

# Corruption and Democracy in Kenya\*

Lillian A. Cherotich

## Abstract

The link between election campaign financing and corruption in Kenya has since been established. What has yet to be fully explored is the correlation between corruption and democracy in Kenya. Since 1990, when Kenya began her transition to democracy, the country has witnessed an explosion of grand corruption primarily linked with election financing made more urgent by exigencies of competitive politics. The Goldenberg Affair, Kenya's biggest corruption scandal to date, stands as a monument to the dark underbelly of democracy in Kenya, coinciding as it did with the country's transition from single party rule to multipartism. The scandal involved the exploitation of various government schemes, introduced as part of Kenya's economic reform package in the early 1990s, ostensibly to facilitate the exportation of gold and diamonds from Kenya by a company called Goldenberg International Limited. The exports were fictitious; the scheme nothing more than a gigantic embezzlement scam. It is estimated that the Affair cost the country more than 10% of its GDP. It involved senior Moi-regime insiders who were determined to shore up the regime's election war chest in readiness for the elections of 1992, the first multi-party elections since Kenya's return to plural politics.

In 2005 another major scandal came to light this time involving the pro-reform (former opposition) National Rainbow Coalition (NARC), which ousted KANU in 2002. NARC's coming to power after forty years of corruption, authoritarianism and economic mismanagement was heralded as a watershed for Kenya, a sign that the fledgling democracy was coming of age. However, with revelations of yet another corruption scandal this time involving the senior NARC officials, it became clear that nothing had really changed. The Anglo-leasing procurement scandal, very much like Goldenberg, was set up to marshal substantial election funds for the ruling faction within NARC, which had by now succumbed to bitter rivalry and factional conflicts.

But why have these major corruption scandals emerged? What accounts for the apparent correlation between corruption and democracy in Kenya? Why has democratisation yielded such little fruit and why does it appear to have exacerbated the predatory tendencies of the previous regime? These questions assume that Kenya made the transition to democracy. We argue it did not. The Kenyan 'democratic State' is nothing but a pale shadow of its predecessor- the one party State. Far from being a 'deficient democracy' or a 'democracy in decline', the Kenyan State never really transformed. Kenya's experience with corruption to date bolsters this conclusion. Corruption remains just as problematic in the democratic age as it was in the one-party State, facilitated by a political system still steeped in patronage and clientelism, with factions locked in an interminable battle for the ultimate prize, the State; a zero-sum game for pre-eminence. Kenya's experience with corruption shows that the State has remained essentially authoritarian, a case of new wine in old wine skins.

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\* Lillian Cherotich is a DPhil Candidate in Politics at the University of Oxford. Her correspondence address is [lillian.cherotich@sant.ox.ac.uk](mailto:lillian.cherotich@sant.ox.ac.uk).

## The Transition to Democracy in Kenya

What Huntington described as the ‘third wave of democratization’ swept through Africa, Asia, Latin America, and Eastern Europe in the 1980s and early 1990s, toppling authoritarian regimes, and heralding the triumph of liberal democracy over communism and other forms of government.<sup>1</sup> Indeed, from the vantage point of the early 1990s, it appeared that the global political landscape had been irreversibly transformed, and that liberal democracy had been installed as ‘the only game in town’. These conclusions however proved premature and by the mid-1990s, the wave had begun to recede. As Luckham and White observe, some entrenched authoritarian regimes began to fight back, sabotaging political and economic reforms that had begun in earnest only a few years earlier; others maintained the façade of democracy through regular but deeply flawed elections while retaining previous forms of governance; democratic regimes that emerged during this period were short-lived and succumbed to various forms of authoritarian reversion.<sup>2</sup>

Kenya’s experience with democracy appears to have followed this trajectory since it began its transition from single-party rule in 1990. Almost two decades later, the State in Kenya remains essentially authoritarian. The country’s experience with corruption demonstrates that the State did not really transform. Indeed, corruption, which was endemic in the one party era, appears to have increased in both frequency and scale. We will focus our attention on grand corruption, which occurs at top levels of government. It is noteworthy that the form grand corruption has assumed has not changed much since the one party era, with most schemes revolving around public procurement and investment. The main distinguishing feature has been the number of players now engaging in grand corruption, and the increased opportunities for rent-seeking observed since the transition to democracy.

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<sup>1</sup> Huntington, Samuel P, *The Third Wave: Democratization in the late Twentieth Century* (Oklahoma University Press, Norman, 1991); Fukuyama, F, *The End of History and the Last Man* (Hamish Hamilton, London, 1992).

<sup>2</sup> Luckham, Robin and Gordon White (eds). *Democratization in the South: The Jagged Wave* (Manchester University Press, Manchester, 1996). See also Dahl, Robert, *Polyarchy: participation and Opposition* (Yale University Press, New Haven, 1991).

Two scandals stand out as examples of the dark underbelly of democracy in Kenya. First, the Goldenberg Affair, which involved government officials at the highest levels of the then incumbent Moi regime. The scandal occurred between 1990 and 1993, just as Kenya was moving from the one party State to multi-partism and coincided with the country's first multi-party elections following the reintroduction of competitive politics in 1992. The Affair involved the exploitation of various government schemes, chiefly the export compensation scheme and pre-shipment finance scheme, introduced as part of Kenya's economic reform package in the early 1990s. The scheme ostensibly entailed the exportation of gold and diamonds from Kenya by a company called Goldenberg International Limited. The exports were fictitious; the scheme nothing more than a gigantic embezzlement scam. It is estimated that the Affair cost the country more than 10% of its GDP. Its main objective was to generate substantial sums of money to shore up the embattled regime's election war chest in readiness for the multi-party elections of 1992.

A little more than a decade after the Goldenberg Affair (in 2005), another major scandal came to light this time involving the pro-reform (former opposition) National Rainbow Coalition (NARC), which ousted KANU in 2002. NARC's coming to power after forty years of KANU's corruption, authoritarianism and economic mismanagement was heralded as a watershed for Kenya, a sign that the fledgling democracy was coming of age. However, with revelations of the massive corruption scandal this time involving the senior NARC officials, it became clear that nothing had really changed. The Anglo-leasing procurement scandal, very much like Goldenberg, was set up to marshal substantial election funds for the ruling faction within NARC, which had by now succumbed to bitter rivalry and factional conflicts.

Both the Goldenberg Affair and Anglo-leasing were established to generate substantial election campaign funds to ensure that the incumbent regimes won impending multi-party elections and maintained their stranglehold hold on power. While democratization had changed the mechanism through which power could be accessed and maintained, that is, through competitive elections, the objective remained the same- a zero-sum game for pre-eminence over the State, and what that promised: privileged access to State resources and guaranteed avenues for primitive accumulation.

But what accounts for this apparent correlation between corruption and democracy in Kenya? Why has democratization not led to the anticipated outcomes in and why does it appear to have exacerbated the predatory tendencies that were associated with the one party State? These questions presume that Kenya made the transition to democracy. This paper argues it did not. The Kenyan 'democratic State' has remained a pale shadow of its predecessor- the authoritarian State. Far from being a 'deficient democracy' or a 'democracy in decline', the Kenyan State never really transformed. Kenya's experience with corruption to date bolsters this conclusion. Corruption remains just as problematic in the democratic age as it was in the one-party State, facilitated by a political system that is still steeped in patronage and clientelism, with factions locked in an interminable battle for the ultimate prize, the State within a context of politicised ethnicity. Indeed, Kenya's experience with corruption shows that the State has remained essentially authoritarian, a case of new wine in old wine skins.

This paper explores the link between corruption and democracy in Kenya. It is divided into four parts. Part one briefly examines the role of corruption in motivating the clamour for change in Africa generally and Kenya more specifically. It also explores how the process of democratization provided opportunities for egregious corruption, and how this process has impacted on the nature of the State in Kenya. Part two examines the root of corruption in Kenya, and situates it in the country's colonial heritage and the nature of the post-colonial State. Part three then briefly discusses corruption during the Kenyatta and Moi regimes, and the factors that facilitated corruption in each period. Part four examines how these factors have impacted the Kenyan 'democratic' State.

## **Part 1 Corruption and the Clamour for Democracy in Africa**

Endemic corruption, alongside gross violations of human rights, bad governance and economic mismanagement, was one of the key triggers for popular demands for competitive elections in Africa in the early 1990s. The 'third wave of democratization' in Africa began in the West African State of Benin, and commenced with demonstrations by university students in Cotonou in June 1989 protesting over

the lack of employment opportunities in the public sector and the government's failure to disburse long overdue scholarships. Hardly had the dust settled than teachers and civil servants held demonstrations in July threatening a general strike unless their salaries, which had not been paid for several months, were immediately paid. The government of Benin was however unable to meet these demands. Bratton and Van de Walle note: 'tax revenues had been slumping for years, capital flight was increasing, and top officials were embroiled in embarrassing financial scandals.'<sup>3</sup> This scenario was not peculiar to Benin but characterized most African countries in the heady days leading up to the re-introduction of multi-partism.

This tumultuous period coincided with the introduction of structural adjustment programmes (SAPs) across Africa aimed at jump-starting African economies. In the Benin case, foreign donors, disappointed by the failure of the government to implement proposed austerity measures, withdrew budgetary support leaving the government handicapped. In an attempt to resolve the situation, Benin's president Mathieu Kerekou began to make political concessions, which included broad amnesty for political exiles and the release of political prisoners. These measures only served to wet the appetite of protesters who now demanded a clampdown on corruption and political liberalization.<sup>4</sup> This marked the beginning of the end for the Kerekou regime, and was the onset of a tidal wave, which eventually swept away many authoritarian governments in Africa. However, those regimes that were able to regain control of the pace of reform, such as Moi in Kenya, sought to reinvent themselves as reformers, and were re-elected in various competitive elections across the continent.

Moi went on to serve two five-year terms under the new 'democratic' dispensation, despite the amendment of the Constitution to restrict the Presidential tenure of office to two terms. He retired in 2002, and appointed Uhuru Kenyatta, the son of Kenya's first president Jomo Kenyatta, as his successor. However, at the polls held in 2002, Kenyans overwhelmingly rejected Uhuru and the then ruling party KANU, and handed victory to the coalition of former opposition parties (the National

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<sup>3</sup> Bratton, Michael and Nicholas Van de Walle, *Democratic Experiments in Africa- Regime Transitions in Comparative Perspective* (Cambridge University Press, Cambridge, 1997), p. 1.

<sup>4</sup> Bratton and Van de Walle, *Democratic Experiments*.

Alliance of Kenya- NAK), and defectors from KANU (the Liberal Democratic Party-LDP). By all accounts, 2002 is considered a watershed moment in Kenyan politics, as it is in this year that Kenyans drew a line under forty years of KANU's (mis)rule, and 24 years of Moi's authoritarian regime. But did the State actually transform? We will explore this question later in this paper using Kenya's experience with corruption as a lens.

## 1.2 Corruption and democratization: a theoretical perspective

Corruption is traditionally associated with authoritarianism. Indeed Amundsen has argued that:

‘even when the level of corruption in some authoritarian regimes is low, this could be because the ruling elite has access to other means of enrichment making corruption less essential and vice versa... when the size of the State administration is scaled down and the possibility to reward followers and clients are restricted, more direct corruption within the remaining positions might well be one of the consequences.’<sup>5</sup>

Friedrich noted the negative correlation between corruption and democracy and argued: ‘It is possible that a law could be stated that would say that the degree of corruption varies inversely to the degree that power is consensual.’<sup>6</sup> Assuming Friedrich's observation is correct, one would expect less corruption in the transition period from despotic rule to democracy compared to authoritarian rule, and even less corruption once democracy is consolidated. However, experience from different parts of the world disproves this. Russia, Central and Eastern European countries, and Africa, which embraced democracy during the third wave of democratization, have witnessed an explosion in corruption during the transition period, which has proved difficult to control. Indeed far from eradicating authoritarian-regime corruption, democratization in Africa has created new opportunities for corruption, and has injected new actors into the political system, without fundamentally altering the rules of the game resulting in widespread and virulent forms of corruption, which have in

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<sup>5</sup> Amundsen, Inge, ‘Political Corruption: An Introduction to the Issues’ (Working Paper, Chr. Michelsen Institute, Development Studies and Human Rights, 1997: 7).

<sup>6</sup> Friedrich, Carl J, “Political Pathology”, *Political Quarterly*, 37 (1966), p.74.

some situations surpassed the experience of corruption during authoritarian rule. Weyland observes, in the case of Latin America, that since the third wave of democratization power has become dispersed and decision-making made corporate thereby extending the range of actors who can demand pay-offs and bribes.<sup>7</sup>

The marked increase in levels of corruption during periods of transition can be explained by the weakness of the State during periods of rapid change and uncertainty.<sup>8</sup> Countries that have begun the process of democratization have tended to embrace two simultaneous projects: political liberalization and economic reform. In the event, their weak institutions have proved unable to cope with the breadth and depth of reform necessary to transform the State. Moreover, the uncertainty; abundance of opportunities for rent-seeking provided by the privatization of State-owned corporations; the range of new actors incorporated in the process of reform; the absence of clear rules or procedures and regulations; and the weakness and ineffectiveness of State institutions have converged to create excellent breeding ground for pervasive corruption in these countries, which might compare poorly with corruption in authoritarian regimes.

The challenge of endemic corruption that confronts fledgling democracies may also be exacerbated by the removal or reduction of previous instruments of State control such as coercion. Amundsen notes that strong authoritarian regimes may be more successful in controlling the scale and number of actors engaged in corruption, and may also enjoy legitimacy in the eyes of their citizens because they are able to ensure law and order, and economic growth.<sup>9</sup> Thus democratization may represent the 'democratization of corruption' as opportunities for rent-seeking are diversified and decentralized. Moreover, democratization may provide incentives for new forms of corruption, particularly related to election and campaign finances, motivated by the determination to retain or access power in the face of competitive elections.

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<sup>7</sup> Weyland, Kurt, "The politics of corruption in Latin America", *Journal of Democracy*, 9, 2 (1998), pp. 108-121.

<sup>8</sup> See for example Johnston, Michael, 'Public officials, private interests and sustainable democracy', in Kimberly Elliot (ed), *Corruption and the Global Economy* (Institute for International Economics, Washington, D.C., 1997).

<sup>9</sup> Amundsen, Political Corruption: An Introduction to the Issues.

Another challenge during periods of democratic transition is the absence of a political culture that is conducive to democracy. Amundsen notes that the sudden opening up of a formerly authoritarian regime facilitated by rapid economic and political reforms, ‘has in many places opened up an era of licence without responsibility, where freedom from oppression has been confused with freedom from any authority, and any responsibility.’<sup>10</sup> It is important to note however that perceived increase in corruption as a result of democratization might be because previous clandestine transactions have now become visible due to the activities of a freer press and other watchdog bodies.

It is noteworthy that democratization has proved particularly difficult in corrupt authoritarian and neo-patrimonial regimes, which are endowed with significant natural resources such as oil and minerals or which enjoy significant foreign support and therefore have easy access to resources. This is because such regimes are usually insulated from popular accountability mechanisms and are often able to quell popular protests using military hardware, personnel and services purchased on the international market.<sup>11</sup> However, it is also true that authoritarian regimes, which are reliant on foreign aid, tend to be vulnerable to external actors, who may then use their clout to force democratic reforms. This was Kenya’s experience in the 1990s and is one of the reasons why the Moi regime succumbed to pressure to embrace democracy.

Theory predicts that pervasive corruption engendered during periods of transition will significantly reduce once the democratic system has stabilized and democratic values have deepened within the polity- what has been described as ‘democratic consolidation’. The term ‘democratic consolidation’ was originally intended to describe the challenge of making new democracies secure (deepening democracy), and preventing reversals to authoritarianism. These objectives have however since been expanded to include diverse (and divergent) aims such as:

‘popular legitimation, the diffusion of democratic values, the neutralization of anti-system actors, civilian supremacy over the military, the elimination of authoritarian enclaves, party building, the organization of functional interests, the stabilization of electoral rules, the routinization of politics, the decentralization of

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<sup>10</sup> Amundsen, Political Corruption: An Introduction to the Issues.

<sup>11</sup> Amundsen, Political Corruption: An Introduction to the Issues.

State power, the introduction of mechanisms of direct democracy, judicial reform, the alleviation of poverty and economic stabilization.’<sup>12</sup>

Thus, democratic consolidation is pre-occupied with regime survival- the prevention of the breakdown of the democratic state and its institutions.<sup>13</sup> But when does a country enter the democratic consolidation phase? The literature is not unequivocal on this point, and this question must be determined on a case-by-case basis. It is however correct to state that democratic consolidation begins where democratic transition ends. But when is democratic transition considered complete? Linz and Stepan note:

‘a democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure*.’<sup>14</sup>

If we accept this threshold, one can argue that democratic transition in most African countries was completed by 1995, when these countries had held their first competitive elections. It follows therefore that these countries are now in the democratic consolidation phase. One would then expect corruption to be less of a problem in this new phase of Africa’s democratic experience. On the contrary, corruption in countries such as Kenya has virtually exploded lending credence to the assertion that the patterns and procedures established during the authoritarian regime have not been altered. It is possible to argue that what we are witnessing now are reversions to authoritarianism following successful transition to democracy. We beg to differ. The patterns of access to State resources and the role and nature of the State in perpetuating corruption suggest that the authoritarian nature of the State in Kenya, for example, has not changed despite its new democratic credentials. But why is this

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<sup>12</sup> Schedler, Andreas, “What is democratic consolidation?” *Journal of Democracy*, 9, 2 (1998), pp. 91-107.

<sup>13</sup> Schedler, ‘What is Democratic Consolidation’.

<sup>14</sup> Linz, Juan and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe* (Johns Hopkins University Press, Baltimore, 1996).

so? In the next section, we will briefly examine the roots of corruption in Kenya, and what impact this has had on Kenya's transition to democracy.

## **Part 2: Corruption and the Façade of Democracy in Kenya**

While the Goldenberg Affair is associated with the transition to democracy in Kenya, Anglo-leasing occurred at a time when Kenya was thought to have matured into a democracy. Anglo-leasing is often considered to represent a reversal to authoritarianism in Kenya. We argue that Kenya's apparent democratic State is a façade, and an examination of the Kenyan State over time indicates that it has remained essentially authoritarian.

The post-colonial State in Kenya has been defined by three main features, which trace their origin to the colonial period, and interact in complex but mutually reinforcing ways to create an environment conducive for corruption. These are patronage, ethnicity and uneven or differential development. We will examine each of these in turn.

### **2.1 Patronage**

Patronage refers to the creation and maintenance of unequal relationships of mutual dependence and reciprocity based on the differentiation of power, status and wealth in society, and ordered in an informal hierarchy referred to as the patron-client network.<sup>15</sup> Linkages within the patron-client network eventually lead to a central figure- the 'Big Man', but few individuals within the network have lateral contact with others at the same level.<sup>16</sup> The 'big man' provides security, access to resources and other benefits in exchange for loyalty and personal assistance for his schemes.<sup>17</sup>

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Sandbrook, Richard, "Patrons, clients and factions: new dimensions of conflict analysis in Africa", *Canadian Journal of Political Science*, 5, 1 (March, 1972), pp. 104-119; Scott, James C., "Patron-client politics and political change in South-East Asia", *The American Political Science Review*, 66, 1 (March, 1972), pp. 91-113;

<sup>16</sup> Sandbrook, "Patrons, clients and factions".

<sup>17</sup> Scott, "Patron-client politics and political change in South-East Asia"; Lemarchand, Rene, "Political clientelism and ethnicity in Tropical Africa: competing solidarities in nation building", *The American Political Science Review* (March, 1972), 66(1), 68-90.

Einstadt and Roniger observe that patron-client relations are based on ‘informal but tightly binding understandings’, and are entered into voluntarily.<sup>18</sup>

The legitimacy of these relations draws on the *moral contract* subsisting between the patron and client, and in the Kenyan context occur within a *moral ethnicity*, which is subject to constant challenge and contestation but nonetheless frames the scope, membership and identity of actors within a patron-client network. The *moral contract* between the patron and client, juxtaposed in the post-colonial period against formal institutions of State based on rational-legal norms, is nevertheless so strong as to undermine attempts at forging strong and impartial state institutions.

The result of this unique interaction between the formal (and more abstract State), and the informal and more legitimate patron-client relations (embedded as they are in the people’s social and cultural experiences) is to weaken formal State institutions and render them captive to influential patronage networks. Such networks take advantage of their access to the State to convert State resources towards the maintenance of wealth, status and influence of patrons-who depend on these credentials for their privileged position in the hierarchy- and for the maintenance of clients-whose loyalty largely depends on the patron’s ability to mobilize resources. Favouritism, nepotism and corruption soon become a characteristic feature of the political and bureaucratic system, and is accompanied by intense competition for privileged access to the State between different patron-client networks, embedded in different social arrangements the most important one in Africa being the ethnic group.

Patronage played an important role in the colonial period and was a prominent feature in the independent State. Those Africans who collaborated with the colonial State were rewarded with plum positions in the local colonial administration as chiefs and headmen. These administrative positions proved to be lucrative avenues for the amassing of land, and other resources obtained as a consequence of the chief’s coercive powers and role in organizing African labour and administering the native

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<sup>18</sup> Eisenstadt, S.N. and Louis Roniger, “Patron-client relations as a model of structuring social exchange”, *Comparative Studies in Society and History* 22, 1 (Jan, 1980), pp. 42-77.

taxation regime. The wealth obtained by these individuals formed the basis for differentiation in power, influence and status among Africans, and established these families as local patrons. These inequalities, which persisted well into the post-colonial era, cemented the perception of the State as the main avenue for primitive accumulation, and established it as the ultimate trophy for political contestation, which often turned violent.

## **2.2 Ethnicity:**

Patronage in Kenya and most African countries occurs within an ethnic context. Indeed, ethnicity has emerged as the most important feature of African political and social identity and exchange, subsuming patronage, which now operates within this context. Commenting on the relationship between ethnicity and patronage Sandbrook notes that where ethnic groups are considerably insulated from one another, patron-client relations provide the mechanism for developing linkages among them through patrons, who fill the gaps by creating personal links with patrons from other groups, and providing linkages between the centre and periphery.<sup>19</sup> He observes that in multi-ethnic states, ethnic co-operation depends largely on ethnic bargains worked out by patrons at the top of the pyramid. Moreover, opportunities for the development of these bargains are often created by factionalism, which are common at the apex of patronage pyramids, and produce alternative patrons willing to strike deals with patrons from other ethnic groups.<sup>20</sup> However, these inter-patron links tend to be unstable and whenever ethnic groups perceive an external threat to their collective interests or existence, they usually close ranks, breaking off any links developed through these inter-patron networks.<sup>21</sup> The Kenyan experience speaks to this.

In his discussion on clientelism and ethnicity in Africa, Lemarchand observes that it is hardly the case that the two operate independently of each other.<sup>22</sup> 'Just as ethnicity has sometimes been credited with integrative properties that really belong to

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<sup>19</sup> Sandbrook, "Patrons, Clients and Factions".

<sup>20</sup> Sandbrook, "Patrons, Clients and Factions".

<sup>21</sup> Sandbrook, "Patrons, Clients and Factions".

<sup>22</sup> Lemarchand, "Political clientelism and ethnicity in Tropical Africa".

the realm of clientelism, so clientelism as an integrative mechanism has often developed out of the exigencies of ethnic fragmentation.’<sup>23</sup>

The concept of ethnicity is however problematic and is often used to describe the affective ties that bind individuals with a common language and history, and shared origin, culture and customs. From this description it is possible to presume that ethnic groups are homogenous solidarities, which have remained unchanged from pre-colonial times. However, beneath this veneer are vigorous contestations over membership, identity, authority and representation. Ethnicity as we know it in Africa today is an innovation forged from both old and new cultural materials.<sup>24</sup> Birthed from Africa’s experience with colonialism and encounter with modernity, it bears fleeting resemblance to its pre-colonial counter-part. Far from being a finished product- a construct that has completed its evolutionary cycle- ethnicity is a process that continues to unfold, influenced and shaped by the socio-political realities of the post-colonial State and Africa’s encounter with the rest of the world. Berman states:

‘African ethnicity and its relationship to politics is new, not old; a response to capitalist modernity shaped by forces similar to those related to the development of ethnic nationalism in Europe since the late nineteenth century, but encountered in distinct African and colonial circumstances.’<sup>25</sup>

Colonial interventions and African responses established the link between ‘bureaucratic authoritarianism, patronage and clientelism, and ethnic fragmentation and competition’ which have continued in the post-colonial period.’<sup>26</sup> The colonial State, pre-occupied with issues of authority and control sought to project itself as omnipresent and omniscient despite its limited institutional capacity and overstretched resources.<sup>27</sup> To do so, they engaged in a process of re-invention creating mutually exclusive ethnic groups within imposed administrative boundaries governed by invented ‘traditional authorities’ which were partial to colonial rule and would serve as the eyes and ears of the colonial power, a group that would perpetuate the colonial façade of control and authority.

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<sup>23</sup> Lemarchand, “Political clientelism and ethnicity in Tropical Africa”.

<sup>24</sup> Berman, Bruce, “Ethnicity, patronage and the African state: the politics of uncivil nationalism”, *African Affairs* (1998), 97, 305-341.

<sup>25</sup> Berman, “Ethnicity, patronage and the African State”.

<sup>26</sup> Berman, “Ethnicity, patronage and the African State”.

<sup>27</sup> Berman, “Ethnicity, patronage and the African State”.

Confronted with the reality of an extractive and oppressive regime, Africans in the colonial period actively engaged with the system and sought to exploit the few advantages that the system afforded. Agents of the State such as chiefs and headmen reinforced the coercive arm of the colonial State, forming a system of what Mamdani has called ‘decentralised despotism’.<sup>28</sup> These African collaborators used their positions and the patronage of the colonial regime to extract rents and accumulate wealth often through corrupt means. With their privileged positions, wealth and influence they were able to establish themselves as patrons, around whom clients converged for protection from the oppressive State and for access to the resources of the colonial State. Their advantaged position at this early stage of the colonial experience had lasting ramifications, allowing their offspring to emerge as African elites at the dawn of independence and leaders in the post-colonial period. In the Kenyan example, these families continue to hold sway on the country’s political system.

Scholarship on ethnicity in Africa has divided into those who view ethnicity as primarily primordial, emphasizing ‘the archaic cultural basis of ethnic identities’, and those who see it as instrumental, used to manipulate ethnic loyalties and identities for particularistic ends.<sup>29</sup> According to Berman, both models provide helpful but partial understandings of ethnicity, being as they are ‘essentially ahistorical- the latter dealing with a decontextualised present, and the former with an unchanging past.’<sup>30</sup> Instrumentalism points to the “contingent, situational and circumstantial” manipulation of ethnicity to secure material advantage.<sup>31</sup> Primordialism on the other hand bases its analysis on the ‘non-instrumental, deeply affective and emotional character of ethnicity’, which distinguishes it from other ‘bases of political identity and mobilization.’<sup>32</sup>

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<sup>28</sup> Mamdani, Mahmood, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press, Princeton, 1996).

<sup>29</sup> Berman, “Ethnicity, Patronage and the African State”; Young, Crawford, “Nationalism, ethnicity and class in Africa: a retrospective”, *Cahiers d’Etudes Africaines* 26 (1986), pp. 421-495.

<sup>30</sup> Berman, “Ethnicity, patronage and the African State”.

<sup>31</sup> Young, “Nationalism, ethnicity and class in Africa”..

<sup>32</sup> Berman, “Ethnicity, patronage and the African State”.

The relationship between ethnicity and politics in Africa is intimate and complex. An examination of the literature reveals two strands of argument. One school argues that ethnicity shapes politics by framing the arena for political contestation and determining the actors involved. The second school reverses the arrow of causality and posits that politics plays a central role in shaping ethnicity because it establishes ethnicity as a basis for political mobilization and creates incentives for the enhancement of ethnic consciousness.<sup>33</sup> We see both arguments as two sides of the same coin, which points to the symbiotic and complex relationship between the two processes and underscores ethnicity's salience in defining African political systems and the post-colonial State.

Ethnicity comprises two elements: the internal aspect, also known as *moral ethnicity* and the external one, which has been referred to as *political tribalism*.<sup>34</sup> Moral ethnicity refers to the norms and rules that stipulate rights and responsibilities of members of the ethnic group and regulate behaviour. It represents the most contested terrain as individuals within the group seek to challenge and affirm issues of cultural identity, responsibility, membership and authority within the ethnic group.<sup>35</sup> Intra-ethnic group contestation can be fiercer than inter-ethnic group competition. To maintain group cohesion in the context of finite resources it becomes necessary for elites within the group to marshall the community against the 'other'- ethnic groups with which the community is in competition for scarce State resources.

The mobilization of ethnicity for instrumental and material ends is what has been referred to as *political tribalism*. Berman notes that ethnicity's continued importance in African politics lies in its 'deliberate activation as a combination of identity, interest and common action' thereby combining instrumentalism with powerful and deeply emotive notions of cultural identity and consciousness.<sup>36</sup> This

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<sup>33</sup> Young, "Nationalism, ethnicity and class in Africa".

<sup>34</sup> For a discussion of political tribalism, see John Lonsdale, 'The moral economy of Mau Mau: wealth, poverty and civic virtue in Kikuyu political thought', in Bruce Berman and John Lonsdale, *Unhappy Valley: Kenya and Africa, Book two: Violence and ethnicity* (James Currey, London, 1992).

<sup>35</sup> Berman, Bruce (eds), 'Ethnicity and politics of democratic nation-building in Africa', in Berman, Bruce, Dickson Eyoh and Will Kymlicka (eds), *Ethnicity and Democracy in Africa* (James Currey, London 1992).

<sup>36</sup> Lentz, Carola, "Tribalism" and ethnicity in Africa", *Cahiers des sciences humaines* (1995) 31(2), 303-328.

instrumentalization of ethnicity needs to be seen in its historical context. The colonial State's failure to fully transform the colonial economy into capitalist modernity created formal institutions of State without supporting economic and social structures. Attempts to incorporate Africans in cash crop agriculture for example came late in the colonial period, after the Second World War, when reconstruction efforts in Europe following the war placed a burden on the colonies to increase their supply of much needed raw materials and primary products.

The partial penetration of capital in the colonial period however radically transformed the structural and spatial organization of African societies, shaping both the 'form and content of ethnic communities, identities and interests, as well as the modes of ethnic political mobilization and organization.'<sup>37</sup> The State became 'the central institutional force in the organization, production and distribution of social resources, and shaped the social criteria of access to those resources.' Berman notes that the State defined the rules of behaviour by which Africans were expected to abide, and structured the realm of choices for individuals, assigning roles, goals and strategies for individuals. In so doing it 'moulded the choices of political actors with regard to both the ascriptive markers of ethnicity and the organizational forms in which it was expressed' such as patronage. This in turn shaped 'the scope of ethnic politics, its relationship with other social cleavages, and the complex interaction of ethnic identities and interests', and in our case the complex relationship between clientelism and ethnicity.

Patronage and ethnicity in Africa are thus mutually dependent and reinforcing. The patronage system is embedded in a universe delineated by certain responsibilities and rules of behaviour. That universe is largely, but not exclusively, expressed in terms of ethnicity, which prescribes who may enter patron-client arrangements, and what their respective rights and obligations are. Where, as is the case presently, the ethnic group becomes the focus of political mobilization, patron-client relations in turn become an important focus of intra-ethnic contestation for leadership, and a mechanism for intra-group accountability. However, the realities of inter-ethnic competition for access to State resources such as jobs, government loans and funds

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<sup>37</sup> Berman, "Ethnicity, patronage and the African State".

for development creates an important tool for enhancing ethnic group cohesion. As such, patrons often articulate issues of access to State resources in terms of political ethnicity in order to maintain their positions at the apex of the pyramid, and to ensure cohesion between patronage networks embedded within the ethnic group.

This situation has important implications for corruption. Patronage networks are essentially instrumental relations. When these particularistic patron-client expectations are articulated in terms of the catch-all phrase ethnicity, and compounded by the emphasis on obtaining as large a share of the 'national cake' as possible ostensibly for the ethnic group, incentives for corrupt behaviour increase exponentially. These incentives are on three levels: first, since the patron's position depends on his wealth, prestige, status and influence, he must maintain these to retain his place in the hierarchy. Thus, the incentive for the patron or aspiring patrons desirous of assuming leadership of the patronage network to utilize public office for primitive accumulation is ever present.

Secondly, the maintenance of clientelist networks depends on the patron's ability to guarantee a steady supply of material resources. Hence, the motivation to divert State resources towards these networks is significant. Thirdly, since the patron's access to State resources depends on his ability to mobilize a substantial following with which to bargain when he confronts other patrons at the national level, claims to the national cake are couched in terms of the ethnic group which guarantees him the greatest possible numbers. Consequently, there is an expectation from the ethnic group that the patrons will protect the group's interests and ensure they obtain their 'rightful' share of State resources, popularly referred to as 'development'. In a context of weak State institutions and capacity to ensure even and continual development across the country, pressure mounts on the patron to engage in corruption to meet these, often unrealistic, group expectations for development that he helped fan in the first place.

### 2.3 Uneven or differential development:

The salience of ethnicity in Africa and Kenya specifically has been attributed to the uneven development within colonial territories, which saw some areas fare relatively better than others (due to the penetration of colonial capitalism in those areas), and some individuals prosper from collaboration with colonial State functionaries.<sup>38</sup> Areas that were proximate to colonial institutions benefited from educational opportunities, cash crop agriculture particularly after World War II, trade and work compared to outlying areas resulting in a topography of uneven development across regions. These advantages were thrown in sharper relief as African elites prepared for independence and the differences in development among regions threatened national cohesion and caused supposedly nationalist groups to mobilize support along ethnic lines. This was particularly so in Kenya where two ‘nationalist’ parties emerged: KANU, which comprised the two dominant ethnic groups that had fared relatively better from the colonial encounter- the Luo and Kikuyu; and KADU, which drew its membership from the smaller pastoralist ethnic groups such as the Maasai, Kalenjin, Somali, Luhya, and the coastal tribes who feared domination and exploitation by the Luo and Kikuyu in the post-colonial period.<sup>39</sup>

Vail notes that when it became clear that the colonial era was drawing to an end, ‘petty bourgeois groups mobilised support along ethnic lines so that they would be in a position to maximise their opportunities for access to resources and power after independence.’<sup>40</sup> Young observes the link between the growth of ethnic conflict in Africa and differential development perpetrated in the colonial period. He notes that ‘the penetration of capitalism and opportunities for social ascent, were unequally distributed, a factor introduced by colonial rule.’<sup>41</sup> He states:

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<sup>38</sup> Vail, Leroy, ‘Ethnicity in Southern African history’, in Richard Grinker and Christopher Steiner (eds), *Perspectives on Africa: A Reader in Culture, History and Representation* (Blackwell, Oxford, 1997).

<sup>39</sup> Anderson, D. “‘Yours in Struggle for Majimbo’: Nationalism and the Party Politics of Decolonisation in Kenya, 1955-1964.” *Journal of Contemporary History* 40, no. 3 (2005): 547-64.

<sup>40</sup> Vail, ‘Ethnicity in Southern African history’.

<sup>41</sup> Young, “Nationalism, ethnicity and class in Africa”.

‘the accidents of location of communication routes, siting of towns and major centers of wage employment, and distribution of missionary resources offered new opportunities to some groups for small but significant fractions of their sons (rarely their daughters) to enter the ranks of the subaltern elite below the foreign estate created by colonialism. Other segments of the populace were denied such openings, and had only small representation in the new elites.’<sup>42</sup>

Berman concurs and notes that the colonial State was more interested in control than in the economic transformation of the colonies. As a result, the emergence of the modern State with a bureaucracy based on Weberian principles was hampered. Instead of the State being viewed as an impartial arbiter and protector of individual rights and freedoms, it became a resource to be captured in a zero-sum game of ethnic competition. In such a situation, the clear demarcation between the public and the private that lies at the heart of the public-office concept of corruption, which informs this paper, lost its potency creating the potential for the emergence of egregious corruption.

To summarise our observations so far, we note that corruption is likely to emerge in a political system characterized by patron-clients relations, where regional development is manifestly uneven, and where ethnicity forms the basis of political mobilization and resource competition in a context of low national integration. This description finds expression in the Kenyan context, and was particularly apparent during the one party State. The transition to democracy, which occurred in 1992, opened political space, allowing the (re)entry of previously marginalized elites into the political system. It did not however change the authoritarian nature of the State. The process of democratization was therefore not considered complete during Moi’s two terms following the re-introduction of multipartism. However in 2002, the coalition of opposition and former KANU elites brought together under the banner of the National Rainbow Coalition (NARC) defeated Moi and KANU. NARC’s victory was generally considered a triumph for democracy and evidence of Kenya’s democratic maturity. However, even at this stage, the nature of the State was not addressed.

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<sup>42</sup> Young, “Nationalism, ethnicity and class in Africa”.

Attempts were made in 2003 to rewrite the country's constitution to reflect Kenya's new democratic credentials, but this succumbed to the political exigencies of the moment, as the coalition degenerated into factional conflicts between the two main coalition partners- the Liberal Democratic Party (LDP), which complained of being shortchanged in the sharing of ministerial portfolios, and the National Alliance of Kenya (NAK), which was itself a coalition of former opposition parties. NAK became reluctant to cede any of the authoritarian powers of the State to the LDP, and the titanic battle that ensued was fought in the constitution review arena. The constitution review process became a casualty of this factional battle. Eventually a watered-down version of the new constitution was presented to the electorate by the NAK-led government in a referendum held in November 2005. The draft was however resoundingly rejected, and with it died the attempts to reconfigure the Kenyan State.

It is in the context of the conflict between NAK and LDP that the Anglo-leasing procurement scandal was conceived by senior NAK ministers, who feared defeat by LDP at the referendum.<sup>43</sup> LDP had been actively campaigning against the draft constitution. Secondly, determined not to allow power to slip from its grasp at the next general election, NAK sought to shore up its campaign chest in readiness for the 2007 election. Thus, at a time when Kenya was being hailed as a model of democracy in Africa, the pre-occupations of the single-party regimes still characterized perceptions of the State, and the objective of politics. In the next section, we will examine, why corruption became such a systemic problem in Kenya and how this in turn affected the transition to democracy.

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<sup>43</sup> For a discussion of the Anglo-leasing scandal see Wrong, Michaela., *Our Turn to Eat: The Story of a Kenyan Whistleblower* (Harper, New York, 2009).

### Part 3: Corruption and democratization in Kenya

Endemic corruption in Kenya reached its apogee in the Moi era. However, it would be incorrect to assert that corruption was less problematic during the Kenyatta years. Indeed, corruption formed an integral part of the Kenyatta administration. It was during the Kenyatta regime that civil servants were allowed to engage in private business activities. The result was the entrenchment of conflict of interest in the bureaucracy. Among the corruption scandals associated with the Kenyatta regime are the coffee smuggling racket popularly known as *magendo* in the early 1970s, and the Ken Ren Fertiliser Company scandal, which entailed the establishment of a fertilizer manufacturing plant to mitigate shortages in the country. Ken Ren soon became a milching cow and is yet to be resolved.

Kenyatta also established an elaborate system of patronage based on ethnicity in which he co-opted elites from various ethnic groups in Kenya into a ruling coalition, and ‘set himself up as the ultimate patron in the neo-patrimonial State over which he presided.’<sup>44</sup> Muigai observes a tension at the heart of Kenyatta’s presidency: the desire to forge a nation from diverse ethnic groups and the perceived need to placate members of his Kikuyu ethnic group. Kenyatta decided to pursue both strategies, surrounding himself with an inner circle of Kikuyu advisers who were widely seen as forming a ‘Kikuyu government within the government to the exclusion of other ethnic groups’ and the forging of a broad ruling coalition of big men from other ethnic groups.<sup>45</sup> This strategy would have significant repercussions on the Kenyan state.

First, it privileged the Kikuyu over other communities and exacerbated regional inequalities, which had emerged in the colonial period. Secondly, it reinforced the perception of the State as a resource, whose capture was the ultimate goal of political contestation as it then guaranteed access to development and the means of individual progression and primitive accumulation. Thirdly, by projecting the State as a

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<sup>44</sup> Muigai, G, ‘Jomo Kenyatta and the rise of the ethno-nationalist State in Kenya’, in B. Berman, D. Eyoh and W. Kymlicka (eds), *Ethnicity and Democracy in Africa* (James Currey, Oxford, 2004).

<sup>45</sup> Muigai, ‘Jomo Kenyatta and the rise of the ethno-nationalist State in Kenya’.

resource, it condoned the privatization of State institutions by cabals of influential politicians and allowed corruption to take root and flourish. Corruption would later explode in the Moi era. Fourthly, it encouraged the growth of instrumental ethnicity and ethnic competition as a result of increasing discontentment among other ethnic groups at the disproportionate advantages the Kikuyu were enjoying under Kenyatta. The Kikuyu dominated the provincial administration, key positions in the civil service, the police force and military. They also had privileged access to credit facilities, licences and government contracts that allowed them to increase their collective wealth and deepen their hold on the economy.

It should be noted, however that not all Kikuyu benefited from the Kenyatta regime. The landless poor of Nyeri and Kirinyaga for example, who had formed the backbone of the Mau Mau uprising, and with whom Kenyatta shared little in common, saw no great improvements to their daily existence.<sup>46</sup> Apart from the parcels of land that some of them received in the Rift Valley through the Million Acres scheme, Kikuyu from these areas were condemned to the periphery of the Kenyatta regime.

The Kenyatta years are usually depicted as the golden years of the Kenyan post-colonial State. The economy was growing, the political system was stable, State institutions were strong and functional, and Kenya was making strides in evening out the developmental divide in the country. However, the apparent strength of the State belied the fundamental weaknesses that lay at its heart. National cohesion was more myth than reality, and the State remained particularly motivated by issues of authority and control. Kenyatta became an astute manager of political conflict, and applied both patronage and coercion to elicit co-operation from and between elites.<sup>47</sup>

To do so, Kenyatta devised an elaborate system of patronage, which centered on what has since become a Kenyan institution, *harambee*. *Harambee* was a policy for community development, which required MPs to initiate development projects in their constituencies by sponsoring fund-raising meetings. The success of such fund-raising

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<sup>46</sup>Anderson, David, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* (Weidenfeld and Nicolson, London, 2005).

<sup>47</sup>Widner, Jennifer A., *The Rise of a Party-State in Kenya* (University of California Press, Berkeley, 1992).

rallies depended on the contributions and support of politicians from other constituencies. *Harambee* became an important instrument of reward and control. Favoured elites and areas *harambee* efforts met with tremendous success and received Kenyatta's backing. Rebels efforts to fundraise through *harambee* on the other hand were sabotaged and these individuals paid dearly at the ballot box. *Harambee* created a situation of mutual dependence and co-operation among elites, compensated areas that fared badly from the development budget, and ensured that political order, the logic driving the State, was maintained.<sup>48</sup> Widner observes that while *harambee* had long existed in an uninstitutionalised form in the country, Kenyatta entrenched it and made it an enduring feature of Kenya's political landscape.<sup>49</sup> In the Moi era, *harambee* would take on renewed significance and would become a salient mechanism for the distribution of largesse and the corrupt extraction of State resources by well-placed individuals.

### **3.1 Moi and the rise of endemic corruption in Kenya**

The explosion of corruption in the Moi years can be explained by several factors. Firstly, Moi's ascension to the Presidency was fraught with challenges mainly from Kikuyu elites close to Kenyatta, who viewed the Presidency as a natural right of the Kiambu Kikuyu. This group came to be known as the 'Change the Constitution Movement' (CCM) and tried to prevent Moi's ascendance to the presidency upon Kenyatta's demise, as was provided in the Constitution. Moi was able to assume office with the support of powerful Kikuyu patrons in Kenyatta's government, who now fully expected to be rewarded.

Secondly, the smaller ethnic groups, in whose name Moi had campaigned from the moment he entered politics, and who had been marginalized by the Kenyatta regime, now wanted their share of the 'national cake'. The wheel of fortune had turned and it was finally their 'time to eat'. Thirdly, Kenyatta had set a precedent, which created expectations of greater access to 'development' and other State resources for the president's ethnic group. The Kalenjin therefore expected to do extremely well from having 'their man' at the helm. Fourthly, the Kikuyu from Nyeri,

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<sup>48</sup> Widner, *The Rise of a Party-State in Kenya*, p. 61.

<sup>49</sup> Widner, *The Rise of a Party-State in Kenya*, p. 61

Kirinyaga, Nyandarua and Laikipia, whose 'big men' had risked a backlash from the wider ethnic group by throwing their lot with Moi, now saw an opportunity through Moi to remedy the neglect of the Kenyatta years.

These burdens of expectation, all particularistic and non-productive in nature, converged on the State, and demanded immediate attention. From the experience of the Kenyatta regime, there appeared to be no reason why these expectations would not be met. However, Moi assumed office just as the tide was changing for the worse in Kenya. The abundant patronage resources that had been available to his predecessor were by now depleted. The cash-crop boom of the mid-1970s was ending; tourism, a major revenue-earner, was leveling off; the international price of tea and coffee had plummeted and smallholder producers had begun to receive a diminishing proportion of the returns from these commodities; the economic benefits of land consolidation were all but exhausted and the urban population was expanding rapidly at more than 10 per cent per annum.<sup>50</sup> Moreover, land, which had been an important patronage resource for the Kenyatta regime, was becoming scarce and the country was facing drought and food shortages. These were inauspicious circumstances indeed for a new regime to be assuming office.

In the wake of these challenges, it became necessary for Moi to look for new patronage resources. Corruption quickly emerged as a vital source. Widner observes:

'It was necessary to remunerate his Kalenjin support while maintain[ing] the allegiance of other major groups, negotiating with greater numbers of spokesmen, in consequence, and thus raising the costs of the Kenyatta style of governance. Absent these, the only access to resources was through the Treasury or through bribes and "shakedowns" on international business contracts.'<sup>51</sup>

Widner notes that as other State resources melted away, money became an important means of buying loyalty, maintaining restive clients and retaining power.<sup>52</sup> Since the economy could no longer generate enough revenue to meet the

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<sup>50</sup> Throup, D., and C. Hornsby, *Multi-Party Politics in Kenya: The Kenyatta and Moi States and the Triumph of the System in the 1992 Election* (James Currey, Oxford, 1998), p. 26. But Lynch disputes this, See Lynch, Gabrielle, "Moi: The Making of an African 'Big-Man'", *Journal of Eastern African Studies*, 2,1 (2008), pp. 18 -43.

<sup>51</sup> Widner, *The Rise of a Party-State in Kenya*, p. 35.

<sup>52</sup> Widner, *The Rise of a Party-State in Kenya*.

government's balance of payments, much less maintain these patronage networks, corruption became a vital means of securing regime stability. What followed was an explosion of dubious schemes and a burgeoning government budget. Moreover, the *harambee* policy, which was entrenched by Kenyatta, began to play a new and greater role in the Moi regime as a means of transmitting the proceeds of corruption to meet patronage ends.<sup>53</sup>

Corruption scandals associated with public procurement and investment soon became a dominant feature of the regime, and 'white elephants' began to dot the landscape as development projects were established specifically to generate rents for political elites and favoured bureaucrats. Alongside the manipulation of *harambee*, which had brought corruption closer to the people, and the massive bureaucratic corruption that now permeated the people's relations with the State, the regime introduced a new dimension- 'land grabbing'.<sup>54</sup> This was not new to the Moi regime. It began in the Kenyatta era where large tracts of public land were excised and appropriated by the ruling class.<sup>55</sup> However in the Moi era, the pace of 'land grabbing'; the massive acreage of land appropriated; the effect of this excision on public institutions (which were left with little room for expansion), and on the people (a majority of whom were rendered squatters on their own land); and the range of actors- from Moi and his inner circle, to the local village leaders who had the ear of a 'Big Man', left the country reeling. The security that people had derived from land title deeds was eroded, as these were often overridden by the rich and powerful. Corruption it seemed had exploded everywhere.

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<sup>53</sup> For the connection between *Harambee* and corruption in the Moi era see the Report on the Task Force on *Harambee* established by the Narc government in 2002 and chaired by Koigi wa Wamwere

<sup>54</sup> For a discussion on land grabbing in Kenya see the Report of the Ndung'u Commission of Inquiry into Illegal/Irregular Allocation of Public Land, 2005.

<sup>55</sup> 'Kibaki is not new to grand scam', *The Standard* 29 January 2006.

#### **Part 4: The Goldenberg Affair and its influence on Kenya's Transition to Democracy**

It is clear from our discussions so far that the Goldenberg Affair, was not an oddity, but was part of the normal course of business for the regime. Goldenberg's significance lies in the timing of the Affair-coinciding with the change from single-party rule to multipartism; the scale of the scheme both in terms of the range of actors involved and the sums generated, and its complexity, involving complex economic and financial arrangements. But why did a government that had so far been content with simple procurement schemes- occurring at frequent intervals and involving a small range of actors- suddenly take interest in a scheme such as Goldenberg? To understand this, we need to examine the events preceding the transition to democracy.

The lead up to the reintroduction of multiparty politics in Kenya in December 1991, was tense and dramatic. Four developments made the maintenance of authoritarianism by the Moi regime untenable: the 'third wave of democratization' that was triggered by the fall of communism in Eastern Europe and the end of the Cold War; the corrupt and shambolic 1988 national and KANU elections that were massively rigged; the murder of Foreign Affairs Minister Robert Ouko (who had enjoyed wide international support and was therefore seen as a threat to the regime) in February 1990; and the withholding of aid by the Paris Club in November 1991.<sup>56</sup>

On 7<sup>th</sup> July 1990, the first public demonstration calling for democracy was held in Nairobi, and was violently quelled by the regime. However, the damage had

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<sup>56</sup> For exposition on the 'third wave of democracy' see Huntington, Samuel P, *The Third Wave: Democratization in the late Twentieth Century* (Oklahoma University Press, Norman, 1991). For discussions on the Ouko murder see Cohen, David William and E.S. Atieno Odhiambo, *The Risks of Knowledge: investigations into the death of the Hon. Minister John Robert Ouko in Kenya, 1990* (Ohio University Press, Ohio, 2004). See also Anguka, J, *Absolute Power: Ouko Murder Mystery* (Pen Press, London, 1998). For discussions on what triggered agitation for democracy in Kenya in the 1990s see Throup and Hornsby, *Multi-Party Politics in Kenya*, p. 54; Kibwana, Kivutha, *Sowing the Constitutional Seed in Kenya* (Claripress, Nairobi, 1996); Kibwana, Kivutha, 'Issues of constitutional reforms in Africa: the example of Kenya', in Kivutha Kibwana (ed.) *Readings in Constitutional Law and Politics in Africa- A Case Study of Kenya* (Claripress, Nairobi, 1998), pp 15-37; Kibwana, Kivutha, 'Democracy and Constitutionalism in Africa', Kibwana, Kivutha and Willy Mutunga, 'Promoting democracy in Sub-Saharan Africa: lessons from Kenya' and Mulei, Christopher, 'Human rights, democracy and the rule of Law' all in Kivutha Kibwana (ed.) *Readings in Constitutional Law and Politics in Africa- A Case Study of Kenya* (Claripress, Nairobi, 1998); Wanjala, Smokin, 'Presidentialism, ethnicity, militarism and democracy: the Kenyan example' in Oloka-Onyango, Kibwana, Peter (eds) *Law and the Struggle for Democracy in East Africa* (Claripress, Nairobi, 1996).

been done, and demands for a return to multipartism began to be heard all over the country. By the end of 1991, the pro-democracy campaign had become a mass movement.<sup>57</sup> The government also came under increasing pressure from the international community to liberalise both politically and economically, and in November 1991, the donor community suspended aid to Kenya leaving the Moi government in very difficult circumstances. In December 1991, Moi finally relented and moved to repeal section 2A of the Constitution, restoring multi-party politics in Kenya. He however tightly controlled the transition to multipartism and used the State's coercive powers to harass and obstruct the nascent opposition.

The first multi-party elections were set for December 1992, and all signs indicated that the regime would not survive the transition to democracy. It came out fighting, deploying security forces and mobilizing vigilante groups to deal ruthlessly with demonstrators. When this failed to stem the tide of change, the regime resorted to terror and coercion especially in the Rift valley aimed at flushing out opposition supporters from the area and securing the Rift Valley as a 'KANU stronghold'. These terror tactics or 'ethnic clashes' as they were euphemistically called because of the ubiquitous presence of 'traditional warriors' were later found to have been engineered by the State following calls by the Kalenjin elites for a return to *Majimbo* (regionalism)- the ill-fated federal system of government that had been established at the dawn of independence but had been systematically dismantled within five years of its inception.

It is in the context of these tense and dramatic events, which threatened the very survival of the Moi regime, that a plan was hatched for its biggest and most daring embezzlement scheme yet, the Goldenberg Affair. The aim was to generate substantial sums of money to secure a win in the 1992 elections. Some estimates have put the amount embezzled and lost through the Affair at Sh. 500 billion.<sup>58</sup> Efforts by successive governments to trace and return the money have proved unsuccessful, and the legacy of Goldenberg lives on.

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<sup>57</sup> Throup and Hornsby, *Multi-Party Politics in Kenya*, p. 68

<sup>58</sup> Warutere, Peter, 'The Goldenberg conspiracy: the game of paper gold, money and power' (Occasional Paper 117, September 2005). Note that the Bosire Commission was only able to trace Sh. 24 billion but admitted that this was only a fraction of the amount lost through the scandal. It admitted that the true scale of the scandal might never be known.

#### **4.1 Conclusion:**

Kenya's experience with corruption to date lends credence to the argument that rather than transform into a democratic State, Kenya has remained essentially authoritarian, while maintaining a façade of democracy. Goldenberg and Anglo-leasing indicate that rather than improve governance, reduce corruption and enhance accountability, the process of democratization has resulted in increased corruption, greater impunity and increased mismanagement of resources. While Kenya's political landscape has been characterised by ritual elections and a freer press since 1992, Kenya did not fully democratize. The transition did not alter the authoritarian patterns, institutions and procedures of the State. Kenya's political system remains steeped in patronage, clientelism and political ethnicity, which have their heritage in the colonial State, and the policies pursued by the Moi and Kenyatta governments in the post-colonial period. While democratization disrupted previous clientelist networks by bringing new players into the political fold, the rules of the game did not change. The State has remained weak and open to challenge by various factions. However, what democratization has indeed accomplished in Kenya is to limit the range of options available to incumbents to deal with threats to its hold on power. While previous regimes could rely on coercion to ensure stability, the 'democratic state' must now rule by consensus. However, absent democratic avenues for achieving consensus, the State in the age of democracy has resorted to the tried and tested instrument for achieving co-operation-corruption-in an environment of ever-dwindling patronage resources. Until Kenya actually democratizes, corruption will remain a salient feature of governance in the country.

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