from the government - was quietly shelved.[1092]

In the 2013-2014 financial year, KSE.137.7 million was lost in four missions, London, Addis Ababa, Pretoria, and Washington DC. Some of the money was lost due to the disappearance of visa stickers and passports. In the Washington DC Kenyan mission, 2,000 stickers went missing. That deprived the country of revenue and exposed it to insecurity given the fact that 2,000 visitors most likely entered Kenya using illegally acquired visas. Incidentally, all the people heading those missions were Uhuru's political appointees.

The extent of corruption in the Ministry would be known when the "hacktivists" group, Anonymous, leaked a trove of documents hacked from the institution's computers in 2016. Ministry officials speculated the documents would most likely reveal names of officials involved in corrupt deals.

The Ministry has also been cited as a bastion of nepotism and cronyism. During the grand coalition government of President Kibaki and Prime Minister Odinga, the latter's sister was fished from the University of Nairobi for the consul general's position in Los Angeles. It made no sense for a chemist to be appointed to head a diplomatic mission. It was pure nepotism and Kenyans made that known to the government. At the same time, Kibaki ensured her daughter, Winnie Wangui Mwai, was given a plum job at the Ministry complete with a security detail in tow.

Those who have worked at the Ministry know to secure an overseas posting, one must either be in good books with the top hierarchy or bribe one's way through. In 2004, 90 postings to overseas missions were cancelled after it emerged that the selection process had been dogged by nepotism, cronyism and tribalism. The cancellation embarrassed the Ministry with politicians calling for a probe.

That the Ministry from the very beginning was dominated by the Kikuyu was a matter of common knowledge. The argument was that the Kikuyu were more educated than the rest and therefore had a better chance of being selected for diplomatic appointments. While that may partly be true, it is also a fact that with three out of four governments under Kikuyu leadership, the chances of nepotism and tribalism playing a big part in appointments are quite high.

In 2010, the Parliamentary Committee on Defense and Foreign Affairs had to weigh in its concerns that appointments to ambassadorial positions were not in line with recommendations of the National Cohesion and Integration Commission (NCIC) which directed that no more than 30% of staff in any one government department should be from the same community.

The Parliamentary Committee suggested that appointments – though the prerogative of the president – be based on merit and the individual requirements of each mission. "Appointing people who are totally incompetent ends up damaging the country's image," said Mwalimu Mati of the Mars group.

Following in the footsteps of Jomo Kenyatta who preferred to keep names of prospective candidates secret until they were officially announced, Moi, Kibaki and Uhuru, followed the same trend. However, in some cases political jostling has led to delays in appointments and infringements of laid down procedures.

In 2008, a top envoy formerly close to the presidency refused to return home after he was recalled from the High Commission in London causing confusion and delaying a replacement. The Ministry had to strip him of his ambassadorial perks including allowances, chauffeured car and official residence to force him to capitulate. In the same year, 13 diplomats most of them appointed by President Kibaki when he came to power in 2002, defied an order to relinquish their positions. Disciplinary threats had to be used to force them to return home. As of 2012, defiant diplomats and those who had been held by bureaucratic hurdles had cost the taxpayer KES.265.1 million in rent and remuneration as per the House Defense and Foreign Affairs Committee.[1093]

The diplomat missions affected, duration of overstay of Ambassadors and High Commissioners, and the cost:

1. Pakistan: Overstayed for 32 months; cost the public KES.48.3 million
2. United Kingdom: 25 months, cost KES.41 million
3. Unesco, France: 24 months, cost KES.41 million
4. Sweden: 19 months cost KES.31.8 million
5. Bangkok, Thailand: 19 months, cost KES.29 million
6. Kuwait: Seven months, cost KES.12.8 million
7. India: Six months, cost KES.8.8 million
8. Ireland: Six months, cost KES.10 million
9. Netherlands: Six months, cost KES.10 million
10. South Africa: Six months, cost KES.10 million
11. Sudan: Five months, cost KES.7.5 million
12. Burundi: Five months, cost KES.7.5 million
13. Botswana, five months, cost, KES.7.5 million.

The Committee noted that the overstay amounted to a breach of law and by extension the height of impunity. However, there are plenty of reasons that have been advanced to explain why Kenyan diplomats posted abroad are reluctant to return home. Some of them are cited in a thesis paper by a former diplomat, Ambassador Philip R. O. Owade, who says returning diplomats often face a serious adjustment process to their own society including housing, work for the spouse and schooling for children. There are also financial difficulties and loss of authority, status, and control offered by international assignments.[1094]

Indeed, through the association of former Kenya Ambassadors and senior diplomats, efforts have been made towards finding solutions to some of the problems facing returning envoys. But as some leave, others are recruited to fill their places in an exercise that has all the hallmarks of favoritism.

Cognizant of this situation, the Ministry appeared to change tact even for postings involving junior officers. When 118 staff members were posted abroad in January 2016, they were told specifically that their tour was strictly for 48 months and included the period already served on cross transfers from one mission to another. “You are reminded that foreign service is a temporary assignment with specific time-bound responsibilities and duties,” said a memo from the Cabinet Secretary Amina Ali Mohammed.

Towards the end of the general elections campaign in 2013 and before Uhuru took over the government, influential civil servants colluded among themselves and came up with 32 names of new envoys who were quietly deployed overseas without vetting by Parliament as per the new constitution and without undergoing the mandatory orientation required of all appointees. Many of the names were connected to individuals and some of them like a businessman dealing in shoes were not qualified to be out there representing the country.

When Uhuru and his Deputy Ruto took over the government, it was too late to stop the envoys from taking up their appointments. The confusion created by the mysterious appointments led to a fresh relook at the methods used to deploy staff overseas. But even after that, political tussles as to who should be appointed has ensued between the President and his Deputy every time vacancies arose with each one pushing for his own choices. The stalemate over Cabinet appointments in September 2015 is a good example.

Ruto had submitted names of several nominees from his United Republican Party (URP) including Cabinet Secretaries who had been implicated but cleared of corruption allegations. Ruto insisted on their re-appointment but Uhuru and his advisers were opposed. On 20 September 2015, journalists were kept waiting for a whole day at State House after they were informed of a joint Cabinet announcement. Without a guarantee his nominees would be on the list, the deputy president did not show up at State House prompting the event to be postponed.

Similarly, in April 2016, Uhuru and Ruto could not agree on the appointment of Ambassadors and High Commissioners to take up vacant positions in Kenyan missions abroad. Ruto's supporters had complained that Uhuru had short-changed the Kalenjin on senior appointments in government. The tussle precipitated a delay in appointments of envoys.

Admittedly, in appointments to ambassadorial positions, political considerations sometimes take center stage over ethnic considerations, diplomatic qualifications and individual merit. In many cases, political losers, retired generals, and loyal civil servants, take positions which generally should go to career diplomats.

A few examples may suffice. Moi appointed retired Army General George Agoi as Ambassador to Ethiopia and former Managing Director of the National Social Security Fund (NSSF), Samuel Watuka Muindi as Ambassador to Nigeria; Kibaki, former MPs Mutinda Mutiso and Kembi Gitura; and Uhuru former MPs and Ministers Robinson Njeru Githae and Ali Chirau Mwakwere, and retired Air Forces Commander, Major General Joff Otieno. In one list of appointments, Kibaki tipped four siblings of Cabinet Ministers and four parliamentary losers, a decision which angered even those within the Ministry itself.

Corrupt MPs

In 2013, MPs arrived at Parliament Buildings to find three dozen pigs and pigs' blood spattered outside the gates as hundreds of demonstrators protested attempts by the lawmakers to increase their salaries. The Salaries and Remuneration Commission (SRC) – an independent constitutional body – had recommended that MPs' salaries be slashed to KES.532,000 from KES.851,000 per month, an amount equivalent to 131 times Kenya's minimum wage. The pigs said to symbolize the legislators' insatiable greed bore signs: "MPigs and Thieves."

Police had to use tear-gas and water cannons to disperse the protesters who continued with their rage through the streets of Nairobi. The motion passed, and although the pay increase was not included, the MPs gave themselves equivalent allowances for cars and pensions. Transparency International condemned the move as "abominable, illegal, unethical and despicable misadventure" by legislators.[1095]

Similarly, no serious protocols have been placed in Parliament to deter officials from conniving with greedy legislators to fleece the government. That was made clear in revelations that KES.550 million was lost in three years through illegal payment of salaries to former MPs who were no longer serving. According to the EACC Chief Executive, Halakhe Waqo, in remarks on 4 December 2015, said even siting MPs were earning allowances yet they neither attended Parliamentary sittings nor Parliamentary Committee meetings. Some of the legislators were signing attendance on behalf of their colleagues and lodging false mileage claims. Waqo said EACC would investigate and those found to have committed fraud would be prosecuted.

The Parliamentary Service Commission (PSC) which oversees the activities of both the National Assembly and the Senate failed to update the payroll promptly, leading to massive loss of public funds. It also did not effectively supervise the procurement and finance departments resulting in illegal payments to companies through inflated bills, and supplies paid but not delivered, among other malpractices. In an audit EACC report to Parliament in December 2015, it recommended prompt updating of payroll records and monthly reconciliation, and better supervision of MP travels. "Most Members of Parliament make claims for travelling to their constituencies for almost all the weekends in every month. There is no method for ascertaining that travels took place," the report said. Yet there were legislators who travelled by air to the nearest airports then transfer to their private vehicles for the rest of the journey "yet make claims for the entire distance."[1096] MPs dismissed the EACC claims and following intense protests from the legislators, the Speaker Justin Muturi dismissed the report, saying "no evidence of any kind has been put forward in the report linking any Member of Parliament to any fraudulent, dishonest or improper conduct," he said.

One way that MPs have used to earn extra money is to schedule trips overseas that may be of little value to their mandate. Millions of shillings are used each year to satisfy the needs of MPs on "bench-marking" trips including first-class tickets and five-star hotel accommodation abroad. Because of greed, most MPs were susceptible to corruption. They allowed themselves to be used to "kill" or "pass" Bills that advantage individuals or companies in exchange for money. One former MP described the Kenya National Assembly as an "auction house where the highest bidder won crucial battles, even if not in the interest of Kenyans."

An MP summed it all on 5 September 2013 during a debate to pull out of the Rome Statute when he bluntly told his fellow legislators in Parliament. "Yes, you are thieves; that is why the country is failing. You are thieves. The Judiciary may have been reformed but the occupants of those offices are the same. They are as bad as you. They think like you; that is who they are and that is who you are." When asked by his angry colleagues to apologize, the MP for Gem and Minority Leader, Jakoyo Midiwo flatly refused. He was suspended for four sittings and forfeited his allowances, privileges and immunities.

Five staff members were questioned by EACC in October 2015, but nothing came out of it, even though the anti-corruption body had in June discovered "systematic failures in Parliament that could have resulted in possible 'loss of tax-payers' money."[1097] On 10 November, seven parliamentary employees appeared in court on various charges of abuse of office, making documents without authority, and conspiracy to commit a felony. They allegedly conspired to steal KES.70 million belonging to the National Assembly through the purchase of printing toners. They were Samuel Obudo and Mary Gathiga (finance); Keith Musyoka and David Mulinge (procurement); Alloys Tinega and Benjamin Njagi (stores) and George Arum (internal audit). They denied committing the offences between 1 July 2013 and 30 June 2015. They pleaded not guilty and were released on a KES.300,000 bail each. However, in September 2016, chief magistrate Daniel Ogembo, dismissed the case without hearing a single witness saying their right to a fair trial had been violated after the prosecution failed to supply them with some crucial documents.

In November 2015, the Parliamentary Catering and Health Club Committee incurred astronomical costs while visiting India, Netherlands and

Ethiopia to acquaint themselves with what their counterparts were doing in managing affairs of food and body exercise. The trip comprising 29 MPs raised uproar across the religious bodies and NGOs.

“The leaders,” said a member of the Council of Imams and preachers of Kenya, Sheikh Abubakar Bini, “portrayed us in bad light across the world. We were viewed…as people who cannot cook…We are disturbed by their actions.”[1098]

On 4 February 2016, a Kenyan newspaper reported that 17 MPs had been charged in various courts for serious criminal offences including fraud, forgery, hate speech, rape, corruption, and incitement to violence. In addition, 90 other MPs were being investigated for filing false mileage claims and fraudulent allowances.[1099] Charges against five were dropped on first appearance in court. The remaining were never convicted. At the time of that case, 90 other MPs were under investigation on a variety of corruption-related charges.

One of them was accused of building a KES.3.5 million dam that didn’t exist. A political activist, Okiya Omtatah, backed by the residents of Longisa Sub-County in Bomet County wrote to the DPP demanding that the area MP, Benjamin Langat and his brother Richard, owners of a company called Green Bay ventures, be prosecuted. The dam was approved by the National Water Conservation and Pipeline Corporation (NWCPC), but according to Omtatah, it was never constructed. However, Langat and his brother refuted the allegations and said the dam indeed existed and challenged those who said otherwise to go to the village and see for themselves. Nothing much came of that matter.

In December 2016, Capt (Rtd) Collins Wanderi, Chairman of the Kenya Institute of Forensic Auditors, claimed in an article that an MP who was also Chairman of a powerful House Committee in the 10th Parliament was paid KES.800 million by a multinational firm as a bribe after the company won a lucrative international tender. Because of the size of the purse and to avoid detection, the legislator was paid outside the country.[1100]

Because of the number of sittings that goes with such high-profile committees like the Public Accounts Committee (PAC) or the House Business Committee and the allowances involved, MPs sometimes have to bribe party leaders to be included in these committees, and while there they must stay on the side of the top people or lose their positions. One MP allegedly paid a bribe of US$.1,500 (KES.155,625 to his fellow committee members to be appointed chairman of a committee

Three years later, the MPs once again demonstrated their thirst for money when they passed a fat gratuity of KES.11 million for each of the 416 legislators in the National Assembly and the Senate totaling KES.456.1 million. Kenyans murmured their disapproval but in this case the gratuity was sanctioned by the constitution. Like children celebrating examination victory, the MPs walked out of Parliament in a jubilatory frenzy. In the budget of 2017, the Treasury allocated KES.2.8 billion as gratuity, with each MP taking home KES.6.7 million at the end of their term in August 2017. The MPs also earned an extra KES.1.09 million each to cover the period between 5 June when Parliament was dissolved and 7 August, a day before the 2017 general elections.

Corruption claims continued to plague Parliament even as the 11th Parliament came to an end in the middle of 2017. At the needles eye was the PSC which was forced to defend claims of a scheme to vary the cost of a 26-storey Parliament office building and pocket the difference amounting to KES.1 billion. Making the claim was Senator Mong'are Okong'o who also alleged that the PSC planned to buy land from one of the PSC Commissioners for KES.1 billion in what he said was a clear case of conflict of interest.

Senate Speaker Ekwe Ethuro called it "a figment of Mong'are's imagination." But the fact the allegations were being made at all was emblematic of the existence of a corruption problem in the Kenya Parliament.

PSC members at the time were Sammy Leshore, David Musila, Beth Mugo, Jimmy Angwenyi, Gladys Wanga, Regina Chegorok, Abdullahi Ali, and Lorna Mumelo.

Chapter 36

Private Sector: It takes two to tango

THE DEVASTATING ROLE of the private sector in promoting corrupt practices was seen in an international audit released by Ernst and Young in November 2014 in which Kenya was ranked behind Egypt, Nigeria and Namibia, as economies where private sector corruption – especially the distortion of tender award processes – was most pervasive. One in every three companies surveyed admitted paying bribes to win public sector contracts. In addition, 27% of chief executives, financial controllers, and internal auditors in Kenya cited high levels of fraud in their companies.[1101]

A New Zealand entrepreneur, Stephen Jennings, who invested in the controversial Tatu City project on the northern outskirts of Nairobi said a substantial amount of corruption in Kenya originated in the private sector. "You've got incredibly skilled businesspeople (in Kenya) who are forced to co-exist with total crooks and thugs,"[1102] he said. Tatu City, occupying an area of 2,500 acres, was projected as an economic zone with homes, schools, a shopping district, a manufacturing area, and an entertainment complex, but years of wrangling has stalled the project.

A survey by the World Bank in 2009 showed Kenyan firms paid approximately 12% of the value of government contracts in bribes or illegal payments. Seventy-one companies indicated they expected to give gifts to secure a government contract compared to 38% across sub-Saharan Africa and 28% worldwide. [1103]The tendency of bribing government officials to win business is a worldwide problem. Kenya is not an exception. Several international companies have been cited for paying bribes to Kenyan officials for a variety of reasons. In 2012, the British company, Oxford publishing limited, was fined an equivalent of KES.170 million after admitting to the government Serious Fraud Office (SFO) that some of its personnel in Kenya and Tanzanian had bribed officials to secure contracts for the supply of school books. The bribes were reportedly paid by the company's local subsidiary.

In 2013, US authorities received information that FedEx Corp's Kenya operations had paid bribes to customs officials and vehicle inspectors to clear shipments without inspecting them. The information was received by FedCorp via an e-mail from an unknown source in December 2013 and was published by the *Wall Street Journal*, a financial newspaper. The bribery was alleged to have taken place between 2010 and 2013.

The US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) launched an investigation because such a conduct violated the country's Foreign Corrupt Practices Act. FedCorp also launched its own probe in 2013 "but had not found anything to substantiate the allegations."[1104] The American company was represented in Kenya by a "nominated service contractor" by the name Pan Africa Express, according to the latter's website. Neither the amount of the bribe money nor the recipients were made public.

In 2014, the Finnish Court of Appeal dismissed a case against the manager of a company called Wartsila Group who was accused of having bribed the CEO of *a leading electricity distribution company in Kenya* to be awarded a contract for the Kipevu 11 power project in Mombasa. The court was told that Wartsila paid the Kenyan, a public official, millions of British Pounds through offshore accounts between 1999 and 2001 for consideration of the works, violating the Finnish criminal code and the OECD convention on combating bribery of foreign public officials in international business transactions. The case was dismissed because the manager did not know the owner of the account was a foreign public official among other reasons.[1105]

Another case of alleged bribery involved another US company, Goodyear tire & rubber company. Reports emerged in February 2015 that it had bribed senior parastatal, military and Ministry of Defense officials with millions of shillings in exchange for tender awards. The matter was reported to SEC which investigated the matter and found that accumulative bribes paid by Goodyear to corrupt Kenyan officials between 2007 and 2011 amounted to more than KES.136 million. SEC documents showed Goodyear subsidiaries "routinely paid bribes to employees of government-owned entities and private companies to obtain tire sales. These same subsidiaries also paid bribes to police, tax and other local authorities."[1106] The company was taken to court in the US and was fined an equivalent of KES.1.5 billion. Again, the names of the recipients were not divulged.

The same month, two officials of a British security and printing company, Smith & Ouzman, (S&O) were jailed for bribing Kenyan electoral and education officials in what came to be known as the "chickengate" scandal. The convictions were a culmination of four years of investigations by the British SFO – which investigates complex fraud cases in the UK – on the activities of S&O and the Kenya national Examinations Council (KNEC) and the Interim Independent Electoral Commission (IIEC). SEC found incriminating e-mail correspondence between the British company and the Kenyan entities, as well as Local Purchase Orders (LPOs) and shipping invoices pointing to fraudulent activities. The offence took place between November 2006 and December 2010.

According to SFO, the defendants inflated commission payments to overseas agents to mask bribes that were to be passed to public officials in the award of print contracts for ballot papers, examination papers and certificates. "Chicken," according to two of the accused Chris Smith and Nick Smith, was used to mean "money, cash, payment, facilitation payments" or "subsistence payment" and that "S&O do not pay bribes."[1107]

One e-mail provided by SFO from one S&O official to one of the two Smiths said of a Kenyan official: "He's a nice guy Smith. He's in my pockets now, let's use em to get the contract, and as I promised em we get the order he gets chicken…Smith these peoples' problem is chicken after award, and I told them as long as we get the tender and after looking at our margins then will definitely give them chicken…"[1108]

Documents filed in court showed the printing firm of S&O wired the money estimated at KES.50 million code-named "chicken" to principal officers in the two organizations to be awarded multi-billion-shilling tenders involving the printing of ballot papers and examination materials. The biggest amount paid, the court was told, was GBP.337,993 (KES.45.8 million) to the S&O agent in Kenya who was to convey some of it to officials as bribes in seven printing contracts. The total cost of the contracts was GBP.1.4 million (KES.190 million) and the Kenyan agent was supposed to get GBP.380,859 (KES.51.6 million) for distribution to the officials.

Chris Smith and Nick Smith were jailed for a total of four and half years for bribing the Kenyans. A Southwark Crown Court also fined the company

KES.200 million and ordered it to pay an additional KES.97 million to satisfy a confiscation order or have its assets seized and a further KES.2.8 million in costs.

Among the Kenyans alleged to have received the bribes was a former Cabinet Secretary who was serving in IIEC, a top IIEC official, a former senior Judiciary official, and an executive in KNEC. In 2016, a year after the UK case was concluded, a London court accused the Kenyan authorities of delaying the conviction of the Kenyans implicated in the scandal despite the latter's efforts to help.

It was not until February 2017 that Kenya took people to court. James Oswago, the then CEO of IIEC (now Independent Electoral and Boundaries Commission, IEBC) was arrested and charged with corruption in connection to the "chickengate" scandal. Also charged was a procurement officer, Hamida Ali Kibwana, and a broker Trevy Oyombra, an agent of S&O. They denied various charges of soliciting and receiving millions of shillings from S&O. They denied the charges and were granted bail.

Part of the money recovered from S&O was returned to Kenya and used to purchase seven ambulances which President Uhuru presented to County governments on 4 July 2017.

In October 2015, Kenya featured in yet another case in the USA. Documents in an indictment of a former UN General Assembly President, John Ashe, charged with taking bribes totaling more than KES.100 million from a Chinese real estate developer mentioned Kenya in a plan to award UN real estate contracts to the Chinese. Ashe was the facilitator. Preet Bharara, the US attorney for Manhattan, New York, said Ashe used some of the money to buy Rolex watches, custom suits, a BMW vehicle, a family vacation, and even a private basketball court.[1109] It was alleged he set up meetings with Kenyan officials to help the real estate billionaire land lucrative UN contracts. He was also accused of introducing a Chinese businessman to Kenyan officials at the UN with the intention of facilitating business deals including some contracts with the Ministry of internal security in Kenya. The officials involved were not named. Ashe, a citizen of the island nation of Antigua and Barbuda and president of the UN General Assembly in 2013 and 2014, died in June 2016 in the USA while lifting a barbell on a bench.

In December 2015, a British whistleblower claimed the British

American Tobacco (BAT) made a secret political donation to Martha Karua, a Kenyan politician, to stop a rival company from getting a multi-million-shilling tender for a technology contract to combat cigarette smuggling. According to a report in *The Independent*, a British newspaper, in return BAT "obtained key confidential KRA documents outlining the GBP.100 million (KES.13.5 billion) five-year contract for new technology to stamp out tobacco smuggling." It was alleged BAT had the contract delayed for the company to get the time to lobby in favor of its own system. The secret donation given in cash to an aide of the politician was listed as "payment for management fees or as expenses incurred in anti-smuggling operations," the paper said.

The aide confirmed attending a meeting with a senior BAT official but claimed she did not know they were employees of the tobacco company. Her representative was quoted by the paper as saying she was not aware of any donations made by BAT. Martha Karua who contested for the presidency in 2013 confirmed meeting a BAT representative shortly after the donation was made but was not aware of the circumstances under which the payment was made.[1110]

In a response to the newspaper report obtained by the *Sunday Nation* from her lawyer, Gitobu Imanyara, Martha Karua, admitted receiving a KES.2 million 'donation' to her presidential campaign from a BAT representative, Paul, but "at no time did I ever discuss the award or influence of contracts/tenders whether at KRA or indeed within any other government entity with Paul or anyone else." She was apparently referring to Paul Hopkins, a former BAT official. She added:

> If any person within my campaign team or beyond purported to accept a donation in exchange for influence of government procurement (they were) acting beyond the scope of their authority, without my knowledge and in their individual capacity not for me or my campaign.[1111]

BAT was involved in yet another spectacle in 2016 when it was accused of having bribed a number of officials in Africa including Kenya. The story was broken by the BBC in its program *Panorama* and said it used forensic experts and computer software to verify the authenticity of correspondence linking a Kenyan MP to a bribery scandal involving BAT. The 2012 bribe was reportedly in the form of an air ticket from Nairobi to London for the politician's wife. BAT denied that it paid bribes to politicians and civil servants in East Africa: "The truth is that we do not and will not tolerate corruption, no matter where it takes place,"[1112] a company official told BBC. The bribe was paid allegedly to stop the UN from reducing the number of tobacco-related deaths. The MP denied the allegations and threatened to sue the BBC for defamation.

Betting craze

The Betting Control and Licensing Board (BCLB) is the premier organization in charge of all casinos, gambling shops, betting, and mobile phone lotteries, and gaming activities. It was established by an Act of Parliament in 1966 under the Ministry of Interior. It also has the task of eliminating illegal gambling houses which are strewn in seedy neighborhoods all over the country generating huge amounts of tax-free revenue. The proliferation of Chinese-made gambling machines in street corners and next to residential areas especially in low income localities has created a serious social problem. The audit firm PricewaterhouseCoopers (PwC) estimate that the industry is worth KES.2.2 billion and expected to grow to KES.5.1 billion by 2019.

The history of betting in Kenya goes back to the Kenya Charity Sweepstakes (KCS) established in 1965 by President Kenyatta "as a fun way for citizens to play their part in nation-building." A large part of the derived revenue was channeled to charitable organizations to help achieve Kenyatta's dream of eradicating poverty, illiteracy, and providing rural health centers.[1113] It is estimated that close to KES.1 billion has been given to charities in all regions since KCS' inception.

Over the years, however, the KCS – which used manual receipts and sold bets from yellow-painted kiosks everywhere – has been overtaken by new technology. Many Kenyans now gamble using their mobile phones and internet outlets in cyber cafes. The industry has fattened the pockets of gaming machine companies as well as operators but impoverished the majority of the estimated five million Kenyans who frequent gaming rooms and participate in mobile betting.

The Standard newspaper reported in January 2017 that Chinese gambling machines – many of which don't meet international standards – "had popped up in street corners…and next to shops in residential areas. They are "usually owned by a ring of Chinese nationals who lease them out and only come to draw the money and pay the owner of the establishment a percentage of the profits."[1114]

The latest gambling firm to establish operations in Kenya was AfroMillionsLotto in 2017. It promised the biggest jackpot in Africa – which it did not specify – and said part of its profits would be donated to the global one foundation, a charity organization, to help children in Nairobi's Kibera slums.

An informal economy analyst, Alex Litu, told the *World Weekly* that most of the punters were young unemployed people lured by the promise of "quick money."[1115] With less than KES.100, one can wage a bet on a game. Games such as Sportspesa, BetIn, Elibet, Betway, and Mcheza, are popular among young people each of whom hopes to become an instant millionaire. To pump-up interest in betting, companies parade the few jackpot winners in luxurious limousines and release photos of winners splurging in beach hotels. Sports betting, one analyst said, had "become the fastest ticket out of poverty by a population disillusioned by sky-rocketing costs of living."[1116] ."[1117] A recent example was that of a 24-year old office assistant, Evalyne Karaba, who became an instant millionaire after winning KES 20 million from a betting house on 15 November. A survey by Consumer Insight showed seven out of every 100 children have gambled.

The BCLB itself has been at the center of corruption allegations for violating licensing procedures for casinos and lotteries. In 2011, detectives from KACC raided the board's offices in Nairobi and carted away boxes of documents for forensic auditing, after receiving complaints from the public that some facilities had been illegally and irregularly licensed. KACC also inspected minutes of all board meetings since 2008 to check whether gambling licenses were issued with the approval of the board and in accordance with the law. Results of that probe were not publicly announced.

There have also been cases of suicide by Kenyans who sank money meant for other uses into gambling including a student of Kenyatta University whose body was found hanging from a tree after spending his school fees on betting.

Politicians have often also delved into the activities of BCLB by ensuring their allies are appointed to the board or to influence policies in the industry. The wrangling among MPs in 2016 over who should be a member of a special committee appointed to probe the activities of the gambling industry was a good example. The committee was to investigate matters of tax compliance, financial impropriety, and management of proceeds, but it provided an opportunity for politicians to inject themselves into the multi-billion-industry.

The fight was between the ruling Jubilee party and the opposition ODM to lead the investigations. They ended up sharing the chairmanship between the Leader of Majority Aden Duale and the Leader of Minority Jakoyo Midiwo. Midiwo also proposed the enactment of the Betting, Lotteries and Gaming (Amendment) Bill 2016 to streamline the industry.

The struggle over the control of the committee was widely criticized by rank and file legislators as an attempt by senior MPs to get closer to the till. "We have never seen the majority leader in any committee. What is this that is making him, and other House leaders want to put their names on this panel?" asked Francis Nyenze. "I know gambling has a lot of money and my gut feeling is telling me to smell a rat."[1118]

In her book entitled *Kenya @50: Trends, Identities and the Politics of Belonging*, Dr. Joyce Nyairo, says Kenya had become a nation of gamblers. The government itself is into gambling even though it banned the importation of gambling machines in January 2017 – without the authority of BCLB – to stop the spread of the gambling craze in the country. In 2013, it established a sports lottery fund under the Ministry of Sports, Culture and Arts, to raise money for the development of sports. The status of the Fund could not be ascertained as at the end of 2017.

Kenya is the third largest gambling market behind South Africa and Nigeria and has the highest number of betting youth – 76% – in sub-Saharan Africa, according to the Geopoll rapid survey carried out in early 2017. Youths between 17 and 35 years of age spend an average of KES.5,000 per month on gambling.

In the 2017/2018 budget, the government capped taxes on betting at 35% on gross profits for all betting categories thus streamlining the old system where lotteries were taxed at 5%, betting firms at 5.7%, casino gambling at 12% and raffle competitions at 15%.

Theft of CDF money

On 20 February 2015, the High Court ruled the CDF Act 2003 unconstitutional. Consequently, the Legislature passed the National

Government Constituency Development Fund (NG-CDF) Act, and the new body became operational as of 19 February 2016. The Act required the board of directors composed of three principal secretaries, the attorney general, and seven persons from outside government, to ensure efficient management of the Fund, encourage best practices in the implementation of projects, and ensure efficient administration of funds and assets. Only projects under the central government and not under the County jurisdiction were to be implemented by the new organization. One significant feature of the NG-CDF was the setting up of a Constituency Oversight Committee (COC) whose job is to oversee projects and get feedback from the people.

Under the NG-CDF Act, each constituency was to receive a flat disbursement of KES.101.4 million for the financial year 2017/2018 comprising KES.96 million equitable-share and a KES.5.3 million emergency reserve. That represented 2.5% of the overall national revenue that year to be applied after the new Parliament convened following the August 2017 general elections.

As MPs waited for fresh disbursements from the treasury, the Auditor General dropped a bombshell in December 2016. He reported that MPs stole or wasted KES.3.85 billion entrusted to them under CDF. He singled out 273 constituencies – out of 290 – where money was fraudulently withdrawn from the CDF account. MPs were accused of paying for services and goods that were not delivered, and in some cases, used money to gravel and patch non-existent roads, among many other misuses. Transparency International Kenya immediately called on the EACC to expedite investigations against the MPs involved.

In a report of the period ending 30 June 2014, fourteen constituencies could not explain how they spent their millions. Ikolomani CDF committee did not have documents for purchase of land worth KES.6.5 million meant for two primary schools, an administration police post, a polytechnic and a district hospital, while the Navakholo CDF committee could not account for KES.1.5 million for completion of an armory and a septic tank for the office of the district commissioner. Many projects that had gobbled taxpayers' money had either not been completed or had not started such as the Lurambi CDF office construction which had stalled though KES.52.4 million had been allocated to it. Millions more were lost to bursaries whose money could not be accounted for. Other constituencies that were listed were Mumias East, Matungu, Shinyalu and Malava, Khwisero, Mumias West, Lugari, and Likuyani.

In 2014/2015, the treasury lost KES.67 billion. Part of it was KES.9.3 million for bursaries in Laikipia East, and KES.3.9 million for Limuru and KES.2 million in Limuru and Mukurweini respectively. In Kirinyaga Central, the CDF spent KES.28 million for construction of health centers and police posts but the structures remained unused. Kacheliba constituency pumped KES.9.7 million in building a CDF office but the office was not completed at the time of the Auditor General's inquiry.

The first time the government was serious about prosecuting legislators involved in embezzlement of CDF money was in early 2015 when the MP for Lamu West, Julius Ndegwa, was arraigned in court for the loss of KES.1.6 million belonging to the Fund. He was charged together with six CDF officials: Sophia Wanjiru Kamau, Yusuf Hassan Dukicha, Alfred Mnjaema, Zakayo Gitonga, Cornell Tuva and Michael Thegeru Kamau among them for illegally withdrawing money meant for the construction of a livestock dip at Witu. A few months earlier in April, three CDF officials, Ali Ahmed alias Bausi, Abdalla Famau and Lali Shee were acquitted on a charge of misappropriating CDF money. They had been charged for purchases of three tractors and disc ploughs for KES.7 million without adhering to procurement procedures. *The Chief Magistrate Maxwell Gicheru ruled that the accused were blameless and were unaware of the regulations, but were relying on government officers for advice.*

One high-flying conviction under President Uhuru's government was that of the MP for Eldoret South, Peris Siman and her husband Enock Kimeli Siman on 8 October 2016. The two along with four others – Schachile Mikoya Laban, Maluti Pamela Maluti, John Simiyu Khaemba, and Wisdom Kimutai Maina – were found guilty of influencing the awarding of a contract to Kachur Hodings Ltd. for the maintenance and spot improvement of the Bayete-Chuiyat-Bargeiywa road in her constituency. *The charges were under the unforgiving Economic Crimes Act. She was handed a stiff fine of KES.10.6 million or 18 years in prison while the rest of the accused were given varied lesser penalties.*

Chapter 37

Greed at the altar and academia

CORRUPTION HAS PERMEATED all sections of society – from the public to the private sector, from political parties to religious organizations. Corruption, said one report, has eaten up the world to the extent that moral decay experienced in the State has found its way to the church too.[1119]

Some religious leaders say corruption in churches is a common problem. It is found in the elections of bishops and of church elders. Money meant for the well-being of the church is stolen ending up in private bank accounts. “Those who demand bribes are members of our Church,” said a former Anglican Archbishop, David Gitari, “but they think it’s OK, because if my MP is doing it, if the Minister is grabbing land, it’s OK.”[1120]

And corruption in church also extends to tax evasion. One church leader spoke of a practice where religious bodies order from overseas musical instruments worth millions of shillings, but they would bribe to evade taxes and when the instruments arrived, the clergy would set them to a shop and pocket the money. There are also serious violations of laid down procurement and asset disposal rules. The clergy sometimes inflate prices of goods and hide the difference.[1121] “Corruption comes because people want to be rich,”[1122] one member of the clergy said.

In one instance in Kisumu, millions of shillings sent by well-wishers to a church for specific project allegedly vanished into the hands of a senior clergy. Pictures were photo-shopped to show completed projects when such projects did not exist, and letters were forged in support of the fake undertakings. The total amount obtained corruptly by the clergy could not be ascertained and no investigations were undertaken by the mother church.

In another case in Nairobi, Everlyne Opondo, a pastor of the Repentance and Holiness Ministry, was arraigned in court on allegations of defrauding another Ministry of KES.4.9 million, while in Nyandarua, Bishop Samuel

Muchai and a prophetess Esther Gitau of the United Hope World Reach church were charged in 2016 with fraudulently receiving KES.5.6 million from two worshipers, Caroline Wambugu and Gladys Nyamu, promising to drive demons from them. KES.4 million of it was conveyed through mobile money transfer service and the balance in cash over a long period of time.

Every Sunday particularly during election campaigns, churches compete in inviting politicians to their services. It is a common practice for the politicians to carry bags full of notes either as contributions to fund-raising initiatives or as donations to the church. In return, the politicians are given an opportunity to ‘greet’ the congregation and take photos with the clergy. The pictures are then distributed to the media and splashed in the social platforms. A discerning politician could visit two or three church services every Sunday dishing out money. The source of such funds is often dubious, and the clergy find no reason to ask questions. In fact, some of clergy look at the contributions as a form of “tax” which they only get during election campaigns.

However, when in December 2016, President Uhuru left a church without contributing money, the murmurs of disapproval were loud. He was complying with an order from the IEBC that barred politicians from making monetary donations ahead of general elections the following August. That decision was applied to discourage political corruption and bribery.

Media reports in 2016 said one Kenyan politician dished out KES.17 million within a period of 76 days in 2016. A video circulating in the social media showed unidentified people contributing KES.70 million they said came from two top Kenyan leaders. Many concluded the money was a bribe to lure people into voting for the ruling party. “Where do politicians get such huge sums of money?” asked Bishop Cornelius Korir of the Eldoret Catholic diocese and a strong government critic.[1123]

Corruption is more rampant in independent Evangelical and Pentecostal churches than the Catholic or mainland Protestant churches. The reason being that the former are churches owned and run by individuals or spouses more inclined to self-enrichment. In their quest to attract followers they engage in coached testimonies, fake healing, and outright extortion.[1124] They encourage congregants to “plant a seed” that is, give money, to receive God’s grace and become rich. They even have a word for this: prosperity gospel.

The emphasis in Pentecostal churches is that giving, especially tithing, was a sure way of getting one’s socio-economic and spiritual breakthrough. This breakthrough can be in the form of healing, getting finances, marital success, promotion in the workplace or other favors from God. Preachers often quote relevant verses in the Bible to build the case for life breakthroughs.[1125]

There have been several major scams involving evangelists over the years. In May 2006, a self-styled prophetess, Lucy Nduta of the Salvation Healing Ministry in Nairobi was arrested and charged with six counts of obtaining money by false pretenses by claiming she could cure HIV/Aids through prayers. In one case, she allegedly induced a person to part with a car valued at KES.300,000 promising to heal the complainant’s daughter. Five people were said to have given out money amounting to over KES.1.3 million and complained to the police when they found they were still HIV/Aids positive even after the prayers. She denied all the charges but in January 2009 she was convicted and sentenced to two years in jail.

Nduta took advantage of the many cases of HIV/Aids in the country to enrich herself.

In 2014, her son pastor Victor Kanyari was exposed in a television investigative story duping poor people into believing he had divine powers and thereby lure his followers to give more money. The television expose showed the pastor, Victor Kanyari, washing the feet of his congregants with potassium permanganate, which turns red in water, to lend credence to the claims that he had healing powers. The red liquid represented evidence there was blood oozing from a person’s legs. The expose also caught Kanyari tutoring his assistants on what to say to convince Christians to believe in the so-called miracles.

However, it was all play-acting as his assistants, with needles hidden in their hands, immersed them in the foot baths to suggest they came from one’s body through the power of prayer. The investigative story on KTN shocked Kenyans and illustrated the extent to which greedy pastors would go to, to make money. To benefit from the prayers, the pastor asked his followers to “plant a seed” of KES.310 each and up to KES.50,000 to be send via mobile money transfer services. Kanyari denied engaging in deception insisting he had healing powers.

But if Kanyari’s escapades elicited gasps of shock, the church that charged its followers KES.1,000 to be told if their names were on the list of those destined for heaven, attracted humor as well as morbid feelings of dread. In 2014, a newspaper report said Bishop Thomas Wahome of Helicopter of Christ Church kept "the Book of Life" which had a list of everyone on the heavenly bliss. The Bishop, it was said, was the only one with access to the book. He gave his telephone number for mobile money transfer service and people flocked to his church to know their fate. Earlier, Wahome promised healing from ailments for anyone who touched his clothes and paid a fee of KES.1,200. *It was not determined whether there were any takes on this bizarre claim.*

The Director of Public Prosecutions Tobiko, ordered an investigation into the scandal. The public uproar that followed led to some churches banning contributions from politicians. "Those barring us from conducting church harambees should know we are Christians first, politicians second," deputy president William Ruto told a church congregation. "One can't retire from Christianity, but can retire from politics."[1126]

But the Anglican Church of Kenya (ACK) Bishop Eliud Wabukala said the habit of churches receiving money from politicians was promoting theft of public resources and corruption and told politicians to take their money elsewhere.

Because of being on the take from politicians, most religious organizations have lost the moral authority to criticize corrupt leaders.

Examples of rags to riches stories involving Kenyan pastors are evident in their lifestyles. They own fleets of expensive cars and even aircraft, live in mansions in the posh estates and dress in designer clothes even as their congregants go without basic needs. Churches also own huge tracts of land, commercial and residential buildings.

Most of their followers see nothing wrong in donating huge amounts of money to such clergy. "Houses of the Lord," one observer says, "have been turned into feeding troughs for greedy church leaders calling themselves bishops and pastors"[1127] particularly so because of poor accounting systems in most religious institutions. Often, the money collected in church either as tithe or as project donation is immediately handed over to the pastor who decides on how it's to be used. One of the most successful Kenyan evangelists are Bishop Allan Kiuna and his wife Pastor Kathy Kiuna. In March 2011, her Mercedes Benz was featured in the media as one of the most expensive and luxurious cars in Kenya.[1128] They are often pictured sitting on their well-manicured gardens with their massive mansion at the background, an illustration of extreme wealth derived from loyal church members.

The church business is so lucrative that people leave mainstream employment to open churches first under a tree, then in tents, and within a few years they have permanent structures housing thousands of people. A good example is the Jesus Is Alive Ministries (JIAM) which started with only 30 members in 1996 and now commands thousands of followers.

The only qualifications a pastor needs for a successful Ministry are charisma, eloquence, favorable interpretation of the Bible, and winning popularity through word of mouth. People are told to give so that they can receive; the more they give the more they will receive as a reward from God, according to the preachers. The vulnerable poor are easy victims of the "prosperity gospel" as they see a close connection with the Almighty to be a solution to their problems.

In 2007, the Kenya government had 6,740 applications waiting for approval from people who wanted to register Pentecostal churches. By 2010, Kenya had 10,000 registered churches.[1129]

Reports of people who have sold all their possessions to contribute to churches are rampant throughout the country. In one publicized case, a husband stormed the Jesus Elevation Tabernacle Church in Kisumu demanding the return of KES.200,000 which his wife gave as tithe without his permission. The money was a loan Geoffrey Odhiambo had obtained from the bank after putting his car as collateral. The wife said she gave the "tithe for prayers as there were evil spirits and devils" in their house.[1130] The matter was reported to the police but there was no indication the complainant got back the money. For his birthday in 2016, the congregation gifted the bishop with a jet, a Cessna Citation X1997 worth an estimated KES.2.1 billion. One headline said it all: *Bishop boasts about 'buying' private jet 'with congregation's money*.'[1131]

In 2015, the *Daily Nation* newspaper reported Christ is the Answer Ministry (CITAM) collected KES.1 billion; the Nairobi Chapel KES.440 million and the Mavuno Church KES.290 million, underscoring the financial might of religious organizations in Kenya.[1132]

In new rules to reign in rogue church institutions, the government in January 2016 banned the registration of new religious institutions, and mandated that clerics submit certificates of good conduct, their theological certificates and statements of their doctrine of faith for registration. The rules also demand that individual churches must belong to an umbrella body and each one body must have 2,500 churches and belong to some umbrella religious society. The rules called “Religious Societies Compliance Rules,” were controversially received by sections of the clergy claiming it was an interference with the freedom of worship.

“We see this as persecution of the Church…When it comes to matters of faith, people are willing to die for the faith and we will stand firm with the church,” Mark Kariuki, Chairman of the Evangelical Alliance of Kenya, retorted angrily at the new regulations.[1133]

But officials said the rules would also prevent money laundering and terrorism. Despite protests from some church leaders, the rules became operational.

Televangelism an import from Europe and America has grown exponentially in terms of audience and evangelization. World renowned American evangelists like T. L Osborne and Billy Graham began visiting Kenya in the 1960s and were followed by others like T. J. Jakes, Joyce Meyer and Morris Cerulo, Americans, Reinhardt Bonke German, and Benny Hill, Israeli. Those preachers gave birth to revival services and televangelism and propelled their little-known Kenyan preachers such as Joe Kayo of the Deliverance Church and Rev Margaret Wangari of the Church of Lord, into millionaires. By copying the dynamic styles of presentation and “miracle healing” from their foreign counterparts, the Kenyan pastors are attracting tens of thousands of followers to their churches who contribute money regularly and lavishly.

Some of the foreign churches have also been victims of extortion by Kenyan religious people who demand money and rights of affiliation on false grounds. One church based in the USA with a branch in Britain called Cornerstone Family Church admitted it had sent hundreds of pounds, Bibles, stationary and gifts to a couple in Nyanza and wondered whether it had not been defrauded. They had also sent a digital camera, sound equipment, a generator, and clothing, among other gifts.

The association between Cornerstone Church and a Kenyan pastor and his wife – identified only as Isaiah and Rose – began in the 1990s when the latter came across the website of the former. Isaiah and Rose claimed they were members of the Seventh Day Adventist Church (SDA) but wanted to quit because they no longer wanted to worship on Saturdays. They requested Cornerstone Family Church to extend to them a license to preach and money because they were poor and did not have anything to eat. But, the only help Cornerstone Church could offer was to a shipment of clothing. However, a member of Cornerstone Church, a Mrs. Amacher, a 77-year old retired widow, sent money to Isaiah and Rose on a regular basis. On their request, she also sent sound equipment and an electric generator followed by "a sizeable amount of money" in 2004.

In the meantime, Isaiah and Rose kept on sending pictures purporting to show their prayer meetings to convince Cornerstone Family Church they were "having a successful Ministry and winning many people for Christ. What Cornerstone Church did not know was that the two Kenyans were reaping from other Church organizations in the USA and Canada including the SDA Church which they had supposedly denounced without divulging their connection with Cornerstone Church.

It was not until 2007 when Cornerstone Family Church started receiving information and enquiries from other foreign ministries about the fraudulent activities of Isaiah and Rose. By that time, they (Isaiah and Rose) had duped others into sending cash, clothing and books. And when they asked for money to clear the goods from the port of Mombasa, benefactors declined.

This is what pastor John S. Torell concluded about the Kenyans: "It would seem from the very beginning, Isaiah and Rose set out to deceive us to get additional support outside the SDA. Furthermore, they were not truthful to Mrs. Amacher when they begged her for money for food, medicine and clothing, indicating if Mrs. Amacher did not respond, they might die due to lack of medicine, etc." He quoted a Swedish pastor who had done missionary work in Africa that "Christians in Kenya had reached the same sophistication as the Christians in Nigeria, who have been running scams for many years with the most tea-dripping stories ever published."

Pastor Dudley Anderson was livid when he learned he may have been duped. He said the couple had children "who are being brought up to believe that it is alright to lie, cheat and deceitfully take people's money…They are to be shunned by the Christian community until they publicly repent and stop their shameful scams." *Indeed, in 2010, the couple wrote a letter of repentance, saying "sorry for the pain we caused you.".*[1134] Cornerstone Family Church accepted the apology.

Corruption in academia

The least expected place one could expect corruption to thrive is the academia. True or false? False! The higher education sector in Kenya has been a haven of graft, nepotism, cronyism, and tribalism, for decades. Half-baked politicians have bribed their way to university degrees, influential elites have been favored with honorary degrees and unqualified faculty members have been hired and promoted based on loyalty and ethnicity. There have also been instances of plagiarism, and academics commissioning researchers to write papers on their behalf to gain promotion and fame. In Kenyan universities and other institutions of higher learning, cases of sex-for-grades and pay-to-graduate have also been reported. Those problems were present in all the presidencies before Uhuru took over.

This has resulted in the hiring of unqualified faculty members and the production of half-baked graduates unsuitable for the job market. According to the World Bank, Kenyan universities “are releasing engineers who cannot create anything but can only explain how those existing were made, teachers who cannot explain concepts, as well as doctors who can only make it as pharmacists, equipped with little or no practical skills.”[1135]

The chairman of EACC said in March 2014 that universities and institutions of higher learning were leading in corruption and ethical malpractices and listed academic fraud, embezzlement of funds, misappropriation of bursary funds, and false certification, as some of the problems bedeviling institutions.

One famous case of questionable degrees applied to the governor of Mombasa, Hassan Joho. He was enrolled at the University of Nairobi (UoN) and Kampala international university in Uganda where he graduated. He joined the Gretsa university in Nairobi and graduated in December 2016 with a B. Com degree. EACC claimed he used a forged examination slip showing he had scored a C+ aggregate score in the Kenya Certificate of Secondary Education (KCSE) to gain university entry. The Kenya National Examinations Council ruled his high school certificate a forgery which threatened his bid for another term as governor in the 2017 elections. But Joho said he scored a D- and took bridging courses before enrolling at the UoN. The governor was taken to court on a slew of allegations over his educational credentials. In April 2017, High Court Judge Chacha Mwita declined to issue orders to bar Joho from contesting and reclaiming his seat.

He said it was the IEBC to determine whether an aspiring candidate has a degree qualification. On 1 June, IEBC cleared him. He contested and won a second term.

In 2013, similar questions were raised about two degrees allegedly earned by Bishop Margaret Wanjiru who wanted to contest for a gubernatorial seat. The certificates were issued by the United Graduate College and Seminary International, (UGCSI) and Vineyard Harvester Bible College, (VHBC) which were not accredited in the United States and not recognized in Kenya. Also, the institutions were not on the list of the world higher education database of United National Educational, Scientific, and Cultural Organization (UNESCO). It was further discovered that what she claimed was a degree of doctor of theology from (VHBC) was obtained on 13 July 2003, seven years before receiving her bachelor's degree in Christian leadership from the UGCSI on 26 October 2010, which was unusual. Wanjiru denied the certificates were fake and said she had a letter from the Kenya embassy in Washington certifying that the two colleges were "operational and legal." However, when she went to the Kenya commission for higher education on 2 January to have her educational qualifications vetted as part of the electoral requirements, the degrees did not pass muster.

At the end of April 2017, bishop Wanjiru was arrested and charged with malicious damage to property and creating a disturbance at one polling station during primaries of the ruling Jubilee party on 26 April. She was accused of destroying four ballot boxes and other documents valued at KES.30,000. She also faced a charge of disrupting voting at the City Park Market polling center accompanied by a group of rowdy followers. The case was still pending by mid-2017.

In another high-profile case of questionable certificates was that involving two contestants for the governorship of Kiambu. Two candidates traded volleys over the authenticity of degree certificates from Punjab University. Each one accused the other of holding fake certificate. The matter was resolved, and both contested.

But an MP was not that lucky. Oscar Sudi was charged on 6 October 2016 with three counts of forging his academic credentials. They included a diploma certificate from the Kenya Institute of Management (KIM) and a KCSE certificate from Highway High School. He was also charged with giving false information to an IEBC officer and making a declaration under oath. The court was informed by the prosecution that the offence took place on 31 January 2013 at the IEBC offices in Eldoret, Uasin Gishu County, while seeking nomination in the 4 March 2013 general elections. Sudi filed an application in the High Court saying his rights had been violated by the investigating authorities, but on 28 July 2017, the High Court dismissed the application to have the charge terminated. Justice Hedwig Ong'udi said the case would continue.

A 2014 report by the National Intelligence Service (NIS) published in the *Sunday Nation* in June 2014 said 50 students of the Kenya Institute of Mass Communication (KIMC) had certificates that could have been fake. Ahead of the 2017 elections, several sitting MPs and new hopefuls enrolled in universities to get degrees to beat the constitutional requirement. Through corrupt practices, some of them were able to get their certificates within two years instead of the normal four years. One MP who allegedly got a business administration degree from the Kenya Methodist University (KEMU) could not even express himself well in English, the examining language. The controversy that followed prompted the Education Minister Fred Matiang'i to threaten an audit of certificates granted to politicians, some of whom did not possess minimum university entry qualifications. *There was no indication the audit was carried out given the influential positions the aspirants held in government.*

In one particular case involving a training institution in Nairobi, students were allegedly given certificates of completion without even setting foot in class. All they had to do was pay bribes ranging from KES.3,000 to KES.5,000 depending on the course. They came out with certificates in aeronautical engineering and electrical engineering, among others, and recommendation letters for employment.

In 2016, Kenya was listed in a report by UNESCO as among countries where corruption in institutions of higher learning is rife. The report said corruption in those institutions was caused by a "huge appetite for higher education among the young populations of the developing world, and the steadily developing sophistication and borderless nature of Information and Communication Technology (ICT)," which, he said, has expanded the opportunities for fraudsters.[1136]

In Kenya, university education is the most rapidly expanding sub-sector of the education sectors, according to the Ministry of Education. With seven public and 18 private universities, the country still has a severe shortage of space for students wanting to advance their education after high school.

In August 2016, the chairman of the National Cohesion and Integration Commission (NCIC), Francis Ole Kaparo, said corruption, nepotism, and tribalism, were so rampant in universities that a special legislation was required to address the issue. “Most public universities have violated the constitution by basing employment of staff on ethnicity. This must stop,” he said. Only a month later, his remarks fell on deaf ears at Moi university after local political leaders led demonstrations to protest the appointment of Prof Laban Ayiro as the acting vice chancellor. They claimed Ayiro, A Luhya from Vihiga County could not lead an institution in the Kalenjin-dominated Rift Valley, and wanted him removed. Prof. Ayiro had taken over from a Kalenjin, Prof Richard Mibey, whose tenure had ended. *That was a stark reminder that ethnicity is alive in Kenya’s institutions of higher learning.*

An ethnicity and diversity audit report NCIC released in September 2016 showed six communities, the Kikuyu, Luo, Luhya, Kalenjin, Kisii, and Kamba, occupied 70.8% of all jobs in institutions of higher learning in 31 universities and colleges. Moreover, universities were also found to draw employees from their localities, meaning opportunities were reserved for the locals with the rest of the communities being shut out. A controversial attempt in 2012 by the higher education Minister, Margaret Kamar, to break up all university senates, management teams and councils and start afresh to stem the spread of tribalism failed. By 2017, the government was still talking about how greed, tribalism, and nepotism, had infiltrated institutions of higher learning, a scourge the Education Cabinet Secretary Fred Matiang’i said was undermining development and learning.[1137]

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On 27 October 2016, two law students of the Catholic University of Eastern Africa (CUEA) were arrested by EACC officers and charged in court on 16 November for allegedly attempting to bribe the deputy registrar of academic affairs, Caleb Opwora, with KES.820,000 to have their names included in the graduation list for a law degree they didn’t qualify for. The two, Jecinta Mugure and Joan Kariuki, denied the charge and were released on a bond of KES.300,000 each and a surety of the same amount. On 14 September 2017, the two were charged afresh with four counts of graft after the prosecution amended the charge sheet. In the meantime, the students were suspended from the institution for four academic trimesters, but they went to court and Justice Hedwig Ong'udi ordered their reinstatement, and said any other disciplinary action against them be stopped. The case was still in court at the end of 2017.

Chapter 38

Farce of elections in Kenya

DESPITE THE CHALLENGES it has faced over the years, Kenya is among a few countries in Africa where general elections have been held regularly as per constitutional provisions. But that does not mean the polls – a total of twelve presidential, parliamentary, and municipal council, elections since independence – have represented the best behavior in electoral practices.

Global requirements demand that elections must be free and fair to be considered democratic. “A country cannot be truly democratic until its citizens have the opportunity to choose their representatives through elections that are free and fair,”[1138] says the US Agency for International Development (USAID).

Unfortunately, most of the Kenyan elections have fallen short of acceptable international benchmarks. Rigging and stealing of votes, harassment of opposing groups, ethnicity, including state-sponsored tribal clashes, muzzling of the media, and corruption and bribery, have been the mainstay of elections in Kenya. Good laws have been used to manipulate legal electoral processes in ways that benefitted the elite. The end results have been violence and deaths.

It was not always that way. Though the elections conducted by colonialists before independence in 1963 were tailored to preserve the interests of British rulers and settlers in Kenya, they were nevertheless managed in a manner that left many, including Africans, satisfied that they were fair.

The first time Kenyans voted was in 1957 when they chose candidates to fill eight seats reserved for Africans in the Legislative Council (LegCo) through what was called a “restricted franchise”. Up to three votes were given to a qualified voter based on education, income, and government service.[1139] Since the country was still under emergency because of the Mau

Mau insurgency, only Kikuyu loyalists were permitted to vote. The elections were based on regional representation, and marked the beginning of ethnic-based polls under which candidates – except in cosmopolitan Nairobi – were picked on tribal basis.

Apart from the fact that there were separate constituencies for Europeans, Asians and Arabs, the March 1957 elections were held in a peaceful environment and most Africans considered them to be fair. Thirty-seven candidates offered themselves to contest the eight constituencies reserved for Africans. A total of 158,134 people participated with Central Province leading by almost half of all votes cast.

Daniel arap Moi, a Tugen, was elected to represent the Rift Valley; Masinde Muliro, a Luhya, was picked for a district then known as North Nyanza; Oginga Odinga, a Luo, Central Nyanza; Lawrence Oguda, a Luo, South Nyanza; J. N. Muimi Eastern Province; and Ronald Ngala, Coast Province. Tom Mboya, a Luo, beat another Luo, Clement Argwings Kodhek to win the Nairobi seat in a fierce competition. However, Central Province, with the largest number of Kikuyu people, did not elect a Kikuyu but a Meru, Bernard Mate.

Up to that time, the Kikuyu were not allowed to engage in political activities because of their support of the Mau Mau. Only those loyal to the colonial establishment could vote and only after careful screening by the district commissioner. Out of a population of 1,750,000 only 10,500 Kikuyu people were cleared to vote in the elections against 21,150 registered Meru.[1140] Mate won against Eliud Mathu, the first African nominated member of the LegCo who serve from 1944 until 1957.

Following demands by African members, six more positions were created in 1958 following the adoption of a new constitution known as the Lennox-Boyd Constitution named after the British Colonial Secretary of the time, Alan Lennox-Boyd. The additional seats brought the number of African representation in LegCo at par with that of Europeans. Those elected were Julius Kiano, Jeremiah Nyagah, Justus ole Tipis, Taaitta Toweett, and Francis J. Khamisi.

KANU, which was formed in Kiambu on 14 May 1960 under the acting chairmanship of James Gichuru – warming the seat for Jomo Kenyatta who was then in detention – was followed by KADU in June of the same year. Its top leadership consisted of Daniel arap Moi, Ronald Ngala and Masinde Muliro.

The first Lancaster House Conference in London in 1960 culminated in what came to be known as the "Kenyatta Elections" in 1961, the year the Kenyan leader was released. To expand the electoral space, the three-vote franchise, a colonial system that gave up to three votes to people based on their education, government service and income was dropped in favor of a one-person-one vote system. The 18-23 January 1961 elections were trouble-free and saw KANU win 19 seats out of a total of 53 seats, beating 10 other parties including KADU which got 11 seats and some independents. That election was the first most competitive in which everything, from ethnic factors to academic qualifications and party loyalty came into play. Kamukunji, then a predominantly Kikuyu constituency represented by Tom Mboya, was the best example of how tribalism and party loyalty forged a united front to produce quality leadership.

As Secretary General of KANU, Mboya had a strong political base in the capital city. He was also an ebullient mobilizer who got along with almost all communities. He had also won recognition for his "student airlift" initiative which sent Kenyan students to America for studies. His election `symbol was "*ndege,*" an airplane. The city had 27,000 registered Kikuyu voters out of approximately 40,000 eligible voters. The others were the Luo, the Luhya, and other smaller communities.

The Kikuyu elite, led by Dr. Julius Gikonyo Kiano, believed Nairobi "belonged to the Kikuyu" perhaps because of its proximity to Kikuyuland. Thus, they wanted one of their own to represent the city. They tried to convince leaders, including Gichuru, to take on Mboya but they all refused. Finally, Dr. Munyua Waiyaki, a physician who was already working closely with Mboya as the Nairobi branch chairman, took the challenge.

But even with their block numbers, the Kikuyu could not muster Mboya's polished campaign machine. When the results were announced, Mboya had won by a wide margin of 31,407 votes against Waiyaki's 2,668. That did not only reaffirm Mboya's command of Nairobi, but it also propelled him to the list of top contenders for the presidency after Kenyatta. Despite all the ethnic heat during the campaign, the election went on smoothly: no rigging, no violence.

1963

The May 1963 elections were the last to be held before Kenya attained self-governing status, and were based on the *majimbo* (regional) dispensation which was negotiated as a compromise solution to the constitutional disagreements which prevailed between the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). KANU wanted a centralized system of government while KADU demanded a regional system with a two-chamber Legislature, the House of Representatives and the Senate.

Kenyatta and KANU reluctantly agreed to the *majimbo* system of government to pave way for full independence later that year. The new structure was to consist of 117 elected and 12 specially elected members of the House of Representative and a 41-member Senate; regional assemblies in the eight existing provinces and regional presidents to supervise the day-to-day activities of the provinces.

The elections were held between 18 and 26 May with a total of 275 candidates as follows: 90 from KANU led by Kenyatta; 59 from KADU led by Ngala; 20 from the African People's Party led by Ngei; five from the Baluhya Political Party (BPU) of Masinde Muliro; three from the Coast People's Party (CPP), and 98 independents. KANU easily won capturing 83 out of the 129 seats in the House of Representatives, and 18 of the 38 seats in the Senate; KADU got 33 in the House and 16 in the Senate; African Peoples Party (APP) got 8 in the House and 2 in the Senate; and five seats in the House and 3 in the Senate were unfilled since the North-Frontier District boycotted the elections demanding the annexation of that part of Kenya into a Greater Somalia. In the Senate, the Nyanza Province African Union and an independent won one seat each.

The elections elicited neither complaints of rigging nor serious cases of violence except two incidents. One in Kangundo in Ukambani, when a group of people attacked KANU supporters leaving 14 people injured; and the other in Kitale when KADU supporters were attacked outside their party offices.

1966 Little General Elections

The only polls in Kenya's history that broke the established five-year circle of elections were the so-called "Little general elections" of 11 and 12 June 1966. The country was in a political crisis. Two of the most popular political personalities, Kenyatta and Odinga, had fallen out over matters of ideology and governance, undercutting the long relationship between the Kikuyu and the Luo. After the fractious KANU national delegates' meeting in Limuru in March that year, Odinga resigned as vice president and formed his own party, the Kenya People's Union (KPU). Following him were 28 MPs and 10 Senators among them two people who were in detention with Kenyatta: Achieng' Oneko and Bildad Kaggia.

Kenyatta pushed through a constitutional amendment in Parliament that said all the MPs who left KANU – the party that sponsored them to Parliament – must resign to seek a fresh mandate. Some opposition MPs and senators opted to cross over back to KANU to escape fresh elections but a total of 29 of them stayed put in the opposition. On 3 May 1966, Kenyatta reshuffled his Cabinet and appointed Joseph Murumbi to replace Odinga as vice president. With the shifting of positions in Parliament, the President had no option but to call for what came to be known as the "Little general elections" in June 1966.

Open for contest were 19 seats in the House of Representatives and 10 in the Senate. That election held between 11 and 12 June was also rigged. KPU candidates were stopped from holding public meetings and from using the national broadcaster – the only nation-wide media then – to disseminate their manifesto. Thus, the opposition was crippled from launching an effective campaign against KANU. On election day, numerous complaints of ballot box stuffing were reported, and once again, the government put its vast machinery at the disposal of KANU candidates. KPU won seven seats in the House against 12 for KANU, and two seats in the Senate against eight for the ruling party.

By restricting the movement of KPU contestants and stopping KPU from using the public radio during the campaign period, the government manipulated the ballot, and the "Little general elections" went into history books as yet another rigged election in Kenya.

1969

On 5 July 1969, Tom Mboya was shot dead on Moi Avenue in Nairobi triggering riots in Nairobi and Kisumu. At the time of his assassination, Mboya was the Minister for Economic Planning and Development. The Luo blamed Kenyatta for the killing which apparently was carried out by a

Kikuyu, Nahashon Njenga. Kenyans looked for any sign that could point the killing to the Kikuyu elite. Thus, there was a short-lived excitement when a photographer observed Kenyatta openly grieving during the requiem mass for Mboya at the Holy Basilica. This is how one writer narrated the story:

> President Kenyatta, his wife Mama Ngina and members of the government were seated awaiting the arrival of the coffin when, with a telephoto lens trained on the President, a photographer exclaimed: 'He is crying, Kenyatta is crying!' And indeed, he was: bending forward and raising a handkerchief to his eyes, the President seemed inconsolable.[1141]

Tensions were still high between the Luo and the Kikuyu when Kenyatta travelled to Kisumu on 25 October 1969 to officially open the Russian-built Kisumu Hospital. Mayhem erupted amongst the mainly Luo crowd and the police moved in with tear gas. When things calmed, Kenyatta lashed out at Odinga – who was present – blaming him for organizing the hecklers. Trouble escalated, and Kenyatta had to be rushed out of the venue as his security shot in the air to clear the way. The following day, Odinga and some of his top aides were rounded up and detained. Odinga was reportedly put under house arrest. A week later, on 30 October, KPU was banned.

On 6 December 1969, Kenyans went to the polls for the first election under the Republican constitution which scrapped the two-chamber parliamentary system and created only one House of Parliament – the National Assembly.

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The 6 December 1969 elections were not supervised by the Electoral Commission but by an electoral supervisor in the attorney general's office who registered voters and supervised the voting process. The first sign that rigging was at play was when chiefs were mobilized to intimidate voters suspected to be dissidents and when orders were given barring those considered opponents to the government from holding public meetings. Despite the absence of KPU, many Kenyans felt disillusioned by KANU policies and yearned for change. In Nairobi's Donholm constituency, the government deployed the crack General Service Unit (GSU) personnel to stop Luo voters from reaching the polling station, thus paving the way for the establishment candidate, Mwai Kibaki, to win – though narrowly – against Jael Mbogo who cried rigging.

Kenyatta's allies such as Mbiyu Koinange were rigged in while his nemesis such as Bildad Kaggia and Luo politicians J. G. Odero-Jowi and Samuel Ayodo were rigged out. The rot was at the balloting. Although Individual boxes bearing the candidate's name were placed at each polling station, there were no controls, and anyone could drop in more than one vote. In several cases, the district commissioners, who were the presiding officers, colluded with establishment candidates to manipulate the polls.

In some constituencies, ballot boxes were "stolen" and dumped in river beds. There was so much discontent in the elections that many people did not turn out to vote. Only 44.6% or 1.7 million voters cast their ballots out of 3.784 million registered voters. In Nairobi, only 50% turned out to vote.[1142] Five Cabinet Ministers out of 20 and 14 assistant Ministers out of 30 lost their seats; only 20 back-benchers were re-elected. The rigging claims resulted in 15 petitions being filed in court by aggrieved candidates, but only three were successful.[1143]

1974

Kenya was a *de facto* one-party state when the country went to the polls to elect a president for the 158 seats in the National Assembly on 14 October 1974. Several changes had been introduced in the electoral system since the last election including one that mandated that candidates had to have been life members of KANU for three years prior to the polls.

That affected dozens of candidates who had resigned from KANU in 1966 to form KPU, among them Odinga. The system of having one ballot box for each candidate at the polling station was replaced with a single ballot for use by all contesting candidates in the constituency. That election too was rigged both before and during the polls. The fact that ballot papers were printed by the Government Printer in a way that did not guarantee transparency, and government critics like J. M. Kariuki were barred from holding public rallies, exposed the elections to rigging claims. In addition, no measures were taken to stop candidates from buying voting cards or from double-registering. There were even reports that voters in Ukambani were forced to take oaths to vote for certain candidates.

After the votes were counted, 88 of the 158 MPs had lost their seats, among them four Cabinet Ministers and 13 Assistant Ministers. The biggest shock was that of Foreign Affairs Minister Njoroge Mungai, a member of the so-called “Kiambu Mafia” who lost his Dagoretti seat to Dr. Johnstone Muthiora. In 1975, he was nominated to Parliament.

1979

Upon Kenyatta’s death in 1978, President Daniel arap Moi, who had succeeded him, dissolved Parliament on 25 September 1979 and called for general elections in November. New rules were applied. Apart from the requirement that candidates must be KANU life members, they also had to be conversant with both English and Kiswahili. At nomination time, seven former KPU leaders including Oginga Odinga, Achieng Oneko and Luke Obok, were barred from contesting because of their incessant criticisms of government over corruption and human rights issues. The ban led to student demonstrations and closure of the University of Nairobi. As expected, there was no one to oppose Moi, and he was thus elected unopposed as President.

There was improvement in the number of people who came out to vote. Out of 5.6 million registered voters, 3.7 million cast their ballots. A record of 742 candidates offered themselves for the 158 parliamentary seats. Seven Ministers did not survive, so were half of the outgoing MPs. In addition to Moi, seven candidates sailed through unopposed: Mwai Kibaki of Othaya; Gitu wa Kahengeri of Juja; Nicholas Biwott of Kerio South; Peter Ejore of Turkana West; Justus ole Tipis of Narok North; Sampson Katurkana of Baringo East; and Francis B. Tuva of Malindi South. The elections were not devoid of rigging claims though. Foreigners who observed the elections declared it to be free and fair, but candidates complained of a myriad of malpractices ranging from bribery to stuffing of ballot boxes with already marked votes. Thirty-five losing candidates filed petitions in court.

1988

Something bizarre happened in 1988. The KANU governing council issued a landmark document entitled “The Kenya African National Union Nomination Rules” which decreed that party primaries be held via a queue voting system in which people would stand behind a candidate or his picture; and that any candidate winning 70% of the vote or more would be declared as having been elected unopposed. However, KANU branches were also given the option of voting by ballot. Only registered KANU members – numbering 4.5 million in a population of 20 million people – participated in the party primaries. More than 50 candidates secured their seats without ever going to the polls by being elected unopposed.

The strange system nicknamed “*mlolongo*” (queue voting) held in September 1988 was supposedly meant to help the illiterates vote without the use of ballot papers. In fact, it served to entrench authoritarianism and instill fear among those inclined to vote against Moi-approved candidates. On the nomination day, several abuses manifested themselves. Mercenary voters were bused in from the interior to stand in lines for certain candidates and cases of intimidation were reported. Because potential voters were exposed on the lines and could be identified, they risked harassment and attacks from KANU youth wingers. Another drawback to queue voting was that once a line broke, a recount could not be reconstructed.

However, there was something even more dubious and inexplicable about the queue system. It did not allow winners to be winners. In numerous cases, candidates with fewer people behind them were declared winners while those with much longer lines lost. A good example was the nomination in Tinderet, Rift Valley, where Henry Kosgey won by 9,385 votes against his rival Kimaiyo arap Sego who polled 3,600 votes. When the presiding officer announced the results, Sego had won. The official results gave Yego 14,449 votes against Kosgey’s 6,151.

Among the more prominent victims of ‘*mlolongo*’ was vice president Mwai Kibaki who angrily declared that, ‘Even rigging requires some intelligence. This scheme is by people who have no sense of intelligence. It is not rigging but direct robbery.”[1144] Soon thereafter the elections, he was replaced as number two by Dr. Josephat Njuguna Karanja. Kenneth Matiba, who was Minister of Transport and Communications, resigned in December 1988 after criticizing the matter in which the elections were conducted. He was immediately expelled from KANU. Although Shikuku had the longest queue, it was his rival with a shorter line, Jesse Eshikhati Opembe, who was declared winner. Opembe died in 1989, and when Shikuku stood to reclaim his seat during the by-election, he was again rigged out in favor of John Okwara. Charles Rubia contesting in Starehe constituency in Nairobi was rigged out, so was Ngengi Muigai in Gatundu, Eliud Mwamunga and Mashengu wa Mwachofi of Voi and Wundanyi constituencies, Paul Ngei in Kangundo, and wa Nyoike in Kinangop.

Such malpractices were reported throughout the country as KANU desperately worked to install only those officials seen to be most loyal to Moi. “This is not the Kenya and democracy we fought for,” lamented Cabinet Minister William Odongo Omamo.[1145] Sarah Elderkin, a political analyst claimed the 1988 elections were “the most scandalous ever conducted in Kenya, and sent to Parliament a large number of people who were never actually elected.”[1146] Even Moi himself agreed that the ‘*mlolongo’* system left a lot to be desired.[1147] Gabriel Mukele who later became Vice Chairman of Electoral Commission of Kenya(ECK) said in 2007 that the 1988 elections were “bogus and could be described as selections rather than elections.”[1148] In one incident in Ukambani where both queue voting and ballot papers were used, a cunning electoral official who hid ballot votes under a table was further investigated and found to have an additional 70 ballot papers in his pocket. He was arrested.[1149] Another historian felt that that year’s elections were “the most blatantly rigged ones in Kenya’s electoral history.”[1150]

1992

In December 1992, exactly one year after Moi ordered the repeal of Section 2A from the Kenyan constitution which barred all parties except the ruling KANU, Kenya prepared for its first multi-party general elections – the seventh election since independence but the first pluralistic polls in 27 years.

The move towards multi-partyism was not coincidental. Since the attempted coup in 1982 pressure had mounted on Moi both internally and internationally to end the *de jure* single party status which had existed for almost a decade. Moi had ignored all calls for electoral reforms. And when religious organizations took the moral high ground and criticized Moi for stifling democracy, KANU secretary general, Joseph Kamotho, denounced them declaring that multi-party politics “was an evil dream by a few clergymen on the payroll of foreigners.”[1151] Moi himself chipped in saying pluralism was a foreign ideology “peddled by some unpatriotic people with borrowed brains”[1152] and those who promoted it were “anarchists, rats and drug addicts.”[1153]

The Constitution of Kenya (Amendment) Bill which was passed by the all-KANU Parliament in August 1992, provided that a successful presidential candidate must obtain at least 25% of the votes cast in at least five out of the eight provinces, in addition to being elected an MP and receiving the highest number of popular votes. If the winner failed to secure the 25% in five provinces, then there would be run-off of the two top contenders. Those provisions worked for Moi whose KANU had tentacles throughout the country and against opposition leaders who relied on their respective ethnic groups.

Moi appointed a nine-member ECK in 1992 entirely composed of his supporters without consulting the opposition. Chaired by Judge Z. R. Chesoni, who was considered a puppet of Moi,[1154] the commission was to conduct elections that were to be "fair, impartial, and without fear or favor." Moi also got the commission to create 22 new constituencies in areas known to be KANU strongholds giving him an advantageous head start. He ensured that returning and presiding officers were either provincial government officials or retired civil servants who were loyal to the government.

No sooner had the Commission started work than Chesoni was plagued by a matter seen as a conflict of interest and potentially embarrassing. The *Independent,* the *Financial Times* of London and the *Daily Nation* on 12 January 1992 claimed that the Kenya Commercial Finance Company Limited, a subsidiary of the government-owned Kenya Commercial Bank (KCB), had "written off" Chesoni's debts amounting to KES.30 million before he was named Chairman. That immediately raised questions about the Judge's impartiality as head of the all-important electoral body.

However, Chesoni did not take the allegations lying down. On 20 January, he issued a press statement in which he denied the media reports saying they contained "substantial inaccuracies…. I take grave exception to these attacks on my reputation which are made with the sole motive of influencing international opinion on the election…"

In March 1992, an electoral code of conduct passed during the single-party era was revised to accommodate multi-partyism and ensure free and fair elections. Many opposition leaders saw that as the beginning of election rigging by Moi's government. But more malpractices were observed after the registration of voters started on 8 June.

Although 7.9 million voters out of a population of 25 million were registered, the International Republican Institute (IRI) reckoned that "as many as three million voters may have been disenfranchised," that the registration process was inefficient, voter lists were deliberately inaccurate, and logistical delays were devised to disenfranchise young voters. Officials deliberately delayed releasing identification cards, thus slowing the process of issuing voting cards. In addition, the voter registration period was "too brief to allow potential voters time to resolve problems in obtaining national identity cards. Also, the nomination period was "illegally shortened."[1155]

Nine political parties were registered to participate in the 29 December elections: the Kenya African National Union (KANU) led by President Moi; FORD-ASILI by Kenneth Matiba; FORD-KENYA by Oginga Odinga; the Democratic Party of Kenya (DP) by Mwai Kibaki; the Kenya National Congress (KNC) by Chibule wa Tsuma; Kenya Social Congress (KSC) by George Anyona; the Kenya National Democratic Alliance (KENDA) of Mukaru Ng'ang'a; the Labor Party Democracy (LPD) by Mohamed Ibrahim Noor; the Party of Independent Candidates (PICK) by John Mwau and the Social Democratic Party (SDP) by Johnstone Makau.

Only the first four parties, KANU, Ford-Asili, DP, and Ford K, were considered consequential. The others were small fringe parties whose agenda was largely regional. But even the larger parties did not escape the ethnicity tag. KANU for example essentially belonged to the Kalenjin and the Maasai and was associated with an amorphous group called KAMATUSA (Kalenjin, Maasai, Turkana, and Samburu). Matiba and Kibaki were both Kikuyu, though from different areas in Central Kenya, the former from Murang'a and the latter from Nyeri; and Ford-Kenya was largely a Luo and Luhya (Bukusu) party which was considered anti-Moi.[1156] Uniting these groups against Moi was a gigantic task.

Another malfunction in the 1992 elections involved the delivery of voting materials on election day. There was a lot of confusion due to a massive mix-up of ballot papers. Documents for one area were sent to another making it difficult for voters to find their names on voter lists. Another signal that the 1992 general elections were manipulated was the exclusion of opposition parties from any consultations by ECK. They were not invited to crucial meetings relating to "the design of the election law, the procedures for registration and election administration, the development of training materials or the training of election officials."[1157]

In a letter dated 15 October 1992 to Prof Philip Mbithi, Head of Civil Service and Secretary to the Cabinet (28 October 1991 to 29 February 1996), Ford-Kenya complained about the reluctance of the government to issue licenses to them to hold campaign rallies; saying although they had complied with laid out rules, they had encountered only difficulty and harassment.

"The Public Order Act is regulatory," the letter said, "and cannot be invoked to derogate or remove the fundamental rights and freedoms of the individual including the freedom of public assembly – which are protected and guaranteed in the constitution. It is therefore unlawful and immoral for the provincial administration to use this Statute to frustrate the efforts of FORD-KENYA and the opposition generally to hold public meetings."

Oginga Odinga said the shut-down of opposition rallies was against the government commitment to free and fair elections. "No election can be free and fair where one party has blanket authority to campaign freely, while the others must face obstacles mounted by the same party at every turn."

Another tool Moi used to frustrate the opposition was intimidation. On 17 November 1992, an ally of Odinga and outgoing MP for Kisumu Town, Job Omino, also Chairman of the Kenya Football Federation, received a warrant of arrest in respect of a debt of KES.54,195 for goods allegedly ordered on behalf of KFF in 1987. On the following day, he was served with yet another notice to pay KES.17 million allegedly owed to Lalji Meghji Patel & Company for unspecified goods. On the same day, the outgoing Kimilili MP, Elijah Mwangale, was served with a seven-day notice to pay KES.2 million allegedly owed to the National Bank of Kenya (NBK) or face bankruptcy charges. When he chose to remain in KANU, the matter was shelved.[1158]

But evidence of electoral malpractices emerged on 9 December when 40 parliamentary and civic opposition candidates were prevented by rivals from presenting their nomination papers. Specific cases involved candidates in Kaloleni and Ganze at the Coast; Kangundo in Ukambani; Turkana South in the north; Wajir in Eastern; Kajiado in Maasailand and Aldai in Western. Other cases were reported in the Rift Valley which Moi had declared a "KANU zone" and Central provinces. In some of the cases, opposition candidates were abducted, beaten up, arrested, and locked up for trivial reasons, while others were time-barred even as they stood in lines awaiting their turn to present nomination papers.

On 15 December, the chairman of the ECK responded to the FORD-KENYA complaints by merely saying: "The commission thinks that the issues raised in the cases…require investigation and should consequently be reported to the attorney general who under Section 26 (4) of the constitution of Kenya has powers to cause investigation to be made." In cases involving alleged violation of election rules, Chesoni promised to make amends.

Many of the candidates resorted to the High Court and Court of Appeal. After the nominations, the ECK was bombarded by not less than 70 complaints from opposition candidates who felt aggrieved by the faulty system. Eight of them filed cases in the High Court demanding that those candidates who had been disallowed by “felonious means” be permitted to contest. When the ECK said its decision was “irreversible” the High Court ruled that the commission “has the power to see that elections are held in accordance with the law, that the election process is free and fair, and the nominated candidates get access to the Returning Officers.”

However, the most widely-publicized cases were those dealing with candidates who were abducted as they went to present their nomination papers. The ECK appointed a five-man tribunal to hear the cases but concluded that the hearings could only commence in March 1993 well after the 29 December 1992 elections. But as the election date approached, the ECK agreed to allow the eight candidates to contest.

Another way the December 1992 general elections were rigged was the way KANU used government resources. State vehicles were rebranded in party colors and deployed for campaigns, government facilities were used to print posters, public offices were converted to campaign centers, and civil servants took time off from work to campaign for KANU candidates. Those activities disadvantaged the opposition and tilted the race.

The 1992 campaign was the first one in which huge sums of money were used by candidates in attempts to win seats. KANU paid candidates to defect and contestants openly bribed to influence votes. Operatives working under the banner of Youth for KANU ’92, a pressure group and such outfits as “Operation Moi Wins” and “Toroitich till 2000” (Toroitich is Moi’s middle name) – bankrolled by Moi and his associates – went around the country with wards of notes to facilitate the opening of offices and engage in direct vote buying. Some rough estimates put the money spent on vote buying at KES.6 billion (US$.60 million).[1159] Overall, parliamentary candidates spent far beyond the allowed ceiling of KES.40,000 allowed by Parliament in October 1992.

There were also allegations of use of exchequer money to fund campaign activities especially after the World Bank reportedly complained to the government about a suspicious increase in money supply into the economy – estimated at 40% – during the last quarter of 1992.[1160] It was alleged that the new bank notes were mostly dated 2 January 1992.[1161] The Central Bank of Kenya (CBK), however, denied that. FORD-KENYA alleged that the government had placed a special order of KES.9 billion in new banknotes from the money printer De la Rue of Britain purportedly for use in the campaign, and that money obtained from the Goldenberg scandal could be circulating to bribe voters.

During the 12 December Independence Day celebrations, Moi took an unusual step of rewarding Kenyans by raising the minimum wage by 12%. He upped travelling allowances for Muslims going to Hajj in Mecca and granted housing allowance to married women. Traditionally, minimum salary increases are an important expectation by workers on Labor Day, 1 May of every year. The surprise generosity announced on Jamhuri Day was therefore unprecedented and fueled whispers that it was intended as a bribe.

It was obvious from the time the one-party system was abolished that Moi and his Kalenjin people wanted to retain the presidency at all costs. The year 1992 was the first time in history that the position of the president was actively being contested. In the past General Elections of 1969, 1974, 1983, and 1988, the KANU candidate was automatically elected unopposed.

When the delayed results were announced, Moi had retained his seat by polling 1,962,866 votes against his nearest rival, Kenneth Matiba with 1,404,266 votes and Kibaki 1,050,617 votes. Oginga Odinga came third with 944,197 votes. Despite the fractious nature of the opposition, it garnered 3.3 million combined votes. Immediately after the elections, the three opposition leaders called a press conference to declare the elections rigged, and state that "we reject the results."

The opposition parties pledged to work together to initiate the necessary framework and modalities to prevent President Daniel arap Moi from assuming office claiming the elections were fraudulent. Moi ignored the protests, and he was sworn-in.

Were the 1992 General Elections free and fair?

The 1992 elections – the sixth since independence – attracted a lot of interest from international observers who wanted not only to see how Moi handled the first multi-party elections but whether, overall, the polls would be free and fair – a fundamental requirement in western democracies.[1162] The elections were also viewed "as a major event in the process of democratization."[1163]

Between 7,500 and 10,000 election observers from local civil societies, governments and NGOs flooded the country and fanned out to polling stations.

Not everyone was happy about the “invasion” of election observers especially their reports and comments before the elections. When the International Republican Institute (IRI) accused the government of “systematic manipulation of the administrative and security structure of the state to the ruling party’s advantage,”[1164] the chairman of YK ’92, a KANU youth pressure group, Cyrus Jirongo, fired back telling the government to cancel the IRI accreditation and deport its officials.

There was a total of 7,000 polling stations and 10,500 “streams” which were additional voting facilities to service stations with large voter populations.

The largest local observer organization was the National Election Monitoring Unit (NEMU) composed of religious organizations and chaired by the secretary general of the National Council of Churches of Kenya (NCCK), Rev. Samwel Kobia. It had 20 members in what was called a ‘council of elders’ with a mandate to supervise all local monitoring groups and to educate people on the nuances of a free and fair election. While NEMU concentrated on a long-term exercise of monitoring everything before and after the polls, the observer missions concentrated their activities on election day and vote counting.

No wonder, NEMU was the first organization to declare soon after the election that the process had been “seriously compromised,” and in its final report a few months later, declared conclusively that the elections were not at all free and fair.

The IRI concluded in a report signed by Edward Stewart on 4 January 1993 that the electoral environment was “unfair and the electoral process seriously flawed.” It noted the disenfranchising of potential voters, improprieties related to registration lists, lapses in provision of voting materials, lack of security of ballot boxes and delays in counting and reporting of results, as some of the shortcomings that dogged the elections. They also talked of bias in the media in favor of the ruling party, harassment of candidates, and lack of restraint characterized by expressions of intolerance and vitriolic language by politicians across the political spectrum.

All that, the IRI said, may have been efforts to manipulate the process and undermine the commitment to democracy by Kenyans.

Also discovered by observers were incidences of ballot stuffing. In at least 40 constituencies, the number of presidential and parliamentary ballots did not match by as much as 800 papers, indicating some form of rigging had taken place.[1165] KANU dished out cash which the opposition claimed came from money obtained fraudulently from the Goldenberg scandal; distributed t-shirts; and gave voters food. The *Nairobi Weekly Observer* even claimed that a non-government organization, the Kenya Rural Enterprise Program (K-Rep), gave loans to voters on condition that they voted for KANU.[1166] It was also reported that KANU bribed opposition candidates to defect. Between nomination day on 9 December and polling day, more than 50 candidates crossed the floor into the ruling party.[1167] Provincial administrators including provincial commissioners (PCs) and district commissioners (DCs) openly campaigned for Moi's party alongside members of the YK'92 youth group. On 5 October, Moi warned that any civil servant found to be campaigning for the opposition would be dismissed.

The campaign period was also not devoid of petty violence incidences. Two cases are worth noting; one involved a politician Raphael Wanjala who was fined KES.50,000 for assaulting a returning officer, and in the other, KANU was fined KES.100,000 after one of its followers was found culpable of assaulting a Cabinet Minister. The two cases were among eight cases of alleged breaches of the code of conduct heard by the ECK.

Several international observer missions had misgivings about the way the 1992 elections were conducted. A Norwegian independent research body, Chr. Michelsen Institute, reported that pre- and post-election events including the "importation" of voters from one area to another, unlawful voting by Somali refugees in government-run camps, and blatant rigging in which clerks manipulated illiterate voters by putting wrong marks on ballot papers, "cast very serious doubts indeed on their freeness and fairness."[1168]

The Commonwealth observer team admitted it was difficult to evaluate the elections in terms of freeness and fairness but said "some aspects of the elections were not fair" and mentioned lack of transparency on the part of the ECK, intimidation, administrative obstacles and violence; the partisanship of the state-owned radio and television; and the reluctance of the government to delink itself from KANU party as some of the issues that messed up the process.[1169]

Another report by the Scandinavian-Canadian Election Monitoring Team signed by Arne Tostensen dated 2 January 1993, blamed ethnic clashes and “incidents of provoked political violence” in some parts of the country, claiming they didn’t create an environment conducive to free elections.

1997

The period between 1992 and the next elections in 1997 was marked by several disturbing events. In January 1994, fresh tribal clashes occurred in the Rift Valley. Thousands of Kikuyu living in Trans-Mara sub-district of Narok province vacated their homes and farms following a series of attacks by the indigenous Maasai. According to the Human Rights Watch-Africa, 40,000 Kikuyu fled the area having lost property worth an estimated KES. 40 million. A month later, Kalenjin raiders calling themselves “tribal executioners” attacked the Kianjogu village in Laikipia district, leaving one dead and several injured.[1170] The attacks were directed at the Kikuyu but also at other communities who were known to oppose KANU. Violence was also reported in other places with devastating consequences.

At the coast, attacks were sustained against upcountry people south of Mombasa. Six weeks after the raid of the Likoni police station, the provincial security intelligence officer at the Coast, Shukri Baramadi, alerted senior government officials in Nairobi about illegal oathing activities involving groups of anti-KANU youths in Likoni and Kwale binding them “to cause civil disobedience and other acts of lawlessness during the election period.”[1171] He reported that the youths were armed with two riffles and one pistol stolen from the Likoni police station and intended to recruit 7,763 others including some 800 servicemen and ex-servicemen for their nefarious mission.

In investigations that followed, several politicians allied to the ruling party were implicated in the clashes both in the Rift Valley and at the Coast and found there was a high-level cover-up among senior police officers.

There were 15 presidential candidates in the 1997 elections from 24 parties. By that time, Ford-Kenya had split into two factions. Its leader, Oginga Odinga, had died in 1994 and an ensuing power struggle between Michael Kijana Wamalwa, a Luhya, and Odinga’s son Raila, led to the latter bolting out to form his own organization, the National Development Party (NDP). If that was not enough, the Ford brand was further fragmented with another Luhya faction forming Ford-ASILI and the Kikuyu registering Ford-People. The once powerful Ford-Kenya which had led protests for reform and had some of its most valuable leaders detained was a pale shadow of itself at a time when unity was essential to depose Moi. Either because of personal differences or sheer power greed, five Kikuyu candidates offered themselves for the presidency in 1994, with Kibaki being the most credible one.

Like in 1992, violence preceded the 1997 elections. Several people including police officers were killed in Nairobi and in other areas during a one-day country-wide general strike called by the opposition on 8 August to protest Moi's reluctance to institute political and economic reforms. The government declared the strike illegal and deployed security forces to clobber demonstrators – among them students of the University of Nairobi – in the most brutal way.

The media reported that at least five people were killed. People everywhere were alarmed by the brutal attacks on protesters they saw on television, and human rights groups and religious groups called for dialogue. "We cannot continue with this kind of hooliganism and violence," said Zacchaeus Okoth, a Catholic Bishop. "We do not want to see a violent country where anarchy prevails. All interested parties must start constitutional talks immediately to steer Kenyans through this difficult period."[1172]

As the government struggled to contain that situation, the Coast region exploded into violence on 13 August 1997 linked to secession causes: police stations were attacked, property destroyed, and thousands of upcountry people ran out largely from the south Coast. Scattered violence was also reported in western Kenya. All this was happening only five months before the elections on 29 December 1997.

The new electoral code of conduct was introduced in 1997 as an amendment to election laws to help ECK deal with all campaign activities. It bound candidates and the government from engaging in intimidation and violence and publishing or repeating false, defamatory or inflammatory allegations against candidates. At the same the same time, the constitution was amended requiring the winner of presidential elections to garner at least 25% of the vote in five out of eight provinces. The ECK was empowered to impose penalties and sanctions on parties, candidates and their supporters who violated the 1997 electoral code of conduct. The penalties would be determined by the Commission. The overall objective was to ensure the execution of free and fair elections.

However, rigging did take place. Ballot papers were sent to wrong constituencies, or arrived late due to logistic problems, resulting in delays in voting in many stations. The exercise had to be extended in some areas for another day. There were several instances of voter bribery, intimidation of candidates, and missing ballot boxes. In at least one constituency, ballot boxes were burnt. In some constituencies, voting went on beyond the official hours, and in one reported case in Nairobi, voting allegedly took place in a hotel. Those irregularities were acknowledged by observers,[1173] including the Institute for Education in Democracy (IED), Catholic Justice and Peace Commission (CJPC). But complaints of rigging did not just come from the candidates. Moi too complained. In a statement on the State-run broadcaster, KBC, he accused the ECK of “a scheme to rig the ongoing general elections in favor of the opposition.”

Once again, KANU depended on government officials to campaign on its behalf. Active participation of PCs, DCs, DOs and parastatal officials was noted in Eldama Ravine, Samburu and Turkana, in the Rift Valley Province; Moyale in Eastern Province; and Mt. Elgon in Western Kenya.[1174]

Fourteen opposition candidates offered themselves for the election against Moi, but the most credible contestants were Kibaki of the Democratic Party, Raila Odinga of the National Development Party, Wamalwa Kijana of Ford-Kenya, and Charity Kaluki Ngilu of the Social Democratic Party (SDP). From this proliferation of parties, it was clear the opposition was shamefully divided mainly on ethnic lines. No one was happier than Moi who was expecting to serve his last term in office, as per the new constitutional amendments.

The opposition platform was similar: they blasted Moi for everything from land grabbing, to tribalism, nepotism, corruption, and highhandedness. At one time, Kibaki even accused the regime of outright theft from public coffers. “This government is full of thieves,”[1175] he remarked.

Despite all the protests over a mountain of irregularities, Moi sailed through in the polls with a not a so impressive margin of 40%, with Kibaki coming second. Moi won 2,500,865 votes against Kibaki's 1,911,742, and Raila's 667,886. Moi was sworn in for the fifth full term.

2002

These were the third elections since the country adopted a multi-party system at the end of 1991. 1992 was the year when President Moi endorsed Jomo Kenyatta's son Uhuru Muigai Kenyatta as KANU's candidate against protests from long-standing politicians like Raila Odinga, Kalonzo Musyoka, Joseph Kamotho and George Saitoti.

Nominations for presidential elections were carried out on 18 and 19 November 2002, while those of parliamentary and civic candidates took place on 25 and 26 November. Out of the eight presidential candidates, only five were considered validly nominated by their political parties. They were Uhuru Kenyatta (KANU), Mwai Kibaki (Narc), Simeon Nyachae (Ford-PEOPLE), James Orengo (SDP) and David Waweru Ng'ethe (Chama Cha Umma). However, the strongest competition was between Uhuru and Kibaki, both Kikuyu. While Kibaki's campaign focused on reforms to end corruption, the message from Uhuru was murky. Uhuru was locked between defending Moi's bad policies and denouncing them altogether. He chose the former and that automatically sealed his fate.

During the party nomination exercises in November 2002, all parties faced confusions and chaos. Like the infamous queue voting, "*mlolongo*" method in the 1988 general elections when voters lined up to be counted resulting in a rigged process, the KANU party nominations in 2002 too followed that system becoming embroiled in criticisms and complaints, while Narc opted for both secret ballot and queue voting in some areas. In many places people refused to line up unless candidates bribed them. In the Narc "secret ballot" nominations, the use of buckets for ballot boxes provided avenues for polling clerks to stuff the ballot boxes with marked papers. The Kenya Domestic Observation Program (K-DOP) said the whole nomination process "was the most shameful, dirtiest, and violent phase of the 2002 general elections."[1176]

The campaign period was also not devoid of petty violence incidences. Two cases are worth noting; one involved a member of Narc, Raphael Wanjala, who was fined KES.50,000 for assaulting a returning officer, and in the other, KANU was fined KES.100,000 after one of its followers was found culpable of assaulting a Cabinet Minister. Both cases were adjudicated by the ECK in 2002.

A total of 14,750 polling centers were established with streams that brought the total to 18,366 polling stations with each station catering for a maximum of 1,000 voters. Scattered incidences of violence were reported, but the scale was well below what was seen before and during the 1992 and 1997 elections. Amnesty International however raised concerns about widespread intimidation "with attacks being suffered by candidates and supporters on all sides." It claimed an assortment of weapons including sticks, stones, a sword and in one instance in Mount Elgon region, a pistol and two automatic assault rifles were used. Several people were killed.[1177]

It was during the run-up to the 2002 elections that the *mungiki*, an urban militia group, emerged as a menacing force for elite Kikuyu politicians. Some called it a youth social movement opposed to Moi's kleptocracy,[1178] but many saw it as an instrument of violence aimed at anyone who stood against Kikuyu supremacy.

The Carter Center which observed the elections reported that the elections were "conducted in a peaceful and tolerant manner," but did not fail to note that one-third of the polling stations opened late, officials were slow in processing voters forcing people to stay longer in lines and the voting process itself was cumbersome. Many voters' names were also missing from registers and "a considerable number of Kenyans were unable to cast their ballots."[1179] Many polling booths were not covered and deprived voters of secrecy.

Those were not the only faults in the 2002 polls. There was massive vote buying throughout the country with illiterate women, the poor and youths being the main targets of manipulation. Money was the biggest motivator of voting in rural constituencies. Bribery also took the form of "cash, t-shirts and food in exchange for votes."[1180] There were no reports that anyone was arrested for those misdeeds, but those caught with more than one voting card were nabbed and prosecuted. However, no serious cases of cheating were detected and many still consider the 2002 elections the only fairest polls since independence.

On 29 December 2002, ECK Chairman Samuel Kivuitu, declared Mwai Kibaki the winner of the presidential elections. He took away 61% or 3.6 million votes beating Uhuru who got only 1.8 million. In the parliamentary elections Narc won 125 seats, KANU 64, Ford-PEOPLE 14, while Safina, Ford-ASILI and Sisi kwa Sisi two each, and Shirikisho Party of Kenya one seat. Gideon Moi was elected MP unopposed to represent Baringo Central, the constituency that had been held by his father since 1955.

That was the first time KANU was out of power in 39 years.

2007

Two years after the rejection of the 21 November 2005 constitutional referendum, Kenyans went to the polls. In 2007, the stakes were much higher than they had been at any election since the first multi-party elections in 1992. The government was deeply divided. Several Cabinet Ministers and their assistants sacked by President Kibaki after the defeat at the constitutional referendum were now entrenched in the opposition.

The first signs of election rigging were seen early in 2007 when Kibaki chose to appoint nine new commissioners of the ECK without consulting the opposition as agreed in 1997 by the bipartisan Inter-Party Parliamentary Group (IPPG), which set out guidelines to ensure the independence of the elections. Kibaki used the same method of appointment as terms of more commissioners expired, including the reappointment of Samuel Kivuitu as chairman three weeks before the elections.[1181]

Those seen not to be in tandem with the government, such as Vice Chairman Mukele were removed and replaced by politically correct individuals, leaving only three experienced officials who had previously supervised elections – Samuel Kivuitu, Jack Tumwa and Kihara Muttu. The rest were plucked out from different sectors, some closely associated with the President. As lawyers, commissioners Muturi Kigano and Muttu, were known to have represented the President and his family in lawsuits, while one commissioner was married to a parliamentary candidate in Kibaki’s Party of National Unity (PNU). Out of the total 22 commissioners 19 were appointed by Kibaki.

The opposition bitterly condemned the changes even though they knew, the IPPG agreement notwithstanding, the appointments to the ECK was, according to the Constitution, the sole prerogative of the President.

Another sinister attempt by the government through the ECK to rig the elections was a proposal to create 60 new constituencies under the guise of rationalization. Though review of constituencies was permitted by the constitution every ten years – and the last review was in 1997 when 12 new constituencies were added to the roll largely in Moi's strongholds – the move was undoubtedly another ploy to pump up representation favorable to Kibaki. The argument was that constituencies such as Kasarani, Lang'ata and Embakasi in Nairobi had the same number of MPs as equally larger constituencies with smaller populations. The opposition vehemently opposed the proposal and wanted the total number of MPs maintained at 210.

ECK's ability to carry out a free and fair election had been tested in five by-elections in July 2006 and was found wanting, casting doubts about its capacity to conduct general elections the following year. The by-elections were occasioned by a plane crash that killed five MPs representing Nakuru Town, North Horr, Saku, Laisamis and Moyale, who were travelling to northern Kenya to reconcile warring tribes.

In the by-elections, the electoral body could not prevent widespread malpractices that included the transportation of voters from one area to the other; faulty registers; inappropriate use of government resources for electioneering; and bribery, among others. What happened during those by-elections was only a harbinger of what was to come in the 2007 general elections.

There were nine presidential contestants, 2,548 parliamentary and 15,332 civic candidates representing 117 political parties. Three parties, Kibaki's PNU – a coalition of 15 parties; Odinga's ODM which split into two on 14 August 2007 over who should be the presidential flag bearer between Raila Odinga and Kalonzo Musyoka; and Musyoka's ODM-Kenya were the main contending parties. The rest were: Kenya Patriotic Trust Party (KPTP) of Joseph Karani; Kenya People's Party (KPP); Workers Congress Party of Kenya of Nazlin Omar; Saba Saba Asili of Kenneth Matiba; Chama cha Umma (CCU) of David Waweru Ng'ethe; and Republican Party of Kenya (RPK) of Nixon Kukubo.

The elections were the most competitive in the country's electoral history and the most expensive, in which an estimated KES.6 billion (US$.75 million) was spent by the main presidential candidates Kibaki and Raila, according to a study of the Coalition for Accountable Political Financing (CAPF).[1182] It was also one of the most widely rigged elections.

> "The polls were a messy business for a number of reasons. The voters' rolls had been poorly updated or at times not updated at all.

> [Names of] some dead people were still on the rolls and electors who had changed residence had not been properly struck off in one place and re-registered at their new address."[1183]

Ballot papers arrived late at polling stations precipitating late start of polling. Some polling stations were permitted to close late to compensate for the hours lost, others didn't. There was a serious mix-up of ballot papers with some upcountry polling stations receiving documents meant for stations at the coast, hundreds of miles away. The government had to use aircrafts to sort out the mess, further delaying polling. Reports were also received of missing names on ballot papers and bribery of voters across the country.

On top of all that, the government-controlled media spent a lot more radio and television time covering Kibaki and his party. The European Union Electoral Observation Mission (EUEOM) reported that the KBC radio favored the ruling party with a 76% share of coverage compared to only 13% for ODM and 5% for ODM-Kenya. Similarly, on the public-owned television, PNU received 71% of the share of coverage against 11% for ODM and 5% for ODM-Kenya.

Unlike in the 1992 and 1997 elections, there were no pre-election conflicts leading to notable violence because "politicians did not attempt to use violence to influence voters' preferences before they went to the polls."[1184] However, disruptions of political rallies did occur, and messages of hate were circulated by unknown people to incite violence. And like in previous elections, ethnic-motivated clashes were reported especially around Molo in the Rift Valley and most of the deaths occurred there. According to some media reports, 40 people were killed in pre-electoral violence during the month of December.[1185]

Ballot boxes were allegedly stuffed with votes favoring Kibaki. "They added 5,000, 10,000, 15,000 – whatever they wanted. It was bizarre. We had results which were quite outrageous." Koki Muli, a senior Kenyan observer, said. This is how one analyst put it:

> In some constituencies, the total announced for Mr. Kibaki at electoral headquarters in Nairobi was higher than that announced at regional tallying centers in the presence of foreign observers. An additional 25,116 votes were added in Molo and 17,677 in Kieni. In North Imenti, Mr. Kibaki won 78,684 votes, but official ECK results gave him an extra 5,324. In a handful of constituencies

> where Mr. Odinga was strong, the results were reduced by election commission officials in Nairobi. In Changamwe, Mr. Odinga won 28,340 votes to Mr. Kibaki's 14,813. However, the official result announced at the election headquarters showed Mr. Odinga with 17,706 votes and Mr. Kibaki with 9,366. [1186]"

The tallying of votes went on in secret for three days allowing officials ample time to alter documents, issue falsified counts from polling stations, and finally declaring Kibaki the winner by 231,728 votes out of an estimated ten million votes. The whole operation was presided over by Kivuitu and a few pro-Kibaki supporters and was fraught with serious discrepancies. At one time, Raila was leading by one million votes, but two days later, that majority had vanished. Conversely, in exit polls taken by the International Republic Institute (IRI), Raila had won by an 8% margin. The results "were announced even when documents were missing, incomplete, unsigned by officers or party representatives,"[1187] said one report. Even some of the commissioners admitted the tallying was doctored.

The Commonwealth Observer Group concluded in its final report that the "Electoral Commission of Kenya has not succeeded in establishing integrity of the tallying process, thereby bringing the validity of the election results into question." The EUEOM concurred that the elections were well conducted, and singled out the new system of counting votes at constituency centers as properly organized in an open and transparent manner. The IRI noted that "improper activities were isolated…(and)…were not widespread or systematic violations of voters' rights." However, it reported instances of improper assistance to voters and bribing. In several cases, the IRI report said, party agents were roaming around the room, including going behind the voting booth and walking around the polling area.

The testimony of David Mozersky, Horn of Africa Project Director for the International Crisis Group, to the US Senate Committee on Foreign Affairs laid bare the magnitude of rigging in the 2007 elections:

> Two instances of rigging appear to have taken place during the tallying process: one at constituency level and one at central (tallying) center. When he was in opposition, Uhuru Kenyatta spoke of Kibaki as the "see nothing evil, hear nothing evil, and do nothing" President. The remarks directed at his godfather were viewed as "insubordination bordering on treason," according to one

> journalist. The first happened throughout the country, with the posting of returning officers by ECK commissioners in their respective provincial strongholds, who tamped with the results of the vote count and sent Nairobi inflated returns for their preferred candidate and deflated results for his opponent.
>
> The second instance of rigging was within the ECK premises in Nairobi. The results were arbitrarily changed to give President Mwai Kibaki a 230,000-vote victory…From 29 December onwards, senior ECK officials changed results coming from the constituency tallying centers or endorsed results which had already been changed, and gave instructions to subordinate staff to accept and compile them without supporting documentation.[1188] The report said both ODM and PNU were involved in rigging the elections.

In the parliamentary elections, ODM won 99 seats; Narc 3; PNU 43; PNU affiliates 21; ODM-KENYA 16; and KANU 14; independents 11; totaling 207 seats. Elections in three constituencies: Kamukunji in Nairobi, Kilgoris in the Rift Valley, and Wajir North in North Eastern Province, were cancelled due to claims of irregularities and were to be repeated.

Within hours as the sun set in the horizon, Kibaki was sworn-in at a hurriedly-convened ceremony at State House. The ceremony was so rushed that some guests were seen literally running to their seats after the swearing-in had begun.[1189]

Even with the defaults, the first recognition of the presidential election by a foreign nation came from the United States which congratulated Kibaki for his re-election and declared that "those alleging vote tampering may pursue legal remedies and should be able, consistent with respect for freedom of speech, to make their case publicly."[1190] It took almost two weeks for Washington to admit that "serious flaws in the vote tallying process had damaged the credibility of the process."[1191] On 2 January 2008, Kivuitu admitted in an interview with *The Standard* that the elections had been so jumbled; he himself did not know whether Kibaki actually won the elections.[1192]

Barely minutes after the announcement of the election results violence burst out. Youths from the Kibera slums on the fringes of Nairobi, armed with crude weapons, went into a rampage destroying property and attacking innocent people in a fit of extreme anger and rejection. The Luo invaded

Kikuyu neighborhoods chasing the Kikuyu, and Kikuyu gangs retaliated by running the Luo out of their houses. From early January in the Rift Valley, the Kalenjin showed no mercy on their long-standing enemies, the Kikuyu and went out on a rampage to drive them out of their areas. Houses and churches were torched, and tens of thousands of people fled their homes and into camps run by the Kenya Red Cross and other NGOs. Militias armed with arrows, bows and machetes retaliated against attackers everywhere.

Mungiki – started as a group of extortionists that charged a fee for every *matatu* (commuter buses) plying routes in Nairobi, Central and Rift Valley Provinces – had graduated into an armed militia in the pay of political leaders. One described it as a “bizarre cross between pre-Christian Kikuyu neo-traditionalism and an extortionist gang.”[1193]

For several days, the humongous slum areas of Mathare, Korogocho, Kibera and Kawangware outside Nairobi spit out protesters into Nairobi CBD, looting and harassing motorists. When security forces moved in ostensibly to quell the fights, they allegedly targeted opposition supporters and provided support to pro-government gangs.”[1194] In Nairobi, thousands of people sought shelter at the Jamhuri show ground on the fringes of the city while in other places, churches served as refugee centers for hundreds or thousands of internally displaced persons (IDPs).

The 2007 post-election violence was nothing like anything Kenyans had seen since independence – paling by far the tribal clashes of 1992 and 1997. A few days after the turmoil began; the government banned opposition rallies and shut down all live media broadcasts to stop real time coverage of what was happening on the streets. One report listed 350,000 IDPs in camps,[1195] and some 900 women and girls were reportedly raped with many unknown cases not officially reported, according to the Human Rights Watch.[1196]

As the violence spread, the international community moved in to find common ground among the adversaries. The first intervention came from Ahmad Tejan Kabbah from the Commonwealth Observer Group and was almost immediately followed by AU chairperson, President John Kufuor of Ghana; the Africa Forum composed of eminent personalities: former Presidents Joachim Chissano of Mozambique, Ketumile Masire of Botswana, Benjamin Mkapa of Tanzania and Kenneth Kaunda of Zambia. More high-level interventions came from the UN Secretary General Ban Ki-moon, South

African Archbishop Desmond Tutu, and US officials Condoleeza Rice and her deputy in the State Department, Jendayi Frazer.

Former UN Secretary General Kofi Annan arrived in Kenya on 22 January 2008 and a week later launched the Kenya National Dialogue and Reconciliation Talks.

Finally, on 28 February, almost exactly two months after the elections, a national accord was reached between Kibaki and Raila signaling the official end of the post-poll violence and the beginning of reforms to ensure "sustainable peace, stability and justice in Kenya through the rule of law and respect for human rights." The accord which allowed for the creation of the Grand Coalition government with a premiership position for Raila was eventually entrenched in the Constitution.

In March, a body to investigate all aspects of the 2007 violence called the Independent Review Committee (IREC) was formed to make recommendations for improvements in the electoral system. Chaired by a South African Judge Johann Christiaan Kriegler it found many malpractices that made it impossible to establish who won the elections.

2013

Between 2007 and 2013 when new elections were held, the country was generally peaceful. It was a time of reconciliation and reflection and one that would be remembered because of the summons from the International Criminal Court (ICC) for six senior Kenyans to appear in court at The Hague, Switzerland, to answer charges related to the 2007/2008 post-election violence: Uhuru Kenyatta, William Ruto, Francis Muthaura, Mohamed Hussein Ali, Henry Kosgey, and Joshua arap Sang.[1197] The summonses were issued in 2010 the same year a new constitution was adopted through a referendum bearing sweeping reforms in the executive, Judiciary and the Legislature. The constitution of Kenya, 2010, provided for two levels of government a national and a devolved government. It also introduced two legislative Houses, the National Assembly and the Senate with an expanded membership. It also introduced more elective posts: Women representatives for affirmative action and 47 County governments each led by a governor and County assemblies (with several MCAs). With a more broad-based Independent Electoral and Boundaries Commission (IEBC) in place, the country was ready for elections.

To improve the voting process and reduce incidences of fraud, the IEBC decided to use Biometric Voter Registration (BVR) kits, but that came with new challenges both technically and administratively. Bureaucracy in procurement delayed delivery of the equipment, and when the kits finally arrived, officials had to be trained. It was soon discovered that the equipment was not entirely reliable as it frequently broke down when tested. Nevertheless, registration of voters was successfully carried out throughout the country, and in the process, 20,000 voters who had registered more than once were identified and expunged. IEBC announced the final number of voters as 14,353,533.

What remained was the date of the election. Kibaki and Raila could not agree on the timetable of dissolving the government and holding polls, so IEBC went ahead and announced 4 March 2013 as the polls date. That initiated numerous petitions to the High Court by civic organizations. Kibaki and a section of MPs favored a December date which is the traditional election month; others wanted the constitutionally-agreed month of August be upheld. However, Prime Minister Raila contended that mid-year polls would disrupt the school calendar and interfere with the preparation of the annual financial statements of revenue and expenditure which, according to Article 221 (1) the constitution, must be submitted to Parliament at least two months before the end of the financial year on 30 June.

Finally, in January 2012, Appeal Court Judges Isaac Lenaola, David Majanja, and Mumbi Ngugi, ruled that presidential and parliamentary elections must be held by March 2013, 60 days after Parliament ended its five-year term. So, 4 March 2003 it was.

In the meantime, the IEBC announced drastic changes to the operating procedures including barring those who lost in party primaries in one party from defecting to other parties after midnight 18 January 2013. Political parties were also required to nominate candidates at least 45 days before the elections. For the third time, Raila Odinga was in the field as a candidate of the opposition ODM. His main challenger was Uhuru Kenyatta – representing The National Alliance (TNA) Party – who ganged up with William Ruto of United Republican Party (URP), leader of the populous Kalenjin ‘nation’ “against the rest of the country in what became known as the ‘tyranny of numbers’.”[1198]

Apart from small scattered incidences of violence, the period heading to the elections was peaceful. However, the situation on the polling day did not augur well for a smooth election. There was a complete collapse of the biometric kits in some polling stations forcing officials to resort to a slow, manual process that delayed polling and caused frustrations among voters. Many votes were nullified at counting because they were placed in wrong ballot boxes, and illiterate voters were manipulated by corrupt officials who, in helping them to mark the papers, used that opportunity to vote for candidates of their choice.

At the Coast, voting was disrupted by goons of the secessionist group, the Mombasa Republican Council (MRC) who violently attacked police and polling stations forcing officials to shut down centers or opening them late thus depriving many voters the opportunity to cast their votes. The worst affected area by the MRC attacks was Kilifi North where two people were killed and several injured at Chumani polling station on the eve of the polling day. Overall, 23 people were killed in the violence at the Coast, among them 10 police officers.

And although rules mandated that votes be counted at the polling station in the presence of candidates' agents, ballot boxes in Kilifi North were moved at night to the County offices and then to the nearby Pwani University by electoral officials. Despite protests, election officials ignored them and went ahead to announce winners. Contenders including those who stood for positions of governor and senators filed cases in court, but their cases were thrown out and they were ordered to pay hefty penalties.

In the presidential race, the Virtual Private Network (VPN) system which was to relay results from polling stations to the central tallying center in Nairobi crashed delaying the results beyond the 48-hours deadline promised by the IEBC. That forced officials to resort to manual tallying which was slow. It was only until the morning of the third day that results were announced, giving Uhuru a narrow win of 6,173,433 or 50.07 votes against 5,340,546 votes for Raila or 43.31%. Musalia Mudavadi of the United Democratic Forum (UDF)/Amani Coalition got 483,981 votes, while Peter Kenneth of KNC, Mohamed Abduba Dida of Alliance for Real Change – Kenya (ARK), Martha Karua of Narc-K, James Kiyiapi of Restore and Build Kenya (RBK), and Paul Muite of SAFINA all garnered less than 80,000 votes each. A total of 12,330,028 votes were cast.

Although some observers declared the electoral process "transparent," Raila charged that the management of the 2013 elections under the IEBC was far worse than those organized previously by the ECK saying, “rampant illegality” marred the elections.[1199] His call for a recount of votes claiming that the votes cast exceeded the number of registered voters was rejected.

However, unlike in 2007 when he called his supporters to take to the streets to protest the results, Raila refused to concede and days later filed a petition in the Supreme Court claiming the elections were not free and fair and were not administered in an impartial, neutral, efficient, accurate, and accountable manner as required by the constitution. Raila Odinga’s almost a dozen lawyers submitted troves of documents to prove his case, but Uhuru Kenyatta’s side called the case malicious arguing there was no validity to the evidence presented.

On 30 March 2013, the Supreme Court delivered its ruling. It ruled the elections were conducted in a free, fair, transparent and credible manner; and that Uhuru and his Deputy, William Ruto, were validly elected. “The court has now spoken,” Raila told Kenyans immediately after the ruling. While saying he would abide by the Court’s decision, he quipped: “I did not lose. It’s Kenya that has lost.” The Supreme Court decision generated scattered violence, but not to the level seen following the 2007 elections.

Even the government-run National Crime Research Center agreed the elections were manipulated and singled out politicians, party officials and agents as among those who committed election crimes. Youths were given hand-outs either in the form of cash or alcohol and narcotics, while older voters were treated to food supplies especially in dry, hunger stricken areas. The center also singled out the media which though “among the least perpetrators of election crimes” were nevertheless cited for unprofessional reporting of inflammatory statements of politicians in newspapers, television and radio.[1200]

Kenyatta was officially sworn-in as the fourth president of Kenya on 9 April 2013.

2017

After the explosion of violence in 2007/2008 and the political tensions following the disputed 2013 elections between Uhuru Kenyatta and Raila Odinga, there was a sense of anxiety as elections came to an end on the evening of 8 August 2017 even though the voting process had gone on smoothly as acknowledged so by all parties as well as international observers.

It was only during the presidential tallying of votes that suspicions and contentions emerged, and statements and counter-statements began to fly between the two main contenders, Uhuru of the ruling Jubilee Party and Raila of the National Super Alliance (NASA). Like in the two previous elections, the main point of contention was discrepancies between the results recorded at the polling stations and those announced by IEBC in Nairobi. The electoral law was clear that results would be announced at the source and only confirmed by the election commission. In many cases, that did not happen, hence NASA's refusal to accept the results.

From the time the counting started, Uhuru was leading in the IEBC numbers, and that lead expanded as he gained numerous constituencies and wards that were formerly controlled by NASA, including the Coast and western Kenya. NASA claimed it won by more than 1.5 million votes. That discrepancy conflicted *wananchi* who became restless and engaged in isolated protests, burning tires and blocking roads.

But after all the back and forth, IEBC announced the winner on 11 August 2016 giving Uhuru a second term in office. For several days, Kenyans waited with bated breath to see what the next opposition move would be. On 15 August, the 72-year old Raila held a press conference in which he claimed he was the rightful winner and that the elections had been stolen from him. He was vague about petitioning the elections in court, but on 18 August 2017 at 11.30 pm as the midnight deadline closed in, NASA lawyers appeared at the Supreme Court registry carrying 25,000-page bundles of documents to challenge Uhuru's victory.

The petition cited ten issues including "numerous instances when their ticket was denied votes and others in which the competitor…had undeserved votes added to his total," said a statement issued by Raila and his running mate Kalonzo Musyoka.

The NASA side claimed that: IBEC allowed 14,000 defective returns from polling stations representing seven million votes; that Jubilee party used State resources to campaign; that IEBC deflated Raila's votes in his strongholds; that there were faults in the transmission of votes from the constituencies to the National tallying center; that IEBC colluded with Jubilee to remove NASA agents from polling stations; that the 477,195 rejected votes reduced Raila's tally, among other claims.

All the three sides – NASA, Jubilee and IEBC – had a battery of top-notch lawyers at the hearing which was transmitted live on several television stations. While NASA lawyers argued that the election results were not based on evidence and that the IEBC did not follow the constitutional provisions in conducting the polls, the electoral body said there was no contest on the results announced at polling stations and that the results reflected the will of the people. Uhuru's lawyers, on the other hand, charged that the NASA petition was a "fictitious one that could only interest directors in Hollywood."

Under the constitution, the Supreme Court had 14 days to make a ruling. On 1 September 2017, with a 4-2 majority, Kenya's highest court ruled to nullify the presidential election calling it "invalid, null and void," and faulted it for irregularities and illegalities. Chief Justice David Maraga, his deputy, Lady Justice Philomena Mwilu, Justice Smokin Wanjala, and Justice Isaac Lenaola, agreed to have repeat polls while Justices Njoki Ndung'u and Jackton Ojwang dissented. Justice Mohammed Ibrahim was away due to an illness. The Supreme Court ordered fresh elections within 60 days.

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The verdict elicited condemnation on Jubilee's side and jubilation on NASA's camp. Initially, Uhuru said while he disagreed with the ruling, he respected it. In subsequent days, however, the Kenyan President unleashed a barrage of verbal assaults on the court and the Chief Justice calling them "thugs". "Who even elected them," he asked, angrily. "We have a problem (with the Judiciary) and we must fix it," he fumed.

After much anticipation from Kenyans and as NASA called for comprehensive reforms in the electoral process, including replacement of several IEBC officials and a change of the ballot paper printing company, the IEBC announced 17 October as the date for repeat elections. The opposition vigorously opposed the date and suggested 24 October instead to give IEBC time to meet what it called "irreducible minimums" – 11 conditions to be met before elections. They included physical inspection of the IEBC servers and databases used; and access to the GPS coordinates of the Kenya Integrated Election Management System (KIEMS) kits.

The IEBC failed to meet NASA conditions and went ahead and changed the repeat election date to 26 October. Consequently, Raila withdrew and urged his followers to boycott the polls. Thus, participation was poor. On 30 October, the IEBC chairman, Wafula Chebukati, declared Uhuru Kenyatta had won with 7,483,895 votes out of the 7,616,217 votes cast, representing a 98% of the votes. He said voting did not take place in 25 constituencies in Homa Bay, Siaya, Migori and Kisumu.

The August 2017 polls turned out to be one of the most rigged elections. They were not only marred by violence and heavy police presence, but also the murder of an IEBC staff, Chris Msando, days before the 7 August polls, alleged hacking of the IT system, and manipulation of ballots and data capture forms. In the repeat elections, the Jubilee government was accused of ballot stuffing and of selectively brutalizing perceived NASA supporters especially in Raila's Nyanza region. Several parts of the country, particularly in Nairobi, Kisumu and Mombasa, saw massive street demonstrations of NASA supporters leading to the death and serious injuries of dozens of people. At the end of November, Raila declared the formation of the National Resistance Movement, an appendage of the party, to lead economic boycotts against firms seen to be supportive of the government.

Uhuru's Legacy

If Uhuru Kenyatta left any legacy after his first term in office, that legacy was not crystal clear. He took over a healthy economy from President Kibaki. Foreign investments and Diaspora remittances were flowing in. Tourism, which was shattered after the terror attacks at the Westgate Mall in Nairobi in 2013, and at the Garissa University College in 2015, rebounded in 2016, and low oil prices helped spur growth. The foreign exchange reserves were strong, and the account deficit stood at around 6.5% of GDP at the end of 2017. However, the stubborn drought conditions resulting in livestock loss and the scarcity of the stable food, maize meal, prevailing during the last part of his first term in office created fears of food insecurity.

And, as Uhuru himself said in May 2017, the government spent the first term completing infrastructure projects conceived or started by his predecessor, President Kibaki. The launching of the Standard Gauge Railway – with all its underpinning problems – was certainly a big plus for President Uhuru's legacy, so were achievements in road network improvements, provision of free maternity services, expansion of power connections, and provision of laptops to primary schools, even though that was partly achieved. He took over an economy with a growth rate of 5.9% of the GDP, but at the end of 2017, it had slowed down slightly to 5.5%.

Impressive as those achievements were, they were overshadowed by massive corruption, excessive borrowing, labor unrests involving nurses, doctors and teachers, and political uncertainty due to electoral disputes. Despite promises, Uhuru was unable to resettle an estimated 300,000 IDPs, victims of tribal clashes and political violence, and to contain the security situation in border areas such as Lamu, Mandera and Garissa. The rule of law was also wanting.

Similarly, Uhuru could not find the magic wand to control the spiraling greed and plunder by the "Kiambu Mafia" and senior members of his government, and looked the other way as "entrepreneurs" and organized criminal cartels raided the tendering and procurement processes through manipulation of control buttons.

The President's failure and fear of implementing the Truth, Justice and Reconciliation Commission (TJRC) report demonstrated a determination to maintain the lid on past malfeasance by his family, friends and cohorts, and cemented the general perception of "we" against "them." Uhuru was averse to the word "land grabbing" and shunned it with good reasons. His family is one of Kenya's biggest land grabbers, with large tracts of land scattered throughout the country.

In the same breath, Uhuru elevated tribalism, cronyism, and favoritism to new levels as he appointed and promoted people from his own community to positions of authority in government. Under his leadership, tribalism remained a worrying trend fueling ethnic distrust among the 43 communities.

Uhuru had a chance to correct the mistakes committed by his predecessors, but he missed the opportunity. So, if he is to be judged by the first five years at the helm of government, Uhuru's performance would not pass muster.

ABBREVIATIONS

AAIC - Afro Asian Investment Corporation
AAK - Architectural Association of Kenya
ACECA - Anti-Corruption and Economic Crimes Act
ACK - Anglican Church of Kenya
ADC - African Development Corporation
AIC - African Inland Church
AIC - African Inland Church
AFC - Agricultural Finance Corporation
AfDB - African Development Bank
AfriCog - Center for Open Governance*
AG - Auditor General
AG - Attorney General
AK - Athletics Kenya
ALICO - African Liaison & Consulting Services Limited
AIC - African Inland Church
AoL - African Online
APP - African People's Party
ARK - Alliance for Real Change
ASCU - African Sector Coordination Unit
AU - African Union
BAT - British American Tobacco
BBC - British Broadcasting Corporation
BEAA - British East Africa Association
BEADOC - British East Disabled Officers Colony
BOT - Build Operate and Transfer
BPU - Baluhya Political Party
CDC - Colonial Development Corporation
CID - Criminal Investigation Department
CPP - Coast People's Party
CRF - Coffee Research Foundation
DC - District Commissioner
DOJ - Department of Justice
DP - Democratic Party
EABI - East African Bribery Index

EACC - Ethics and Anti-Corruption Commission
EAGCL - East African Gas Company Limited
EAL - Elephant Action League
EAR - East African Railways
ERB - Engineering Registration Board
ESTU - Executive Secretariat and Technical Unit
EU - European Union
CAK - Communications Authority of Kenya
CBK - Central Bank of Kenya
CBK - Coffee Board of Kenya
CBPI - Chinese Business Percption Index
CCK - Communications Commission of Kenya
CCU - Chama Cha Umma
CDC - Center for Disease Control
CDC - Colonial Development Corporation
CDF - Constituency Development Fund
CDS - Chief of Defense Staff
CECAFA - Council for East and Central Africa Football Associations
CIDA - Canadian International Development Agency
CFA - Collateral Financing Arrangements
CGS - Chief of General Staff
CHB - CharterHouse Bank
CIA - Central Intelligence Agency
CID - Criminal Investigation Department
CIJ - Consortium of Investigative Journalists
CITES - Convention on International Trade in Endangered Species
CJ - Chief Justice
CMA - Capital Markets Authority
CMA - Cereal Millers Association
COC - Constituency Oversight Committee
CPA - Commonwealth Parliamentary Association
CPC - China Power Company
CPC - Communist Party of China
CRBC - China Road and Bridge Corporation
CRS - Coffee Research Station
CTB - Central Tender Board
CUEA - Catholic University of Eastern Africa
DANIDA - Danish International Development Agency
DC - District Commissioner

DCI - Directorate of Criminal Investigation
DDC - District Development Committee
DfID - Department for International Development
DO - District Officer
DPP - Director of Public Prosecutions
DRC - District Roads Committee
DSL - Discount Securities Limited
DTB - Diamond Trust Bank
EAA - East African Association
EAC - East African Community
EACC - Ethics and Anti-Corruption Commission
EAGCL - East African Gas Company Limited
EAHC - East African Harbours Corporation
EAL - Elephant Action League
EAP &L - East African Power and Lighting
ECGD - Expert Credit Guarantee Department
ECK - Electoral Commission of Kenya
EMU - Efficiency Monitoring Unit
ENDA - Ewaso Nyiro Development Authority
ESTU - Executive Secretarial and Technical Unit
FBI - Federal Bureau of Investigations
FCO - Foreign and Commonwealth Office
FIFA - Federation of International Football Association
FKF - Federation of Kenya Football
FORD - Forum for the Restoration of Democracy*
FORD-Asili - Forum for the Restoration of Democracy - Asili
FORD-K - Forum for the Restoration of Democracy – Kenya
FORD-P - Forum for the Restoration of Democracy – People
GBP - Great Britain Pound
GCB - Global Corruption Barometer
GDC - Geothermal Development Corporation
GDP - Gross Domestic Product
GEMA - Gikuyu Embu Meru Association
GIL - Goldenberg International Limited
GPEDC - Global Partnership for Effective Development and Cooperation
GRV - Great Rift Valley
GSU - General Service Unit
HDD - Housing Development Department
HSBC - Hongkong and Shanghai Banking Corporation

IBEACo - Imperial British East Africa Company
ICC - International Criminal Court
ICDC - Industrial and Commercial Development Corporation
ICT - Information and Communication Technology
ICSID - International Center for Settlement of Investment Disputes
IDB - Industrial Development Bank
IEBC - Interim Electoral and Boundaries Commission
IFC - International Finance Corporation
IFMIS - Integrated Financial Management Information System
IMF - International Monetary Fund
IOC - International Olympics Committee
IPPG - Inter-Party Parliamentary Group
IRC - Independent Review of Elections Committee
IRI - International Republican Institute
JIAM - Jesus Is Alive Ministries
JKIA - Jomo Kenyatta International Airport
JSC - Judicial Service Commission
KAA - Kenya Airports Authority
KACA - Kenya Anti-Corruption Authority
KACAB - Kenya Anti-Corruption Advisory Board
KACC - Kenya Anti-Corruption Commission
KADC - Kenya Agricultural Development Corporation
KADU - Kenya African Democratic Union
KALRO - Kenya Agricultural and Livestock Research Organization
KAM - Kenya Association of Manufacturers
KAMATUSI - Kalenjin, Maasai, Turkana, and Samburu
KNC - Kenya National Congress
KANU - Kenya African National Union
KAR - King’s African Riffles
KARI - Kenya Agricultural Research Institute
KAU - Kenya African Union
KBA - Kenya Bankers Association
KBC - Kenya Broadcasting Corporation
KCA - Kikuyu Central Association
KCAA - Kenya Civil Aviation Authority
KCB - Kenya Coffee Board
KCB - Kenya Commercial Bank
KCC - Kenya Cooperative Creameries
KCF - Kenya Cashewnut Factory

KCLB - Kenya Control and Licensing Board
KCMC - Kenya Coffee Marketing Committee
KCS - Kenya Charity Sweepstakes
KSCE - Kenya Certificate of Secondary Education
KDC - KANU Disciplinary Committee
KDCW - Kenya Diaspora Corruption Watch
KDF - Kenya Defense Forcess
K-DOP - Kenya Domestic Observation Program
KDRTV - Kenya Diaspora Radio and Television
KEMU - Kenya Methodist University
KENATCO - Kenya National Transport Cooperative Society
KENDA - Kenya National Democratic Alliance
KEPSA - Kenya Private Sector Alliance
KES - Kenya Shilling
KETC - Kenya External Telecommunications Corporation
KFF - Kenya Football Federation
KFL - Kenya Federation of Labor
KFS - Kenya Forest Service
KfW - German Development Bank
KHRC - Kenya Human Rights Commission
KIA - Kenya Institute of Administration
KICC - Kenyatta International Conference Center
KICD - Kenya Institute of Curriculum Development
KIE - Kenya Institute of Education
KIM - Kenya Institute of Management
KIPPRA - Kenya Institute of Public Policy and Research
KEMRI - Kenya Medical Research Institute
KEPSA - Kenya Private Sector Alliance
KFRA - Kenya Footbal Referees Association
KFS - Kenya Forest Service
KLB - Kenya Land Bank
KNBS - Kenya National Bureau of Statistics
KNEC - Kenya National Examinations Council
KMC - Kenya Meat Commission
KMCK - Kenya Milling Corporation of Kenya
KMPDU - Kenya Medical Practitioners, Pharmacists and Dentists Union
KNA - Kenya National Archives
KNA - Kenya News Agency
KNH - Kenyatta National Hospital

KNHA - Kenya National Highways Authority
KNSC - Kenya National Sports Council
KOA - Kenya Olympics Association
KPA - Kenya Ports Authority
KPCU - Kenya Planters Cooperative Union
KPL - Kenya Pipeline Limited
KPLC - Kenya Power and Lighting Company
KPP - Kenya People's Party
KP&TC - Kenya Post and Telecommunication Corporation
KPR - Kenya Petroleum Refinery
KPS - Kenya Police Service
KPTP - Kenya Patriotic Trust Party
KPU - Kenya Peoples Union
KR - Kenya Railways
KRA - Kenya Revenue Authority
KRC - Kenya Railways Corporation
KRC - Korea Railways Corporation
KRC - Kenya Red Cross
KRU - Kenya Rugby Union
KSC - Kenya Social Congress
KSG - Kenya School of Government
KTDA - Kenya Tea Development Authority
KTDC - Kenya Tourism Development Corporation
KTDC - Kenya Tea Development Corporation
KTH - Kericho Tea Hotel
KTN - Kenya Television Network
KUR - Kenya Uganda Railways
KUTIP - Kenya Urban Transport Infrastructure
KVDA - Kerio Valley Development Authority
KWCMD - Kenya Wildlife Conservation and Management Department
KWS - Kenya Wildlife Service
LAAICO - Libya Arab African Investment Company
LAPSSET - Lamu Port - Southern Sudan-Ethiopia Transport Corridor
LBDA - Lake Basin Development Authority
LDGI - Land Development and Governance Institute
LDP - Liberal Democratic Party
LegCo - Legislative Council
LPO - Local Purchase Order
LSK - Law Society of Kenya

MCA - Member of the County Assembly
MCK - Milling Corporation of Kenya
MLC - Member of the Legislative Council
MOU - Memorandum of Understanding
MP - Member of Parliament
MRC - Mombasa Republican Council
MSC - Mumias Sugar Company
NACADA - National Authority for the Campaign Against Alcohol
NAK - National Alliance Party of Kenya
NARC - National Rainbow Coalition
NARC-Kenya - National Rainbow Coalition-Kenya
NASA - National Super Alliance
NBK - National Bank of Kenya
NCA - National Construction Authority
NCC - Nairobi City Council
NCC - Nairobi City County
NCCK - National Christian Council of Kenya
NCE - Nairobi Coffee Exchange
NCIC - National Cohesion and Integration Commission
NCPB - National Cereals and Produce Board
NDC - National Delegates' Conference
NDP - National Development Party
NEC - National Coffee Exchange
NEMU - National Election Monitoring Unit
NESC - National Economic and Social Council
NG-CDF - National Government-Constituency Development Fund
NGO - Non-Governmental Organization
NHC - National Housing Corporation
NHIF - National Hospital Insurance Fund
NIH - National Institute of Health
NIS - National Intelligence Service
NLC - National Land Commission
NLCC - National League Competitions Committee
NOC - National Olympics Committee of Kenya
NPMB - Numerical Machining Complex Limited
NPSC - National Police Service Commission
NPYVA - National Pyramid Schemes Victims Association
NREC - National Railway Equipment Company
NSE - National Securities Exchange

NSIS - National Security Intelligence Service
NSS - National Space Secretariat
NSSF - National Social Security Fund
NTA - National Taxpayers' Association
NTA - National Transport Authority
NWCPC - National Water Corporation and Pipeline Corporation
NYS - National Youth Service
OAU - Organization of African Union
ODM - Orange Democratic Party
ODP - Office of the Deputy President
OP - Office of the President
OTS - Open Tender System
PAC - Public Accounts Committee
PANG - Pan Afican Network Group
PBS - Public Broadcasting Service
PC - Provincial Commissioner
PCEA - Presbyterian Church of East Africa
PCK - Postal Corporation of Kenya
PE - Public Enterprise
PFM - Premier Flour Mills
PIC - Parliamentary Investment Committee
PICK - Party of Independent Candidates
PNU - Party of National Unity
POEA - Public Officers Ethics Act
PPARB - Public Procurement Administrative Review Board
PPO - Provincial Police Officer
PPOA - Public Procurement Oversight Authority
PRPC - Parastatal Reform Program Committee
PS - Permanent Secretary
PSC - Parliamentary Service Commission
PSC - Public Service Commission
PSCU - Presidential Strategic Communication Unit
PwC - PriceWaterCoopers
RBK - Restore and Build Kenya
RBL - Road Board Levy
RPK - Republican Party of Kenya
RVR - Rift Valley Railways
RVRU - Rift Valley Railways Uganda
SAISS - South African Institute of Security Studies

SAS - Special Air Forcess
SDA - Seventh Day Adventists
SDP - Social Democratic Party
SFO - Serious Fraud Office
SFT - Settlement Fund Trustees
SGR - Standard Gauge Railway
SGR - Strategic Grain Reserve
SIPRI - Stockholm International Peace Research Institute
SNB - Swiss National Bank
S & O - Smith & Ouzman
SRC - Salaries and Remuneration Commission
TA - Tel Aviv deposit (a collection of migrated archives
TI - Transparency International
TJRC - Truth Justice and Reconciliation Commission
TNA - The National Archives (British)
TRSDI - Third Railway Survey and Design Institute
TSC - Teacher Service Commission
UAC - United Africa Corporation
UAE - United Arab Emirates
UGCSI - United Graduate College and Seminary International
UNCAC - United Nations Convention Against Corruption
UNEP - United Nations Environment Program
UNESCO - United Nations Educational, Scientific and Cultural Organization
UNITA - Union for the Total Independence of Angola
UoN - University of Nairobi
URP - United Republican Party
USD - United States Dollar
USAID - United States Agency for International Development
VAT - Value Added Tax
VHBC - Vineyard Harvester Bible College
VOK - Voice of Kenya
VPN - Virtual Private Network System
WADA - World Anti-Doping Agency
WB - World Bank
WCO - World Customs Organization
WDF - World Duty Free
WFP - World Food Program
WHO - World Health Organization

GLOSSARY

Baraza – Meeting
Bwana – Mister, master, husband
Chai – Tea, corruption
Harambee – Let us pull together
Jamhuri – Republic
Kadhi - Muslim clergy
Kitu Kidogo – Something small, corruption
Majimbo – Regions, counties, provinces
Matatu – Passenger mini-buses
Memsahib – Mistress
Mlo – Eatable, corruption
Mzee – Old man, wise old man
Mtukufu – The blessed one
Ngoma – dance (dances)
Njora – Whip, cane *Panga* – Machette
Pata Potea – Gambling game
Ragai – (Kikuyu) Lazy, useless
Rungu – Club, Thick stick
Shamba – Farm, garden
Uhuru - Independence, freedom
Wabenzi – The rich, elite, those who own Mercedes Benz
Wananchi – The general public
Wazee – Old folks, wise old men
Wazungu – Europeans, caucasians

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