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Corruption in Kenya Understanding a Multifaceted Phenomenon

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Alexia VAN RIJ

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Abstract

In Kenya, corruption results from a confusion of public and private interests that is specific to the neo-patrimonial logic in place since British colonization. The strong moral and political ethnicity that characterizes the country fuels an ambiguous relationship between the population and the elite. While the abuses of leaders are widely condemned by citizens, many of them show resignation and even tolerance in the face of the phenomenon, from which they paradoxically sometimes feel the beneficiaries. In this context, the fight against corruption appears above all as a means of discrediting political opponents by the citizens—to maintain power—, and to reassure international investors—to maintain wealth.

Résumé

Au Kenya, la corruption résulte d'une confusion des intérêts publics et privés propre aux logiques néo-patrimoniales en place depuis la colonisation britannique. La forte ethnicité morale et politique qui caractérise le pays alimente un rapport ambigu entre la population et l'élite. Si les abus des dirigeants sont largement condamnés par les citoyens, nombre d'entre eux font preuve de résignation voire de tolérance face au phénomène, dont ils se sentent paradoxalement parfois bénéficiaires. Dans ce contexte, la lutte contre la corruption apparaît avant tout comme un moyen de discréditer les adversaires politiques auprès des citoyens – pour maintenir le pouvoir – et de rassurer les investisseurs internationaux – pour maintenir la richesse.

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Introduction

"Corruption has become an accepted way of life. As individuals and as a collective, we have sacrificed our traditions, customs and values at the altar of materialism. Rather than shunning those who have made their wealth through illicit means, we celebrate them, even in places of worship."

With these words delivered on January 25, 2019 at the historical Bomas of Kenya conference hall, President Uhuru Kenyatta condemned the neo-patrimonial spirit and practices specific to Kenya's political elites. This stance does not appear to have convinced the public, which has been greatly disillusioned by the discrepancy between politicians' words and actions with regard to corruption since independence (1963)³: in 2016, only 21% of Kenyans thought that the president would succeed in reducing the level of corruption in the country during his term in office.⁴

As the sixth richest country in sub-Saharan Africa in 2019 and the ninth fastest-growing country in the region in recent years, Kenya boasts an encouraging economic trajectory. However, real progress in the fight against corruption is much more nuanced. The country's stagnation at the bottom of the international ranking in perceived corruption by the economic and institutional world, and the feeling among the population of an increasing level of corruption in recent years, raises questions about the relevance of the current government's approach to the phenomenon. In the *Routledge Handbook of Political Corruption*, the political scientist,

^{2.} President Uhuru Kenyatta's speech on January 25, 2019 at the National Anti-Corruption Conference at the Bomas of Kenya (Kenya), available online: www.president.go.ke.

^{3. &}quot;Au Kenya, la guerre contre la corruption ne convainc pas", *Le Monde*, January 24, 2019, accessed on March 13, 2021.

^{4.} Ipsos opinion poll carried out in 2016, available at: www.ipsos.com.

^{5.} Data: World Bank. The Gross Domestic Product (GDP) amounts to 65 million real dollars (2010) in 2019, and the average annual growth in GDP between 2014 and 2019 was 5.6%.

^{6.} Each year, the organization *Transparency International* publishes a global ranking based on the *Corruption Perception Index*, that is the aggregate of several indices and surveys carried out in the economic and institutional world. Between 2012 and 2019, Kenya was 140th out of 180 countries with very little variation throughout this period (standard deviation: 3.8).

^{7.} The last Afrobarometer Kenya survey, conducted between August and October 2019, found that 64% of the population reportedly experienced an increase in the level of corruption in the country in the last year. In 2016, this was 67% of Kenyans surveyed. Online results: www.afrobarometer.org.

^{8.} P. M. Heywood $et\ al.$, $Routledge\ Handbook\ of\ Political\ Corruption$, London: Routledge, 2014.

M. Johnston, argues that ongoing corruption in some developing countries (such as Kenya) is due to the repeated duplication of anticorruption reforms. These reforms are based on a "limited understanding of justice and the importance of politics", firstly ignoring the multifaceted nature of the concept and secondly, the diversity of political and economic contexts that corruption spreads in.

In this paper we will use the broad definition of corruption, as proposed by the anthropologist, J.-P. Olivier de Sardan, namely, "the set of practices of misuse of public office (illegal and/or improper from a normative or user point of view) to obtain undue private benefits". The Kenyan case study allows us to distinguish two main levels of corruption in the public sector (i) politico-administrative corruption, involving high-level public officials (ministers, members of parliament, local governors, etc.) and other public officials or private actors, and (ii) everyday corruption, involving frontline public officials (police officers, customs officials, airport employees, etc.) and ordinary citizens.

We will refer to the concept of neo-patrimonialism, developed by J.-F. Médard in 1991 to characterize sub-Saharan African governments, 11 and describe a situation where the State, while claiming to be modern, combines public and private norms, as opposed to the Weberian bureaucratic State that is based on impersonal rules. 12 The result is the personification of power and the accumulation of resources (power and wealth) for private purposes by a small group of influential people in pursuit of their personal interests rather than the common good. In other words, the State would be "appropriated by its office-holders and privatized: with each holder of a share of State authority monopolizing it for their own benefit and for that of their network". 13 In Kenya, neo-patrimonialism is rooted in a "moral and political ethnicity" that is a legacy of colonialism: according to the historian, J. Lonsdale, 14 moral ethnicity refers to a sense of common ethnicity based on shared practices,

^{9.} G. Blundo and J.-P. Olivier de Sardan, *Etat et corruption en Afrique*, Paris: Karthala, 2007, p. 8.

^{10.} In this paper, we will focus on corruption involving public officials as defined in Article 2 of the United Nations' Convention against Corruption (UNCAC).

^{11.} J.-F. Médard, "L'État néo-patrimonial en Afrique noire", in : J.-F. Médard (ed.), États d'Afrique noire : Formation, mécanisme et crise, Paris: Karthala, 1991, p. 323-353.

^{12.} D. Bach & M. Gazibo, *L'État néopatrimonial : genèse et trajectoires contemporaines*, Ottawa: University of Ottawa Press, 2011.

^{13.} P. Jacquemot, "Comprendre la corruption des élites en Afrique subsaharienne", Revue internationale et stratégique, Vol. 1, No. 85, 2012, p. 125-130.

^{14.} J. Lonsdale, "Ethnicité morale et tribalisme politique", *Politique africaine*, No. 61, 1996, p. 98-116.

norms and values, and political ethnicity is the use of this moral ethnicity in political competition for access to power.¹⁵

The objective of this paper is to highlight the complexity of corruption by analyzing its various forms in a specific case, contemporary Kenya, where it is part of a neo-patrimonial political system characterized by strong moral ethnicity and intense political struggles. We will use the neo–Marxist distinction between the ruling elite and the rest of the population¹⁶ to structure the discussion. We will firstly examine how the structural interpenetration of private and public interests in Kenya since independence has resulted in a constant resort to corruption among the ruling elite in increasingly complex forms. We will then study the citizens' ambiguous attitude towards corruption, that ranges from justification, to outrage and to involvement. On the basis of these findings, we will analyze the reasons and resources for fighting corruption in Kenya.

This paper is the result of field research carried out between March and September 2019. More than 40 semi-structured interviews were conducted with researchers, journalists, businesspeople, activists and politicians in Nairobi and Mombasa to shed light on the idea at a time when the fight against corruption is the leitmotif of President Uhuru Kenyatta's politics. These interviews—which have been anonymized here—were supplemented by an extensive literature review, a press review, and an analysis of public data.¹⁷

^{15.} According to the Central Intelligence Agency's (CIA) *World Factbook*, ethnic distribution in Kenya in 2019 was as follows: Kikuyu 17.1%, Luhya 14.3%, Kalenjin 13.4%, Luo 10.7%, Kamba 9.8%, Somali 5.8%, Kisii 5.7%, Mijikenda 5.2%, Meru 4.2%, Maasai 2.5%, Turkana 2.1%, foreigners 1%, others 8.2%.

^{16.} See B. E. Bedasso, "Ethnicity, intra-elite differentiation and political stability in Kenya", *African Affairs*, Vol. 114, No. 456, 2015, pp. 361-381.

^{17.} The study was supervised by the *Institut français de recherche en Afrique* (IFRA-Nairobi). *The Fondation Sarah Andrieux* also provided financial support.

Map of Kenya



Source: Oxford Cartographers

Politico-administrative corruption: a result of the interpenetration of public and private interests

The Kenyatta, Moi and Kibaki families, i.e., the three presidential families, were among the top 20 wealthiest families in Kenya in 2020. 18 A specific characteristic of a neo-patrimonial regime, the conflict of public and private interests in Kenya, which began with colonialism, has resulted in the ruling elite accumulating wealth through various corrupt practices. Although the features and forms of corruption have changed over time, the underlying logic persists while becoming more complex.

The origins of corruption: the patronclient relationship

The "original sin" at independence19

In 1965, Jomo Kenyatta, the controversial former leader of the Mau Mau rebel movement,²⁰ was proclaimed the first President of the Republic of Kenya. According to the historian, H. Charton,²¹ the Father of Independence, who came from the main Kikuyu ethnic group, had an "ambiguous" image. However, the president was apparently determined to unite people around the ideal of an independent Kenyan nation, and he responded to the frustrations caused by British colonialism by promoting the appropriation of arable land (Central Region, Rift Valley, etc.) and concentration of

^{18. &}quot;Super Rich Kenyans Who Are Not So Philanthropic!", *Business Today*, March 27, 2020. Presidents of Kenya since independence (1963): Jomo Kenyatta (1965-1978), Daniel arap Moi (1978-2002), Mwai Kibaki (2002-2013), Uhuru Kenyatta (2013-...). Uhuru Kenyatta is Jomo Kenyatta's son.

^{19. &}quot;The Original Sin: Land, Politics and the History of Ethnic Tensions in the Rift Valley", *The Elephant*, February 14, 2019.

^{20.} The Mau Mau were an insurgent group formed in Kenya in the 1950s, mainly made up of Kikuyus protesting against British colonial oppression. See C. Elkins, *Britain's Gulag: The Brutal End of Empire in Kenya*, London: Penguin, 2005 and D. Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire*, London: Weidenfeld & Nicolson History, 2005.

^{21.} H. Charton, "Jomo Kenyatta et les méandres de la mémoire de l'indépendance du Kenya", *Vingtième Siècle. Revue d'histoire*, Vol. 2, No. 118, 2013, pp. 45-49.

power for his own benefit and that of his close associates, mainly Kikuyu members of the "Mount Kenya Mafia". ²² In this way, he laid the foundations for a clientelist system where he (the patron) rewarded his "clan" (the clients) in exchange for their political support and at the expense of public interest.

Such outcomes were a legacy of British colonialism where the "systematic use of material incentives to convince African leaders and administrators to cooperate with them [the colonists]" was at work.²³

Moi's nyayo philosophy

Daniel arap Moi was president of Kenya from 1978 to 2002, and is a Tugen from the Kalenjin ethnic group.²⁴ During his successive terms in office, he maintained the neo-patrimonial nature of Jomo Kenyatta's regime, while exacerbating its ethnic dimension, consequently further politicizing already strong moral ethnicities.

The analysis of Moi's "Imperial Presidency" by S. Mueller²⁵ is particularly instructive in this sense. Moi, unlike Kenyatta, had a much smaller and less influential political circle at the start of his term in office. Furthermore, the fall in coffee prices around 1980 reduced government revenue. Given these two challenges, and driven by a sense of revenge due to the unfair distribution of land and power under Kenyatta, Moi's political and economic strategy was focused on weakening the Kikuyu "enemy" in favor of the Kalenjins. Subsequently, many Kikuyu figures were removed from key positions in the government and private sector, and replaced by Moi's close associates, who were mainly Kalenjin. The collusion between political and economic actors is linked to rapid enrichment by the political and economic elite through, amongst other things, widespread embezzlement of public funds. The Goldenberg scandal is a prime example of this: in the early 1990s, the equivalent of 10% of the country's Gross domestic product (GDP) was allegedly granted by the Ministry of Finance in the form of non-existent gold subsidies to a company whose interests were closely connected to the highest level of government.²⁶

^{22.} In common parlance, the "Mount Kenya Mafia" refers to Jomo Kenyatta's inner political circle, mainly made up of Kikuyus from the areas around Mount Kenya.

^{23.} M. Mulinge & G. Lesetedi, "Interrogating our past: colonialism and corruption in Sub-Saharan Africa", *African Journal of Political Science*, Vol. 3, No. 2, 1998, pp. 15-28.

^{24.} The Kalenjin ethnic group was created on independence to counter the hegemony of the two main ethnic groups, the Kikuyu and the Luo. It includes, amongst others, the Nandi, Kipsigi, Elgeyo, Marakwet, Tugen and Sabaot.

^{25.} S. Mueller, "The political economy of Kenya's crisis", *Journal of Eastern African Studies*, Vol. 2, No. 2, 2008, pp. 185-210.

^{26. &}quot;Moi 'ordered' Goldenberg payment", BBC, February 17, 2004, accessed on November 3, 2020. See also H. Maupeu, "État, économie et développement au Kenya", in:

In keeping with a violent colonial order based on exclusion and ethnic division, Jomo Kenyatta and Daniel arap Moi laid the foundations for a neo-patrimonial regime where the private interest of the ruling elite transcended the public interest. Essentially, being in power became synonymous with personal enrichment and favoritism for their entourage—often from the same ethnic group—in exchange for political support and complicity. Corrupt practices continue to serve both of these interests: they enable the former, particularly through embezzlement, and sustain the latter through the granting of various rewards (bribes, public land, political offices and contracts).

Between legacy and renewed corruption

"Traditional" illegal enrichment practices: embezzlement and bribery in large infrastructure contracts

Despite the determination of Presidents Mwai Kibaki (2002-2013) and Uhuru Kenyatta (2013-...)—both Kikuyus—to fight corruption (see part 3), traditional corrupt practices that enrich the ruling elite persist.

Analysis of the corruption scandals reported and criticized by the media in Kenya show different levels of illegal enrichment.²⁷ Embezzlement of public funds is the most criticized practice, as it amounts to a direct, obvious, and substantial loss of public revenue for the benefit of the private interest of a small group of people. It can occur in current or capital expenditure and at both local and national level. For instance, the "wheelbarrow scandal" refers to a case of embezzlement at county level. In 2015, the Bungoma County Department of Agriculture procured ten wheelbarrows for KES109,000 each (or approximately €965) as opposed to a market price of KES5,000 (€45). By inflating the invoice price, seven public officials responsible for the purchase were able to embezzle the equivalent of €9,200.²⁸ At a different level the (second), "National"

M.-A. Fouéré, M.-E. Pommerolle & C. Thibon (eds.), *Le Kenya en marche, 2000-2020*, Paris/Nairobi: Africae, 2020, pp. 29-73.

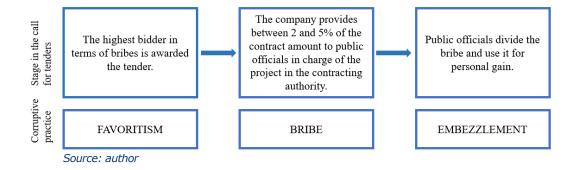
^{27.} See data collected by Cytonn available at: www.cytonn.com. Source: OdipoDev Research.

^{28. &}quot;Uproar as Bungoma County buys 10 wheelbarrows at Sh1m", *The Standard*, published on September 8, 2015, accessed on December 28, 2020. See also C. Josse-Durand, "Entre espoirs et désillusions: réformes constitutionnelles et décentralisation au Kenya, 2000-2020", in: M.-A. Fouéré, M.-E. Pommerolle & C. Thibon (ed.), *Le Kenya en marche*, 2000-2020, op. cit., pp. 135-182.

Youth Service" scandal refers to budgetary irregularities by members of the Ministry of Devolution and Planning, estimated at a total of €60 million. The accused allegedly embezzled a share of these funds by over-charging for the purchase of various goods (medical and electronic) and by issuing false invoices.²⁹

During the field study, the increased role of foreign companies in illegal enrichment schemes was constantly mentioned. In 2008, Mwai Kibaki launched the Vision 2030 development strategy, with the objective of making Kenya an upper-middle-income country by 2030. The resulting increase in large infrastructure projects, involving public actors and-often foreign-companies created new loopholes for corruption in various forms. There are two ways of entering into a public contract: by tender or by direct agreement. In the event of a tender, the most common corrupt practice is to award the government contract to the company offering the highest bribe. The contracting authority, after receiving funding from the donor, then makes this available to the company, that then pays a share of the amount as a bribe to the public officials in charge of the project. This practice undermines the potential of public spending as it is not used effectively: only a part of the project amount (between 95 and 98%³⁰) will be invested in the actual performance of the work while the rest will be pocketed by the public officials involved. As the following figure shows, three corruption-related mechanisms are at work:

Figure 1: Detailed description of how bribery works in a tender



^{29. &}quot;Head of Kenya Youth Agency arrested in \$78m corruption scandal", BBC, May 28, 2018.

^{30.} Interview with the former head of the Kenyan subsidiary of a major European company on May 21, 2019 in Nairobi.

In the case of directly negotiated contracts, "all-in-one" bids by Chinese banks and state-owned companies, which involve supplying a Kenyan public authority through a construction company and with the related funding, have been particularly singled out over the last decade for their lack of transparency.³¹ For instance, this is the case of the Standard Gauge Railway project at the center of the controversy.³²

Box 1: The Standard Gauge Railway (SGR)

The SGR is a project to build a standard gauge railway from Mombasa (Kenya) to Kampala (Uganda). Phase 1 of the project (Mombasa-Nairobi) opened in May 2017. In total, the project is expected to cost US \$10 billion. It is financed by various bank loans from the Chinese state-owned bank, the Exim Bank of China to the contracting authority, the Kenya Railways Corporation (KRC). Work has been carried out by the Chinese state-owned company, the China Road and Bridge Corporation (CRBC). The contract was directly negotiated and is consistent with Chinese "all-in-one" bids.

The manifold suspicions of corruption surrounding the project are related to its lack of transparency. The CRBC is specifically accused of having encouraged the signing of the contract by bribing government members to speed up the development of this enormous project. The arguments supporting this theory relate to the SGR's lack of economic viability:

- In August 2013, the World Bank advised ruling out any standard gauge railway project in Kenya due to the lack of socio-economic profitability.
- The estimated cost of the project per kilometer is 1.6 times greater than the international average.
- Upgrading the old railway line would have cost \$150 million compared to \$3.6 billion (the loan amount for phase 1 of the SGR).
- The loan terms offered by Exim Bank of China are rather disadvantageous (high interest rates, short-term maturity, collateral of Mombasa port's Terminal II, etc.).

Source: author

Corruption is becoming more complex: Devolution and multi-positioning of the elites

The devolution policy introduced in 2013 following the adoption of the 2010 Constitution, created 47 new administrative bodies (counties) that replaced the eight provinces in place since

^{31.} From 2008 to 2018, China's share of external debt rose from 7% to 22%. Source: *Kenya National Bureau of Statistics*, Nairobi Regional Economic Department These estimates only take account of bilateral debt and the geographic origin of commercial debt is not specified.

^{32.} Interview with a Kenyan journalist specializing in China-Kenya relations on May 8, 2019; "SGR by the Numbers: Some Unpleasant Arithmetic", *The Elephant*, July 21, 2018; "Chinese charged over Kenya 'railway scam'", *BBC*, November 26, 2018.

independence.³³ Although devolution was primarily intended to promote fairer distribution of resources throughout the country, it also greatly increased opportunities for corrupt practices.³⁴ The Office of the Auditor General, which has been responsible for the financial audits of government bodies since 2011, found that at least 20 out of the 47 counties had budgetary irregularities in 2015. Although these irregularities may be partially related to ineffective management of the local budget, the role of corruption cannot be excluded: in 2019, the former governor of Nairobi County, Mike Sonko, was accused of, among other things, embezzling more than €2 million through contracts awarded to companies owned by his close associates.³⁵ By making the administrative system more complex, devolution has helped to move corruption from the central government to the counties³⁶ through a transfer of neo-patrimonial logics and political ethnicity.

Nationally, the continuation of political dynasties, such as the Kenyattas and Odingas—the Kenyatta's historical opponents who have always been beaten—or the Moi,³⁷ have contributed to members of the ruling elite accumulating political and economic roles over several decades, that is a characteristic of neo-patrimonial regimes in sub-Saharan Africa.³⁸ The President of the Republic, Uhuru Kenyatta's, family alone owns the leading dairy product company in Kenya, Brookside Dairies, media companies, real estate and land—to name some—with an estimated fortune of US \$500 million in 2011.³⁹ An interview with a Kenyan businessman highlighted the existence of illegal enrichment practices that are less obvious than traditional corrupt practices (bribes and embezzlement) because of this multipositioning of the elite. He mainly mentioned the performance of

^{33.} The devolution policy allows counties to set their own development priorities, to execute procurement contracts, to have a budget and raise local taxes.

^{34.} M. D'Arcy & A. Cornell, "Devolution and Corruption in Kenya: Everyone's Turn to Eat?", *African Affairs*, Vol. 115, No. 459, 2016, pp. 246-273.

^{35. &}quot;Kenya's Mike Sonko: The Rise and Fall of Nairobi's Ex-Governor", *BBC*, March 28, 2021. In December 2020, Mike Sonko was removed from his position as governor of Nairobi, but his trial has not started yet.

^{36.} See C. Josse-Durand, "Entre espoirs et désillusions : réformes constitutionnelles et décentralisation au Kenya, 2000-2020", *op. cit*.

^{37.} As explained previously, Uhuru Kenyatta, the current President of the Republic, is Jomo Kenyatta's son, who was the first President of the Republic. Furthermore, Raila Odinga, the former deputy president and current leader of the opposition, is the son of the first Deputy President of the Republic, Jaramogi Oginga Odinga, and Gideon Moi, chairman of the political party, KANU (Kenya African National Union) and likely candidate in the 2022 presidential election, is the son of the second President of the Republic, Daniel arap Moi.

^{38.} See J.-F. Médard, "Le 'Big Man' en Afrique: esquisse d'analyse du politicien entrepreneur", *L'Année sociologique*, Vol. 42, 1992, pp. 167-192 and J.-P. Daloz, "'Big Men' in Sub-Saharan Africa: How Elites Accumulate Positions and Resources", *Comparative Sociology*, Vol. 2, No. 1, 2003, pp.271-285.

^{39.} Source: Forbes and interviews.

public works in areas where politicians own land in order to increase its value, or even economic favoritism granted to companies in which they have direct or indirect interests. ⁴⁰ The example of the Nairobi Eastern Bypass illustrates this process: with the aim of increasing the value of the family's real estate investments, the president reportedly put pressure on the Ministry of Transport in 2018 to prioritize the construction of a four-lane bypass serving Northlands City, a 4,450-hectare mixed-use development project, in which the Kenyatta family has allegedly invested US \$5 billion. ⁴¹

Therefore, politico-administrative corruption is embedded in a conflict of public and private interests of political leaders and their entourage that began in the colonial period. This corruption is reflected in various ways through the use of sometimes interlinked corrupt practices—like calls for tender—and becomes more complex as the administrative levels expand and the multi-positioning of the political and economic elite increases.

Citizens' ambiguous attitude towards corruption: ranging from justification to fury and involvement

In 2018, the findings of Kenya's anti-corruption agency's (EACC)⁴² opinion poll revealed a paradox: while the Kenyan citizens interviewed quoted corruption as Kenya's "main problem" ahead of poverty and unemployment, 61.7% of them said they did nothing to support the fight against corruption in their country during 2017. A priori, citizens appeared to be collateral and passive victims of corrupt practices at all levels, in fact, they wavered between different roles, that sometimes positioned them as defenders of, fighters against, or actors in corruption.

The myth of vertical redistribution of corruption

In the long term, through neo-patrimonial policies

Historical injustices, symbolized by successive movements of private land appropriation (often referred to as land grabbing), resettlement and eviction of landowners on ethnic grounds under Kenyatta and later Moi, have left a strong mark on the collective consciousness in Kenya. They have formed the idea that access to power for a member of an individual's own ethnic group is an "existential need" and guarantees prosperity, security, and protection in a context of increased political and economic competition. This logic, specific to political ethnicity, is embodied in the popular phrase "It's Our Turn to Eat", that is reflected in ethnic favoritism in both national and local

^{42.} EACC, National Ethics and Corruption Survey, Research Report, No. 6, 2018.

^{43.} For an in-depth analysis of the relationship between politics and land in Kenya, see C. Boone, "Land Conflict and Distributive Politics in Kenya", *African Studies Review*, Vol. 55, No. 1, 2012, pp. 75-103.

^{44.} Interview with a Kenyan social scientist on April 29, 2019 in Nairobi.

^{45. &}quot;It's our turn to eat", a phrase originally used under Moi to justify favoritism towards the Kalenjin community after Jomo Kenyatta's Kikuyu government's abuses. It is now more

governments and in neo-patrimonial redistribution policies based on ethnicity. For instance, in 2015, 48% of top officials were Kikuyu (President Uhuru Kenyatta's ethnic group), while 24% were Kalenjin (Deputy President William Ruto's ethnic group). The negative aspect of having no political representative from your own ethnic group could put you in a weak position. This is the feeling among the Luo that is the Odinga political family's ethnicity. Since independence, the Luo are said to feel neglected by the government, that has spurred them on to persevere in education in order to "get by on their own". The same political family are said to feel neglected by the government, that has spurred them on to persevere in education in order to "get by on their own".

Kenyans' belief in this historical link between ethnicity and public policy supports a certain vertical impunity where a majority of citizens allegedly tolerate the political and economic elites' misdeeds as they also benefit from them. The persistence of this idea of the patron-client relationship, which is not well established in practice, 48 could be behind a vicious circle whereby leaders, despite their involvement in corruption, are re-elected from election to election by citizens, and from father to son. 49

In the short term, through lavish electoral campaigns

With the introduction of a multi-party system in 1992, and then devolution in 2013, Kenyan citizens vote every five years on the same day for five local and national representatives (governor, senator, women's representative, member of parliament and member of the county assembly), as well as for a presidential ticket (the President of the Republic and their Deputy President). The increased political competition and the significant human and material resources required to organize these elections, go hand in hand with exceptional mobilization of national and local resources, making Kenya one of the countries in the world with the highest cost per registered voter (€25 per voter in 2017). ⁵⁰

broadly used to describe the desire to reward the president's ethnic community with the state resources. M. Wrong used this phrase as the title of his biography of John Githongo, the whistle blower in the Anglo-Leasing scandal, published in 2009.

^{46.} Data consolidated from an article in the *Kenya Stockholm Blog*, available here: <u>kenyastockholm.com</u>. Also see the Auditor General's reports on the ethnic makeup of county governments.

^{47.} Interview with a Kenyan academic on May 14, 2019 in Nairobi.

^{48.} See the statistical analysis of the link between ethnicity and road building, that recedes during periods of democracy: Burgess *et al.*, "The Value of Democracy: Evidence from Road Building in Kenya", *American Economic Review*, Vol. 105, No. 6, 2015, pp. 1817-1851.

^{49.} Interview with a Kenyan, anti-corruption activist on April 26, 2019 in Nairobi.

^{50.} P. Jacquemot, *De l'élection à la démocratie en Afrique (1960-2020)*, Paris: Fondation Jean Jaurès Éditions, 2021.

The field study found that this trickle-down of public funds creates an-admittedly fleeting-sense among citizens of sharing in the rewards of the elite's corruption, as demonstrated by the vote-buying techniques used by local and national candidates. Vote-buying is one of the very few corrupt practices directly linking the elite with the ordinary citizen. In that sense, at this particular point in the elections, this practice makes citizens a direct beneficiary of politicoadministrative corruption.⁵¹ Vote-buying, which itself is the product of various corrupt practices (embezzlement, extortion of bribes from large private companies), can range from handing out 100-shilling bills in a village (75 cents or the equivalent of a soda) to "charity" donations of €50,000 to *Harambees*. 52 As demonstrated by D. Connan and C. Josse-Durand's monitoring of Chris Wamalwa's campaign, who was a parliamentary candidate for the Trans-Nzoia constituency in 2013,⁵³ these methods of persuasion are mainly used in areas "where there is less certainty of winning", i.e., in areas where the dominant ethnic community is not represented by any candidate.

Therefore, by exploiting moral ethnicity, political leaders maintain a neo-patrimonial relationship with their ethnic community, and in so doing, buy their tolerance towards corrupt practices ("*It's Our Turn to Eat*"). On the other hand, the trickle-down of national and local resources during electoral campaigns brings voters closer to the proceeds of corruption, to the point where they sometimes become direct beneficiaries of it (vote-buying, support for organized groups). Ultimately, the belief in this "sharing" of the rewards of corruption contributes to a certain acceptability of politico-administrative corruption by citizens, if not to their "passive" participation at election time.

^{51.} N. Cheeseman, G. Lynch & J. Willis, *The Moral Economy of Elections in Africa*, Cambridge: Cambridge University Press, 2021.

^{52.} *Harambee* is a Swahili term that can be translated by "all pull together" and refers to a Kenyan tradition of fundraising for various events (marriages, religious events, etc.). Here, we are primarily referring to donations to churches. The donations made by the current deputy president, William Ruto, who is running for president in 2022, have been singled out by the press: "Puzzle: How PD Ruto has donated over 8 times his salary in harambees in 6 months", *Nairobi News*, published on June 22, 2018, accessed on December 16, 2020.

^{53.} D. Connan & C. Josse-Durand, "Le Pays du miel et du lait : ethnographie de la campagne électorale d'un *professional* au Kenya", *Cahiers d'Études africaines*, Vol. 225, No.225, 2017, pp. 89-119.

^{54.} *Transparency International* distinguishes between two forms of corruption: active corruption (offering a gift or benefit to the specified person in authority) and passive corruption (the person in authority accepting the gift or benefit).

The difficult position of citizens vis-à-vis widespread corruption

An awareness with mixed effects

Corruption cases involving members of the government make headlines in the Kenyan local and national press on a daily basis. This intense media coverage raises awareness of the scale of corruption throughout the general Kenyan population and may partly explain the increased perception of the level of corruption among citizens.⁵⁵

Since the 2000s, civil society has increasingly mobilized in response to this phenomenon, mainly through local organizations fighting corruption. This movement is symbolized by John Githongo, a former journalist who was appointed Permanent Secretary for Governance and Ethics in 2003 under Kibaki. He went into exile in Great Britain in 2006 after having publicly exposed one of the most extensive corruption cases in Kenya's history, the Anglo-Leasing scandal.⁵⁶ He is currently at the center of the nebulous network of anti-corruption institutions in Kenya, as the founder of Ni Sisi! ("It's us!" in Swahili), chairman of the NGO, AfriCOG, founding member of Transparency International Kenya and editor of the activist newspaper The Elephant. In the same vein, the photojournalist, Boniface Mwangi, embodies "youth" activism, i.e., different from the anti-Moi activism of the 1990s, condemning government abuses: having made a name for himself through his photo-journalism during the 2007-2008 post-election violence, he now leads an activist movement Pawa254 and has founded the anti-corruption political party *Ukweli*.⁵⁷

Nevertheless, these beliefs are not shared by all Kenyans. A Kenyan businessman, who is a director of the East African subsidiary of a European bank, explained in an interview⁵⁸ that the *wananchi* ("the common people" in Swahili) were less concerned about corruption than he and his peers, particularly if they were from rural areas. The reason he gave was mainly fiscal: only 7.4% of Kenyans pay

^{55.} Afrobaromètre opinion poll (2019), op. cit.

^{56.} An embezzlement scandal related to a government contract with a British company, Anglo Leasing Finance. The contract amount was reportedly significantly overvalued (€30 million, while a competing French company offered the same service for €6 million). In 2006, nearly 10 years after the scandal began, John Githongo exposed the involvement of prominent members of the government, including Deputy President Moody Awori with the collusion of President Mwai Kibaki.

^{57.} Boniface Mwangi was voted one of the Top 10 most influential young Kenyans in 2019 by the organization AvanceMedia, and is the eighth most followed Kenyan on Twitter after Deputy President William Ruto and the leader of the opposition Raila Odinga (source: *SocialBakers*, accessed on December 28, 2020).

^{58.} Interview on April 26, 2019 in Nairobi.

income tax,⁵⁹ which makes them less susceptible to government abuse, and the *wananchi* rely more on their family (in the broadest sense) than on the government to help them financially. In his case, he said he gave money every month to 12 family members, all of whom were exempt from tax, while he was taxed at the highest rate (30%).

Furthermore, the intense media coverage of corruption scandals in both the local and national press has paradoxically led to a feeling of pervasive corruption, rather than a desire to eradicate the phenomenon, that is considered an impossible task.⁶⁰

Daily corruption is an accepted way of life⁶¹

Although many people complain about the high level of corruption among the ruling elite, Kenyan citizens are actively involved in corruption on a daily basis in their personal or professional interactions with frontline public officials. ⁶²

This daily corruption stems from two overlapping processes⁶³: (1) the frontline public officials grant the citizen favors in exchange for a bribe; (2) public officials share the extorted money with their supervisors who sometimes give them daily bribe targets. The police are a perfect example of this institutionalization of corruption. According to an opinion poll published by AfriCOG in 2016, 64 88.5% of citizens believe that the police frequently engage in corruption. It affects all citizens, primarily motorists, the boda boda (motorcycle cabs) and matatu (shared minibus) passengers, and occurs with high frequency. In practice, a police officer arbitrarily stops a vehicle and charges the driver with an alleged offense (speeding, overtaking on a white line, illegal parking). After some conversation about the nature of the offense and its possible consequences (fine, being taken to the police station), one of the parties-often the police officer⁶⁵-indirectly suggests the option of avoiding punishment through phrases that have become part of common parlance: "buy me drinks", "buy me lunch", "leta kitu kidogo"66, "let's help each other". The supposed

^{59.} Kenya Revenue Authority, Annual Revenue Performance Report, KRA, 2018/2019.

^{60.} D. Burbidge, *The Shadow of Kenyan Democracy: Widespread Expectations of Widespread Corruption*, London: Routledge, 2015.

^{61.} Bomas speech, op. cit.

^{62.} Here frontline official refers to public officials in direct contact with people. It should be noted that businesses are also involved in this daily corruption, particularly with regard to customs.

^{63.} Interview with a Kenyan researcher on corruption on April 29, 2019 in Nairobi.

^{64.} AfriCOG, Citizen Perception on Current Affairs, 2016.

^{65.} AfriCOG, *Report on Devolution*, 2012: 75% of Kenyans who gave bribes to public officials, did so upon request, compared to 25% on their own initiative.

^{66.} Trad. "Give me something" (Swahili).

offender is forced to become involved in corruption. The minimum amount of a bribe paid by the driver to the police officer is around KES150 (or about €1.17). The daily bribe target reportedly set for police officers by their superiors can be as high as KES5,000 (about €38.84 or the equivalent of 33 bribes).

The very high frequency of these minor informal transactions, often imposed by officials with leverage over common people, and the formalization of associated language, known by everyone, build on the idea that corruption governs relations between individuals and public institutions, or is even essential to avoid difficult situations. B. Rothstein examines this phenomenon from the perspective of game theory⁶⁷: even if most citizens disapprove of the constant use of corruption in the public sector, they continue to practice it on a daily basis, in a more or less forced way. Otherwise, they would be disadvantaged in relation to those who do not hesitate to participate in it.

The ambiguous relationship between citizens and politico-administrative corruption is therefore reflected in a strong awareness of corruption throughout the entire population and in its moral condemnation in words, without however, always being rejected in practice. Indeed, despite increasing mobilization by a part of society against the elite's corruption, there is a certain acceptance of the phenomenon among citizens. The belief in neo-patrimonial redistribution of the top-down rewards of corruption, the resignation of the wananchi in view of financial malpractices, and citizens' daily involvement in corruption in their interactions with public officials, contribute to this acceptance.

The fight against corruption: an economic and political weapon

In his inaugural speech in December 2002, Mwai Kibaki said that "corruption will cease to be a way of life in Kenya". He "calls on all members of [his] government and public officers accustomed to corrupt practices to know and clearly understand that there will be no sacred cows under [his] government". 68 Seventeen years later, Uhuru Kenyatta is saying more or less the same thing, promising that "the war on corruption" will continue to be waged by his government "with all tools at [their] disposal in law, without compromise or concession". 69 At the heart of political discourse since the end of the Moi era, the fight against corruption does not seem to escape the neopatrimonial logics that underlie Kenyan politics. Indeed, analyzing the reasons behind this "war" suggests that it is primarily aimed at sustaining a system where power and wealth are interconnected: it is a matter of preserving investors' peace of mind-for access to wealthwhile ensuring voters' support-or access to power. The result is a cursory fight against corruption, that is perceived as being used for political purposes at the expense of concrete actions.

The reasons for fighting corruption: maintaining access to wealth and power

The origins of the fight: pressure from international donors

The issue of corruption started to be taken up politically in the 1990s, after the end of the Cold War and following the implementation of structural adjustment policies. In Kenya, under pressure from international institutions, ⁷⁰ President Moi initiated a series of democratic reforms, in particular establishing a multi-party political system. In practice, Moi and his political entourage controlled the

^{68.} Inaugural speech on December 30, 2002 available here at: alumni.dkut.ac.ke.

^{69.} Bomas speech, op. cit.

^{70.} S. Brown, "Authoritarian leaders and multiparty elections in Africa: how foreign donors help to keep Kenya's Daniel arap Moi in power", *Third World Quarterly*, Vol. 22, No. 5, 2001, pp. 725-739.

Electoral Commission, hence rigging votes in their favor to the point of being re-elected in 1992 and 1997. In view of the limited progress, the International Monetary Fund (IMF), the World Bank (WB), the European Union (EU) and bilateral donors suspended funding in 1997—the equivalent of US \$400 million—claiming poor management of public finances and pervasive corruption in politics. In response, "cosmetic" changes were made that did not compromise the ruling party's (KANU) benefits. ⁷³

Relationships with traditional partners (IMF and WB) improved from 2002, with the organization of elections that were deemed democratic by international observers, and anti-corruption actions undertaken by the new president Mwai Kibaki. Even now, pressure from economic actors is one of the main drivers in the fight against corruption. According to a European economic expert, this idea is reflected in Uhuru Kenyatta's commitment to clean up the business environment with a view to attracting private investors to finance public debt. In the contraction of elections that were deemed democratic by international observers, and anti-corruption actions undertaken by the new president Mwai Kibaki. In the fight against corruption actions are the commitment of the property of the contraction of elections that were deemed democratic by international observers, and anti-corruption actions undertaken by the new president Mwai Kibaki.

^{71.} Ibid.

^{72.} Ibid.

^{73.} *Ibid*.

^{74.} For an in-depth analysis of the fight against corruption under Kibaki and the dashed hopes by the exposure of the Anglo-Leasing corruption scandal, see J. Githongo, "Kenya's Fight against Corruption", *Center for Global Liberty & Prosperity*, No. 2, 2007.

^{75.} Interview on May 25, 2019 in Nairobi. This interview provided the material for the inset below.

Box 2: The interconnected issues of the fight against corruption and the risk of debt distress

Kenya's decade of prosperity between 2008 and 2018 (5.9% on average according to the WB), largely attributable to President Kibaki's Vision 2030 development strategy, was accompanied by increased public debt, leading the IMF to re-evaluate the country's risk of debt distress from "low" to "moderate" in 2018.

At the same time, Kenyatta's economic strategy since 2013, based on the Big Four (food security, universal access to housing, universal health cover and industrial development), requires significant funding, that is increasingly difficult to obtain at short notice and unconditionally from traditional donors.

In view of this, and in the interests of economic independence, the president has made a strategic switch towards private investment: according to the National Treasury of Kenya's 2016/2017 Annual Report, the proportion of commercial debt as a percentage of public debt increased from zero in 2011 to 14.3% in 2017. The success of this gamble is closely related to the fight against corruption:

- The financial terms of debt on the market are less advantageous than from traditional donors, and the interest rate depends on the country's rating with the international financial rating agency, Fitch Ratings Limited.
- Currently, Kenya's long-term debt rating of B+ denotes "highly speculative" public investment. Fitch identifies the government's weaknesses with respect to transparency, particularly in the management of public finances. This rating results in costly market financing, further increasing the public debt.
- Faced with the increasing threat of debt distress, Kenyatta is reportedly committed to improving the business environment to attract investors and improve the country's market access conditions. This goal is part of the fight against corruption, targeting corrupt practices at the heart of major contracts (bribes, favoritism, etc.) with the enactment of the Bribery Act No. 47 of 2016, and increasing convictions for giving and receiving bribes.

Source: author

A political response to citizens' expectations

As we have seen, while Kenyan citizens largely condemn government abuses, they are also prone to a certain resignation and popular belief in vertical redistribution of corruption, embodied by the phrase, "It's Our Turn to Eat". An opinion poll reviewed by D. Burbidge found that on average, in 2014, the inhabitants of one county tended to believe that the leaders of their county were less corrupt than the average

leader in all counties.⁷⁶ This ties in with the more prosaic idea espoused by several interviewees that a leader "in my community" is perceived as a hero, even if they engage in corrupt practices.

Addressing citizens' expectations about corruption does not necessarily mean promoting the dismantlement of a political system based on pervasive corruption by a political elite. It would rather require political leaders to prove their loyalty to their voters, and the tendency for their political rivals to be more corrupt.

To sum up, President Kenyatta's fight against corruption mainly seems to stem from outside pressure on the government from international investors and citizens. Due to a lack of actual political support, the actions of national anti-corruption institutions are struggling to achieve their objectives, if not to define them.

Controversial oversight institutions

Media hype, but little concrete action

This study has highlighted the multifaceted nature of corruption, which is evident both in the politico-administrative area (ethnically biased government recruitment, bribes in infrastructure contracts, embezzlement of public funds, biased public policies), and in citizens' interactions with (i) frontline public officials (bribes in exchange for a public service or to avoid punishment) and (ii) their political leaders during electoral campaigns (vote-buying). The interpenetration of public and private interests lies at the heart of this system—enabling illegal enrichment by the elite—and strong political ethnicity—justifying this illegal enrichment to the population.

It is difficult to implement the fight against corruption in this complex landscape. In addition to the judiciary, there are three main institutions working together to reduce corrupt practices in the public sector, particularly embezzlement: the Ethics & Anti-Corruption Commission (EACC), the Office of the Auditor General (OAG), and the Office of the Director of Public Prosecutions (ODPP). The EACC (the KACC prior to 2003) is responsible for collecting information on corruption in the public sector. This information comes from the press or direct testimony from individuals or local or national government members. The OAG has been appointed since 2010 to audit public institutions' accounts, including the national government, the counties, parliament, and political parties. The ODPP, which has been in existence since the 1990s, is responsible for arresting public figures accused of various crimes.

The commitment of these oversight institutions in recent years has been evident. For instance, the EACC can boast of having been involved in recovering illegal assets in the region of US \$271 million since its foundation in 2003, and in the conviction of more than 290 people charged with corruption.⁷⁷ Additionally, the fight against corruption is also widely publicized in the local and national press, informing citizens about the integrity of their leaders and the level of their wrongdoing.⁷⁸

Nevertheless, several interviews have pointed out the lack of convictions of the "Big Fish", a popular expression describing a few key political and economic figures at the heart of corruption networks. The activist NGO, AfriCOG, 79 believes that the handling of the Anglo-Leasing corruption scandal under Kibaki foreshadowed this phenomenon:

"[...] successful corruption inevitably involves 'small fish'. The 'big fish' have rarely been successfully prosecuted. Many cases ended in a *nolle prosequi* [dismissal] by the DPP, others in acquittal –mainly because of poor quality investigations—and a third batch by discharge as per the criminal procedure code. And when the indictment and conviction have happened [...], the sentences have been lenient at the time of conviction, or significantly reduced on appeal."

In other words, the fight against corruption is accused of encouraging media hype (particularly in the press) without actually shaking up the neo-patrimonial order established by a political and economic elite at the heart of the corruption system.

Political exploitation of the fight against corruption

The reported alliance between President Uhuru Kenyatta and his Deputy President William Ruto does not reflect the deep animosity between them. The coalition was formed for purely strategic reasons: accused by the International Criminal Court of crimes against humanity because of their active role in the 2007-2008 post-electoral tensions and killing, Kenyatta and Ruto joined forces to benefit from immunity from prosecution once elected. As is the nature of presidential elections, their election was carried by Kikuyu and Kalenjin votes.

^{77.} Source: eacc.go.ke

^{78.} The Auditor General's report is particularly informative in this respect.

^{79.} W. Maina, State Capture: Inside Kenya's Inability to Fight Corruption, AfriCOG, 2019. 80. S. Mueller, "Kenya and the International Criminal Court (ICC): politics, the election and the law", Journal of Eastern Studies, Vol. 8, No. 1, 2014, pp.25-42.

As a matter of fact, the opposition between Kenyatta and Ruto is fierce: Ruto comes from the ethnic group, which is the Kikuyu's historic competitor, the Kalenjin, and he obviously has ambitions for the 2022 elections. Unlike Kenyatta, Ruto comes from the Kenyan working class. His rapid enrichment coincided with his term of office as a member of parliament for the Eldoret North constituency, and now continues through, amongst other things, the profitable development of his land interests. Feared for his political and economic opportunism, Ruto is viewed by Kenyatta and the Kikuyu elite as a potential threat to their economic empire, making him a prime target in the fight against corruption. This fight against corruption ad personam is translated into action by charges mainly targeting the deputy president's close associates and more generally Kalenjins.⁸¹ The arrest by the Director of Public Prosecutions (DPP) of the Finance Minister, Henry Rotich, a Kalenjin close to Ruto and 27 other defendants (including 15 Kalenjins) in July 2019 reportedly symbolized this political targeting.⁸²

^{81.} See "Are Kalenjin CEOs corrupt or just victims of circumstances?", *The Star*, December 8, 2019 or "Big Four Agenda and 2022: Reasons Uhuru is Unhappy with His Deputy", *Sunday Nation*, June 10, 2018.

^{82.} They were arrested on corruption charges in relation to the construction of two dams in the Rift Valley, in partnership with the Italian company, CMC Di Ravenna. Among the charges are embezzlement of public funds, non-compliance with public procurement procedures and abuse of power. Henry Rotich was removed from his post as Finance Minister in January 2020.

Conclusion

The neo-patrimonial nature of the Kenyan political system, a legacy of colonialism, is accompanied by a conflict of public and private interests among the ruling elite that is still largely at work today. This is reflected in the use of increasingly complex corruption schemes directed at personal enrichment (bribes, embezzlement, conflicts of interest) and the consolidation of a political entourage (granting financial, land or professional rewards).

Despite increasing public protests against politico-administrative corruption, political leaders manage to maintain a strong electoral base by playing on ethnicity at election time. Furthermore, the intensive media coverage of corruption scandals, and daily experience of corruption in citizens' interactions with frontline public officials contributes to some sort of integration of corruption into the Kenyan way of life, and even to its acceptance.

Although the fight against corruption has been presented by Uhuru Kenyatta's government as his key issue, it appears to come up against a lack of genuine commitment on the part of its initiators, as well as an exploitation of oversight institutions for political purposes. The issue of corruption is at the heart of the 2022 presidential elections between Raila Odinga and William Ruto. Despite the president's 2013 commitment, reiterated in 2017, to support his deputy president in the 2022 presidential elections, 83 Kenyatta created the Building Bridges Initiative (BBI) with Odinga in 2018, some months after their historical reconciliatory "handshake". It is intended to present a common front against Ruto, whom the two political successors are trying to portray as "the representative [...] of widespread major corruption". 84 While the BBI plays on corruption cases involving Ruto to weaken him, the latter uses his humble origins to win over voters and convince them of his determination to dismantle a political system that has been monopolized by political dynasties since independence.

Focused on the heuristic Kenyan case, this paper encourages us to think about the handling of corruption in Africa more generally. It calls for a detailed analysis of the issue taking in account the history and nature of the political regime, ethno-regional logics and battles

^{83.} Uhuru Kenyatta cannot stand in the 2022 presidential elections because of the limit on two presidential terms. He was already elected two times in 2013 and 2017 with his partner William Puto.

^{84.} H. Maupeu, "Etat, économie et développement au Kenya", op. cit.

for power and wealth. In particular, this note raises questions about the paradox inherent in the fight against corruption: mainly imposed by international bodies and called for by forces of opposition, such as the press and some civil society organizations, for politicians and citizens this would involve destroying a phenomenon that they know they are partly beneficiaries of—albeit it to varying degrees.



