

**Persistence and Change of Neo-patrimonialism
in Post-Independence Kenya**

Draft

Research Paper prepared for the Project “Persistence and Change of Neopatrimonialism
in Various Non-OECD Regions”

Based at the GIGA German Institute of Global and Area Studies, Hamburg
Funded by the German Research Foundation (DFG)

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Public Administration, July 2009**

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1: Introduction

Neo-patrimonialism is normally associated with the absence or inapplicability of bureaucratic norms that have been associated with the development of the state in the western world. According to the Weberian notion, patrimonialism refers to a government that is derived from and is based on traditional authority that was organized as more-or-less a direct extension of royal household in which officials were personal dependants of the ruler.¹ Neo-patrimonialism, on the other hand, is not exactly identical with its traditional counter-part, but contains some aspects of the traditional authority and others from the modern state.²

It has been argued that while neo-patrimonialism features in all political systems in one way or another, it is the defining feature of the political systems in the African continent, a phenomenon that can be largely attributed to two successive factors:

1. The tendency for the colonial state to serve the interests of the metropolitan government rather than those of the colonies.
2. A bad fit between the formal institutions introduced by the colonizers and enduring societal norms in the post-independence era.

The end-result has been a juxtaposition of an apparently “traditional”-patrimonial logic and “modern” formal state institutions derived from the Western experience.³

According to Bratton and van de Valle, neo-patrimonialism mainly takes the form of power concentration, provision of personal favours and misuse of public resources.⁴ The purpose of this paper is, therefore, to assess the manifestation of the main components neo-patrimonialism in Kenya’s politics and administration.

¹ Max Weber (1968), *Economy and Society*, New York: Bedminster Press

² Monica J. J. Kerrets-Makau (2006), *At a Cross-road: The GATS Telekom Framework and Neo-Patrimonial States: The Politics of Telecom Reform in Kenya* (A PhD Dissertation, University of New South Wales: Unpublished), p.35

³ M. Bratton and N. van de Valle (1994), Neo-patrimonial Regimes and Political Transition in Africa, *World Politics*, 46 (4), 453-489

⁴ Ibid.

The problem of neo-patrimonialism in Kenya needs to be understood in the light of the fact that in the pre-independence era, Kenya was managed essentially as a source of raw materials for British industries and as a market for British goods. Hence, the social and economic policies under the colonial regime heavily favoured British interests.⁵ For its survival therefore, the colonial regime heavily relied on divide and rule tactics and political suppression. The results were ethnic favouritism and authoritarian administration, which are acknowledged as important breeding grounds for neo-patrimonialism.⁶

Hence, neo-patrimonialism in the post-independence Kenya is in many ways a continuation of the socio-economic and political order that prevailed under the colonial regime, yet retained intact by the successive post-independent governments. In Kenya, the colonial order has perpetuated itself in the retention of the provincial administration, divide-and-rule policy by the government and the consequent ethnic favouritism, and unfair allocation of public resources. Thus Kenyatta's government is seen to have favoured his Kikuyu community just in the same way that Moi's government, which succeeded it, favoured his Kalenjin community⁷ and Kibaki's government is once again favouring the Kikuyu community.⁸

Kenyatta's tendency to favour his Kikuyu ethnic group seems to have been partly occasioned by the fact that in the post-independence Kenya, the position that had initially been held by the European settlers was increasingly held by the nascent petty bourgeoisie, of which the Kikuyu ethnic group happens to have been the most predominant. Power concentration in the person of Kenyatta, therefore had a lot to do

⁵ See Brett, E. A. (1973), Colonization and Underdevelopment in East Africa (New York: NOK Publishers) and Mwea, F. and Ndung'u, N. S. (2004), Explaining African Economic Growth Performance: The Case of Kenya (Nairobi: African Economic Research Consortium)

⁶ Robert Maxon (1994), "The Colonial Roots," in Water O. Oyugi, Politics and Administration in East Africa (Nairobi: East African Educational Publishers), pp. 33-70.

⁷ For the manner in which the Moi regime favoured the Kalenjins, see Monica J. J. Kerrets-Makau, *op. cit.*, pp.138-140

⁸ For the manner in which Kibaki's regime has favoured Kikuyus, see Murunga, Godwin R. and Shadrack W. Nasong'o (2006), "Bent on Self-Destruction: The Kibaki Regime in Kenya," Journal of Contemporary African Studies, 24, 1, January 2006.

with the desire to defend both the petty bourgeois and Kikuyu interests. Whereas the desire to defend the petty bourgeois interests has continued to underline power concentration by the successive regimes in the post-independence era, it has been combined with the desire to break the Kikuyu ethnic hegemony in favour of that of the Kalenjin under the Moi administration⁹ while under the Kibaki administration, it has been combined with the desire to revive the Kikuyu ethnic hegemony.¹⁰

2: Power concentration in post-independence Kenya

2.1: Power Concentration at the Political level and the Struggle for Constitutional Change

Despite the fact that the colonial rule was manifestly authoritarian, the independence constitution had some democratic safety-valves that resulted into wide dispersal of power within the country's political system. These include a multi-party system, a dual executive, a bicameral legislature and a quasi-federal system (popularly known as the *majimbo* system). Most of the relevant democratic reforms were hastened after the World War II on realization that power transfer to Africans was indeed inevitable.¹¹

Ironically, the post-independence political leaders did not give priority to these democratic safety-valves. Instead, they considered national unity and national development as over-riding goals, which must be pursued at the expense of democratization. Indeed, they saw the pursuit of both democracy and national development as mutually incompatible, given the ethnically divided nature of the post-independence society. Not surprisingly, therefore, Kenyatta's governments set in motion a series of constitutional amendments that altered all the democratic safety-valves leading to the emergence of *an imperial presidency* at its best. In a series of constitutional

⁹ For the manner in which Moi's government discriminated in favour of his Kalenjin ethnic group, see Monica J. J. Kerrets-Makau, (2006), At a Cross-road: The GATS Telekom Framework and Neo-Patrimonial States: The Politics of Telecom Reform in Kenya (A PhD Dissertation, University of New South Wales: Unpublished)op. cit., pp.138-140

¹⁰ See for example Mutahi Ngunyi's commentary on why the 2012 general elections will once again be rigged, in the Daily Nation, January 25, 2009.

¹¹ These include increased representation of Africans and the opening up of cash crop farming to Africans

amendments, the presidency dramatically ascended in power relative to the cabinet, parliament, judiciary, civil service, local government and civil society organizations.¹²

A significant aspect of this concentration of power in the presidency was the emergence of personal rule in post-independence Kenya, which was itself largely attributable to enormous and often conflicting tasks that were expected of the post-independence state. These include, fostering capitalist development in an environment that was still dominated by a peasant mode of production, promoting national unity in an ethnically divided society and promoting equitable development in an economic environment dominated by foreign interests.¹³

Driven by its own will to survive and the fear of foreign domination of the economy, the post-independence Kenyan state chose to disregard the rule of law as its ideological base and instead settled on the ideology of “development,” which it has so far used with a reasonable degree of success, to justify the concentration of power in the person of the incumbent president.¹⁴ Jackson and Rosberg’s characterization of Kenyatta and Moi as personal rulers is, therefore, not very far-fetched. According to them, the post-independence Kenya, just like in other African countries, has been characterized by manipulation, purges, rehabilitations and institutional neglect.¹⁵

It is only from the early 1990s that this tendency to manipulate the country’s constitution was put on hold and the country returned to the path of democratization. However, power-concentration in the executive and ultimately in the person of the chief executive continues to haunt Kenyans given that the Kenyan constitution has continued to be retained in its mutilated form and pressures to review it have so far been unsuccessful. Although the emerging misfit between the post-independence constitution and multi-

¹² NJuguna Ng’ethe and Wasunna Owino (eds) (1998), From Sessional Paper No. 10 to Structural Adjustment: Towards Indigenizing the Policy Debate (Nairobi: Institute of Policy Analysis and Research), chapter 2

¹³ See Connie Ngondi-Houghton (2006), Access to Justice and the Rule of Law in Kenya (A Paper developed for the Commission for the Empowerment of the Poor), pp.6-7

¹⁴ Ibid.

¹⁵ Robert Jackson and Carl Rosberg, Personal Rule in Black Africa (Berkeley: University of California Press, 1982).

party democracy was acknowledged by the former president Moi way back in 1992 (when he stated for the first time his government's commitment to a comprehensive constitutional review), he later began to show signs of back-tracking.¹⁶

It was only following the National Convention Assembly's (NCA's) instigated "*saba saba riots*" (through its implementing arm the National Convention Executive Council) in July 1997, that Moi and his ruling party KANU capitulated to minimum constitutional reforms, pending comprehensive constitutional review after the 1997 elections. Among other things, the IPPG package served to level the political ground in readiness for the December 1997 general election while at the same time creating the Constitution Review Commission, which would be charged with delivering a "people-driven constitution".¹⁷

However, the IPPG reform package was seriously limited by the fact that it had no legal force (passed as it was by a simple majority in parliament), that is, unless it was entrenched in the constitution by Kenya's 8th parliament (i.e., that which followed the December-1997 elections), which would never be. Hence, its relevance would increasingly depend on the good will of the government of the day. Thus, contrary to the spirit of the IPPG, KANU's hard-line position continued throughout the life of the 8th parliament, as indicated by its systematic co-optation of a section of the opposition,¹⁸ thereby seriously compromising the reform agenda.

Thus, while the 8th Parliament saw the passage of a series of constitutional amendments, including the Constitutional Review Commission Act of 1998 (providing for broad representation in the Constitutional Review Commission), the Constitutional Review (Amendment) Acts of 2000 (establishing the Yash Pal Ghai-led Constitution of Kenya Review Commission {CKRC}), and the Constitution of Kenya Review (Amendment)

¹⁶ See Lawrence Murugu Mute and Smoking Wanjala (eds) (2002), When the Constitution Begins to flower: Paradigms for Constitutional Change in Kenya (Nairobi: Claripress), Introduction.

¹⁷ Ibid.

¹⁸ In the immediate aftermath of the 1997 general elections, the National Development Party (NDP) began to drift towards the government leading to the historical union between it and KANU in the year 2001.

Act of 2001 (legislating the merger between the Ufungamano Commission,¹⁹ and the Ghai-led commission, it failed to deliver for Kenyans a new constitution.

Although the National Rainbow Coalition Party (NARC) was elected on the basis of a promise that it would deliver a new constitution to Kenyans within the first 100 days, it increasingly turned conservative as indicated by its dismissal of the Bomas Draft Constitution produced by the Ghai-led team on the grounds that among other things, it sought to breed chaos in the country by creating two power centres, that is, the office of the prime minister and that of the president.²⁰ Instead, it developed a more diluted version of the Bomas Draft constitution known as the Wako Draft,²¹ which was rejected by Kenyans during the national referendum of 2005.

The failure of the NARC administration to yield a new constitution to Kenyans is also an indication of how far the process has been politicized. Thus, following allegations of fraud in the December 2007 general elections, constitutional reform was identified as one of the measures that would deal with the perceived long-term sources of the conflict.²² Whereas the post-2007 election violence was widely expected to check this trend by serving as a reality check, indications so far are that politicians are continuing to conduct their business as usual with ethnic power-games playing a dominant role in the entire process.²³

¹⁹ This is the popular name for the People's Commission of Kenya, which was established by the coalition of civil society organizations and the opposition parties in 1999 as a parallel forum for constitutional review amidst fear that the government was reneging on its commitments as per the 1998 Constitution of Kenya Review (Amendment) Act. See Lawrence Murugu Mute and Smoking Wanjala (eds), op. cit. Introduction and Peter Wanyande (2004), op. cit, pp. 187-212.

²⁰ John Githongo (2006), "Inequality, Ethnicity and Fight Against Corruption in Kenya", in Institute for Economic Affairs, Oxford: Blackwell Publishing, December 2006), p. 21

²¹ For details on how the Kibaki regime reneged on the promise of a new constitution, see Goodwin R. Murunga and Shadrack W. Nasong'o (2006), "Bent on Self-Destruction: The Kibaki Regime in Kenya," in the Journal of Contemporary African Studies, 24, 1, Jan. 2006, pp. 17-19

²² See the National Accord and Reconciliation Act of 2008, Agenda IV

²³ This is best indicated by the current power struggles within the Grand Coalition Government. For the most recent report on this power struggle see the Daily Nation, May 6th 2009, entitled "Power Rows Create Diplomatic Vacuum," pp. 1-2. Also see "No end to House Deadlock," in *ibid.*, p. 4.

2.2: Power Concentration at the Administrative level

2.2.1: Authoritarian Administration

At the administrative level, power concentration in Kenya has mainly taken the form of *authoritarian administration*,²⁴ also traceable back to the colonial era. It has been widely acknowledged that the introduction of state institutions in Kenya by the colonial government, like in other African countries, failed to take into account the unique social, economic and cultural conditions that obtained locally. Mainly as a result of the failure of the British colonizers to nurture the growth of the civil society (as indicated by their failure to entrench in the colony liberty, equality and democracy, their failure to encourage formal education among the indigenous population and their failure to encourage the growth of indigenous African entrepreneurs), the post-independence Kenyan public servants have had so much of a free-hand in carrying out their role of policy implementation compared to what obtained during the emergence of national bureaucracies in the western world.²⁵ At the same time, given its colonial heritage, the behaviour of the post-independence Kenyan state continues to be heavily influenced by external economic and political forces. As a result, its national bureaucracy has had little capacity to develop the kind of autonomy that can enable it to resist encroachments upon the rights of its citizens by the more powerful external actors, including states and economic interests.²⁶

The manner in which bureaucratic authoritarianism expresses itself is clearly captured by Fred Riggs's theory of Prismatic society otherwise referred to as the "sala" model of bureaucracy. Among other things, it connotes relative lack of accountability on the part of public servants in the developing world (unlike in the developed world), given the prevalence in these societies of "formalism", i.e., wide latitude on the part of public servants while interpreting the law of the land. Hence, public servants in the developing

²⁴ Robert Maxon (1994), *op.cit.*

²⁵ See Amukowa Anangwe (1994), "Public Service and Development in East Africa," in Walter O. Oyugi (ed), *op ct.*, 71-106

²⁶ Connie Ngondi-Houghton (2006), (), Access to Justice and the Rule of Law in Kenya (A Paper developed for the Commission for the Empowerment of the Poor), p. 6

countries have more incentive to act in favour of their private as opposed to public interests.²⁷

2.2.2: *Political Interference in Public Administration*

Power-concentration at the administrative level is also manifested in political interference in the public service. Within the education sector, power concentration has mainly taken the form of politicization of the educational services as evidenced by indiscriminate interference in the sector by the political executive. At the centre of such interference during the Kenyatta and Moi era was the *Harambee movement*. As noted in 3.1.1 below Harambee self-help was encouraged by Kenyatta as a means of diverting the attention of the members of parliament from politics at the centre. One of its positive results was the rapid growth, especially of secondary schools beginning from the 1970s, thereby making it possible for many children to go to school. However, it also did encourage the growth of *patron-client relationships*, which increasingly replaced the activities of political parties since political support at the grass-roots was increasingly pegged on Harambee donations from the rich and powerful patrons.²⁸ In this way, the education sector was systematically patronized by the political executive.

Thus despite the creation of a number of institutions that were meant to depoliticize and professionalize the education sector (including the Teachers Service Commission in 1966, the Kenya National Examination Council in 1980, and the Kenya Commission of Higher Education in 1985, among others), the post-independence Kenya has been characterized by utter lack of institutional autonomy in the educational sector. Policy-making in the sector has more often than not, been made on an ad-hoc basis, catching both the planners and the professionals unawares.²⁹

For example, the presidential decrees to abolish school fees in primary schools in 1974 and 1979 led to higher enrolment of pupils and the subsequent need to recruit a large

²⁷ Fred Riggs (1964), Administration in Developing Countries: The Theory of Prismatic Society (Boston: Houghton Mifflin)

²⁸ Brian Cooksey, David Court and Ben Makau, Education for Self-Reliance and Harambee, in Joel D. Barkan" (ed), Beyond Capitalism and Socialism in Kenya and Tanzania (Nairobi: East African Educational Publishers, 1995), pp.201-233.

²⁹ Ibid.

number of untrained teachers. Consequently, there was a dramatic rise in teachers' salary bill, which could only be catered for by unbudgeted funds. At the same time, the call for parents to construct class-rooms and provide facilities for the expanded system negated the argument that primary education had been made free. Other instances of ad hoc decisions by the political executive, which caught both the planners and professionals unaware include: the introduction of primary school milk scheme in 1979, the introduction of the quota system in the selection of students entering secondary schools in 1983, the introduction of the 8-4-4 system of education in 1983, and the decision to more than double the university intake from 1987-1990.³⁰

3: Provision of Personal Favours in Post-independence Kenya

3.1: Personal Rule as a Manifestation of the Provision of Personal favours at the Political level

Joel D. Barkan seems to have had in his mind the idea of personal rule when he contended that patron-client relationships³¹ have played a dominant role in resource allocation in post-independent Kenya. Barkan went ahead to argue that in the emerging four-tiered patron-client structure, the president is the chief patron, followed by the cabinet ministers, members of parliament and the people, in that order.³²

The post-independence Kenya did provide a fertile ground for the emergence of patron-client relationship. The patron-client politics that came to dominate the post-independence Kenya, mainly in the form of *harambee self-help movement* has been associated with the ethnically divided nature of the society, its weak political parties,³³ its rural-urban divide, the establishment of a Kenyan capitalist class by the British and the subsequent inclination on the part of its ruling elite in favour of capitalist development.³⁴

³⁰ Nkinyangi, J. A. (1980), "Education for Nomadic Pastoralists: Development Planning by Trial and Error," in J. G. Galaty and P. C. Salzman (eds), The Future of Pastoral Peoples (Ottawa: International Development Research Corporation)

³¹ These are those linkages that run parallel to the formal political and bureaucratic linkages and link the chief-patron at the apex to a chain of clients including cabinet ministers, members of parliament and the people at the bottom.

³² Joel D. Barkan, (1980), "Legislators, Elections and Political Linkage", in Joel D. Barkan (ed), Politics and Public Policy in Kenya and Tanzania, Revised edition (Nairobi: Heinemann)

³³ See Walter O. Oyugi, "Party-State relations in Post-independence Kenya", in Walter O. Oyugi (ed), op. cit.

³⁴ See Frank Holmquist (1984), "Self-Help, the State and Peasant Leverage in Kenya", in Africa, 54, 3, 72-91

The experience of post-independence Kenya with harambee self-help movement demonstrates beyond any reasonable doubt how intolerant the successive incumbent presidents have been of autonomous power bases within the country. Thus, Kenyatta's appeal to Kenyans to engage in harambee self-help efforts in the immediate post-independence era can be seen as one way in which he hoped to reduce the volume of demands for rural services on his government. However, it can also be viewed as an important part of his strategy for diffusing local dissent. By urging the local residents to engage in self-help activities and to seek assistance from their local leaders on the one hand, and by allowing the local leaders to build their respective political bases through such assistance on the other, he forced most politicians to pay more attention to the needs of their constituencies than to matters of central government politics.³⁵

For more or less the same reasons as Kenyatta's administration, the Moi administration did undermine to a considerable extent the growth of the Harambee self-help movement. It has been argued that, following as he did, a charismatic leader,³⁶ Moi found it increasingly difficult to fit into the shoes of his predecessor, with the result that he resorted more frequently to force of coercion as a means of gaining compliance. Moreover, during Kenyatta's reign, there seems to have been plenty of patronage resources, including the "white highlands", public service jobs, and even buoyant economy. By the time Moi was taking over in 1978, all these advantages were no longer available. Hence, the political and economic power-base of regime under Moi was significantly narrowed.³⁷

Moi's recourse to use of coercion seemed to be at odds with such local power bases as the voluntary self-help organizations. Barkan notes that in his efforts to consolidate

³⁵ Joel D. Barkan (1992), "The Rise and Fall of a Governance Realm in Kenya", in Goran Hyden and Michael Bratton (eds), *Governance and Politics in Africa* (Boulder: Lynne Rienner Publishers), ch.1

³⁶ Most nationalist leaders who emerged as their respective countries' first chief executives were revered by their citizens and for that reason could get away with many aspects of misgovernance.

³⁷ C. Odhiambo Mbai (2003), "Public Service Accountability and Governance in Kenya since Independence," in *African Journal of Political Science* (2003), Vol. 8, No. 1 p, 10

power, the Moi administration took measures that ultimately proved incompatible with the growth of the movement, including:

1. The banning of what he considered to be ethnic associations, most of which provided the infrastructure for the movement.³⁸
2. The introduction of the District Focus for Rural Development, as a result of which the associational life in the rural areas was subjected to tighter control by the provincial administration.³⁹
3. The shift from locally confined projects to nation-wide projects, whose benefits to the local sponsors became increasingly unclear. These include the National Youth Project, the National Women Project and the National Street Children Project.

Indeed, Barkan notes that the democratic space under the Moi administration was considerably narrowed, leading to what he considers as the “fall of the governance realm”. These are indicated by among other things, the movement during his tenure from de-facto to de-jure one party system, and the removal under his administration of the security of tenure among the senior public officials.⁴⁰ Hence, the reduced political and economic basis of Moi’s regime explains why it became difficult for him to sustain the Harambee self-help movement. It is, therefore, instructive that, both Kenyatta (throughout his 15 years of presidency) and Moi (until the re-introduction of multi-party politics in 1991) succeeded in warding off formal opposition to their regimes despite their different orientations to the Harambee self-help movement.

As a tool for rural development, Harambee self-help movement had several merits (see 2.2.2 above), although it was constantly opposed by bureaucrats on grounds that it was wasteful and contributed to government over-load. It has, however been argued by Frank Holmquist that the bureaucrats should not have been expected to support harambee self-help projects considering the fact that these were not likely to generate revenues for their

³⁸ See Dirk Berg-Schlosser (1994), “Ethnicity, Social Classes and the Political Process in Kenya”, in Walter O. Oyugi, op. cit., p. 253

³⁹ For the manner in which the various attempts at decentralization has undermined associational life in post-independence Kenya, see Walter O. Oyugi (1991), “Decentralized Development Planning and Management in Kenya: An Assessment,” in Orieko Chitere and Roberta Mutiso (eds.), Working with Rural Communities: A Participatory Action Research in Kenya (Nairobi: Nairobi University Press), pp. 27-48

⁴⁰ Joel D. Barkan (1992), op. cit., chapter 1

salaries in the short-run. Instead they were likely to also lay claim on the already scarce government revenues.⁴¹

As a political tool, however, it is associated with widespread misuse of public resources both under Kenyatta and under Moi. It was increasingly subjected to abuse and manipulation by the ethnic leaders, as fund-raising rallies were turned into platforms for political campaigns. Increasingly, more-over, the Members of Parliament were elected, not on the basis of their ability, principles and forthrightness as leaders, but on the basis of their wealth. This is an indication of lack of merit considerations at the popular, electoral level. Moreover, as argued by Joel D. Barkan, appointments of Members of Parliament as Ministers or Assistant Ministers under the Kenyatta regime was increasingly based on their perceived success in Harambee self-help (as indicated by their re-election to parliament) rather than on their leadership qualities.⁴²

Another significant aspect to the provision of personal favours in post-independence Kenya is urban biased development, to the extent that this has been carefully calculated to maintain the successive post-independence regimes in power. According to Michael Lofchie, national policies in Kenya, like in other third world countries, have also been biased in favour of urban areas given the desire on the part of the successive ruling elite to maintain the valued political support of key urban political groupings.⁴³

Aside from this, resource allocation in post-independence Kenya has been designed to favour specific ethnic groups that are allied to the successive incumbent chief executive. Lofchie has, for example, given an account of how ethnic considerations influenced the award of rights to use foreign exchange quotas during the era of foreign exchange controls under Kenyatta and Moi. Indeed, as a result of their influence within the Kenyatta government, the members of the Kikuyu community grew so much in economic strength relative to other ethnic and regional groups, leading to ethnic polarization under

⁴¹ See Frank Holmquist (1984), op. cit.

⁴² See Joel D. Barkan (1992), op. cit. ch.1

⁴³ Michael Lofchie, "Politics of Agricultural Policy" in Joel D. Barkan (ed), Beyond Capitalism and Socialism in Kenya and Tanzania (Boulder and London: Lynne Rienner Publishers, 1994), pp. 129-173

the Kenyatta regime. Their economic base was coffee and tea, both of which were promoted by the Kenyatta government as a matter of national priority.⁴⁴

With the shift from Kenyatta to Moi regime in 1978, the ethnic, regional as well as economic base of the government also shifted to Kalenjin, Rift Valley and wheat. Moi's move in this regard has been widely criticized, especially by the World Bank, for having put Kenya on a path of agricultural decline following two decades of agricultural prosperity. This is because Kenya seems to be a very inefficient producer of wheat. Thus, by the mid-1980s, its producer price had to be raised to about 140 per cent of the World price for its production to be stimulated. In Kenya, the foreign exchange costs of locally produced wheat exceed its world market price. Hence, far from saving hard currency by growing wheat, Kenya was in fact squandering scarce foreign exchange earnings to subsidize a small group of politically correct, well-connected individuals.⁴⁵

The Kibaki administration under both the NARC Government and the Grand coalition has not escaped from ethnic bigotry. Indeed, ethnic mistrust has been cited as one of the major reasons that led to both the rejection of the draft new constitution in November 2005⁴⁶ and the eruption of the post-election violence following the December 2007 elections.⁴⁷ According to Goodwin R. Murunga and Shadrack W. Nasong'o (2006), the transition from Moi's government to Kibaki's government in 2002 merely constituted a shift from "Kalenjin Mafia" to "Mt. Kenya Mafia."⁴⁸

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ John Githongo (2006), Inequality, "Ethnicity and the Fight Against Corruption in Africa: A Kenyan Perspective," in Institute of Economic Affairs (Oxford: Blackwell Publishing), pp. 19-23

⁴⁷ See for example Mutahi Ngunyi's article entitled "Is Kibaki's Succession Plan Viable?" in the Sunday Nation, January 25th 2009, p. 15

⁴⁸ Goodwin R. Murunga and Shadrack W. Nasong'o (2006), op. cit., p.8

3.2: The Provision of Personal Favours at the Administrative Level

3.2.1: Favouritism within the Public Service

Whereas public administration is ideally supposed to be non-political, the post-independence Kenyan public service has been for the most part, politicized, leading to a high prevalence of favouritism. This state of affairs may be attributed to a variety of factors, including:

1. Africanization policy, which obliged the post-independence Kenyan leaders to temporarily waive the merit requirements in their bid to replace the expatriate public service employees.
2. The predominance of patron-client linkages within the public service
3. The influence of the culture of “economy of affection,” among public servants and citizens with the former being assessed by the latter based on the extent to which they succeed in using their positions in service of parochial interests.⁴⁹

Indications of political interference in Kenya’s public Administration are clearly identifiable in the country’s post-independence constitution which creates an independent Public Service Commission with the mandate to appoint and discipline the middle and lower-level public servants, only for it to declare in another clause that all public servants occupy their respective offices at the pleasure of the president (see Chapter II Section 24). Moreover, according to Kenya’s constitution, the president has the power of constituting any public office and terminating any appointment to it (see Chapter VIII Section 25 (1)). In this way, the public offices in Kenya are constitutionally transformed into personal properties of the chief executive, to be dispensed by him at will.

Needless to say, this has been a major contributory factor for the poor delivery of public service in post-independence Kenya. Moreover, the trend during the post-independence period has been towards further removal of the merit-considerations in the appointment of public servants. By a constitutional amendment act no. 4 of 1988, for example, the

⁴⁹ Goran Hyden (1983), No Short-cuts to Progress: African Development Management in Perspective (Berkeley: University of California Press). Also see Goran Hyden (1980), “Policy-making in Kenya and Tanzania,” in Joel D. Barkan (ed), Politics and Public Policy in Kenya and Tanzania, Revised edition (Nairobi: Heinemann)

security of tenure of High Court and Court of Appeal Judges was removed (although it was later restored in 1990). According to the then Attorney-General, Matthew Guy Muli, the constitutional amendment was occasioned by the fact that the constitutional provision guaranteeing the security of tenure of the judges and the members of the Public Service Commission (PSC) was inconsistent with the presidential prerogative to appoint and dismiss public servants as provided under the constitution.⁵⁰

In a recent article within the Daily Nation,⁵¹ Kenya's former Member of Parliament Paul Muite, who is also a legal expert, lamented the extent to which the presidential prerogative in the appointment of the senior judicial staff continues to be misused under the Kibaki Administration. The president appoints senior judicial officers on the advice of the Judicial Service Commission, yet the members of the latter are also hand-picked by the president.⁵² In practice, therefore, the only way in which one can hope to be appointed as a judge of either the High Court or Court of Appeal in Kenya is when he or she enjoys the sponsorship of any one of the presidential appointees who have been hand-picked by the president. Even though some very competent judges have found their way into the Bench, this has been largely by coincident rather than by design.⁵³

As a result of the resultant patronization of the judiciary by the chief executive, the delivery of justice in post-independence Kenya has been very wanting, as is indicated by a large backlog of unresolved cases,⁵⁴ leading to progressive loss of faith in the judiciary among Kenyans (this is manifested in high incidences of defiance of court orders by politicians, extra-judicial killings by the police and mob-justice by the public). Indeed, incompetence within the judiciary has had very negative repercussions in the country's

⁵⁰ Lawrence Murugu Mute and Smoking Wanjala (2002), op. cit. p.21

⁵¹ See the report entitled "Key Reforms needed to Restore Confidence in the Judiciary" in the Daily Nation, April 2nd 2009, p. 14

⁵² Kenya's Judicial Service Commission (JSC) consists of five presidential appointees, including the Chief Justice, the Attorney-General, The Chairperson of the Public Service Commission, two Judges (either from the High Court or Court of Appeal)

⁵³ See Ibid.

⁵⁴ According to the most recent estimation by the participants of the East African Magistrates and Judges Conference in Nairobi, for instance, Kenya has the highest number of pending court cases (863,000), followed by Uganda (115,406) and Tanzania (65,837), in that order. See the report entitled "Judges Faulted for Case Backlog" in the back-page of the Daily Nation, May 6th 2009, p.56

stability as is indicated by the tendency on the part of many Kenyans to lose faith on the Judiciary, among other public institutions. The most recent indication of this loss of faith in the Judiciary is the unwillingness on the part of the aggrieved party during the 2007 presidential elections to seek redress in court.

Given the ethnicized nature of the Kenya society, the provision of personal favours within the public service takes an ethnic dimension. It has for example, been widely acknowledged that under the Kenyatta administration, the members of his Kikuyu community were the chief beneficiaries in terms of public service appointments and economic prosperity. The very question as to whether they did merit such appointments is still open to debate. Barkan, for example, attributes the larger presence of Kikuyus (and to a lesser extent the Luos) in Kenyatta's public service to their greater access to secondary and university education.⁵⁵

Similarly under the Moi government, his Kalenjin community, which formed his ethnic base, was the chief beneficiary in terms of public service appointments and economic prosperity. In line with his mission to redress ethnic inequalities (that, in his opinion had been generated by Kenyatta's 15-year rule), Moi set out replacing Kikuyus with the members of ethnic groups that had earlier on been allied to his KADU party, especially the members of the Kalenjin community within the public service. In addition, public expenditures in areas such as roads, health, water and education were also shifted away from Central Province to other regions, especially Rift Valley Province, which is inhabited by the Kalenjin community.⁵⁶

3.2.2: The Provision of Personal Favours in the Public Enterprise Sector

The expansion of the public enterprise sector in post-independence Kenya was in many ways an extension of a process that had been already initiated during the colonial era. During the colonial era, public enterprises were created to further the interests of the colonial state, including:

1. Providing infrastructural services to the settler community

⁵⁵ See Joel D. Barkan (1994), *op.cit.*, p.17

⁵⁶ *Ibid.*, pp.24-25

2. Providing agricultural supplies, input and marketing services to the settler farmers
3. Providing credit facilities to the settler farmers, especially in the periods following the Great Depression of the 1920s and 1930s and the World War II.

With the attainment of independence, most of these public enterprises were simply re-oriented so as to serve the interests of post-independence Kenya.

However, the expansion of the public enterprise sector in post-independence Kenya is more specifically associated with the desire among the new elite to consolidate political independence and to stimulate national economic development, including pursuit of Africanization objectives, export promotion, development of indigenous skills, creation of employment opportunities and the generation of investible surplus.⁵⁷ Nevertheless, the national development that they were expected to stimulate was carefully designed to suit the interests of the ruling coalition. Hence, they have been used to buffer against, squeeze or co-opt political enemies while at the same time deepening the politico-economic base of the ruling coalition.⁵⁸

Thus, whereas the post-independence Kenya government's involvement in the sugar industry was guided by the Swynnerton Plan of 1954 and the Sessional Paper No. 10 of 1965,⁵⁹ the establishment of state owned sugar companies in Western Kenya from the late 1960s was specifically associated with an increasing feeling within the ranks of the ruling coalition that this region was beginning to experience a sense of neglect by the Kenyatta government.⁶⁰ This can otherwise be interpreted as purchase of political loyalty.

As noted by Mukandala, the management of public enterprises in Kenya, like in the other three East African countries, has been characterized by heavy political interference, with the members of the ruling coalitions seeking to mould and employ them in pursuit of their own goals. In particular, the successive presidents in the three countries have been

⁵⁷ Rwekaza S. Mukandala (1994), "The State and Public Enterprise," in Walter O. Oyugi (ed.), op cit., pp. 128-149

⁵⁸ Ibid

⁵⁹ Before independence, the sugar industry in Kenya was mainly dominated by Asians, with Miwani sugar mills being run by Hindocha while Ramisi sugar mills was run by Madhvani Group International of India.

⁶⁰ Peter Wanyande (2004), "Management Politics in Kenya's Sugar Industry: Towards an Effective Policy Framework", in *African Journal of Political Science*, Vol. 6, No. 1 (2001), pp. 123-140

involved in creating them, appointing their Boards of Directors, selecting their senior management, choosing their location, setting their terms of reference and determining important sources of their inputs.⁶¹

Moreover, political patronage within the public enterprise sector also affects the relationship between the state and the private sector. As noted by Roger Tangri (2000) in his account of political patronage in the management of public enterprises in Africa, although the post-independence Kenya is among the few African countries where the private domestic firms have been promoted by the policy of indigenization (based on its ideological inclination towards free-market),⁶² they are yet to emerge as a large and powerful group with political clout in terms of articulating the interests of the economic class. This is because, much of this assistance and preferential treatment has been provided to favoured clients of the government, including relatives or political associates of influential state personnel and “politically correct” ethnic communities, a phenomenon that he mainly attributes to the large size of Kenya’s public sector and prevalence of economic control.⁶³ Public enterprises in Kenya are therefore viewed as being in competition with the private sector whereby the latter are being crowded out in terms of access to state incentives (Refer to footnote no. 62). Indeed, even with the advent of Structural Adjustment Programmes in the 1980s, the private sector is still not considered by the ruling elite as an equal partner with the public sector.⁶⁴

Monica J. J. Kerrets-Makau has given an account of how the Kenya Post and Telecommunications Corporation (KP&TC) operated as a channel of political patronage under the government of Moi. This parastatal was overwhelmingly manned by the Kalenjin community (Moi’s ethnic group) right from top to bottom. It is also for this reason that reform in the Telecom sector was considerably delayed by the Moi

⁶¹ Rwekaza S, Mukandala, op. cit.

⁶² This has been done by among other things, concessionary loans, preferential taxation rates, protective tariffs, tender provision by the state, and prohibition of foreigners from engaging in certain economic activities.

⁶³ Roger Tangri (2000), The Politics of Patronage, Privatization and Private Enterprise (Africa World Press)

⁶⁴ Ibid.

administration despite it having been long over-due.⁶⁵ Instead, its statement of reform commitments focused on the banking, transport and insurance sectors, based on the conditions of privatization program that had began in 1991. It therefore appears that Moi had no intention of reforming the telecoms sector, despite pressure from the donor community. This, according to J. J. Kerrets-Makau is largely attributable to the fact that the Telecoms Kenya was Moi's political (as well as ethnic) power base.

4: Misuse of State Resources in Post-independence Kenya

Misuse of public resources by the political and administrative elite is one of the most important challenges that are faced by Kenyans today. The main concern is that whereas public servants and public finance are meant to serve the public at large, they have often been used in service of partisan, personal and individual interests. Misuse of public resources in post-independence Kenya is manifested in the manner in which public resources are used by members of the ruling coalition so as to maintain themselves in power, and the manner in which the public enterprises and other parastatals have been mismanaged or used in service of partisan, personal or ethnic interests.

4.1: Misuse of State Resources at the Political Level

Misuse of public resources at the political level in post-independence Kenya is closely associated with arbitrary rule, as manifested in the successive post-independence governments. In this kind of environment, the political leaders have enjoyed a free-hand in stealing from public coffers without the expectation that they can be subjected to public accountability. The entire process has taken the form of "grand" corruption. In an attempt to clarify the term "corruption," Inge Amundsen includes within its usage a variety of terms that may end up subsuming the various aspects of neo-patrimonialism discussed in this paper (these include, embezzlement, fraud, extortion and favouritism, among others). He further distinguished between "grand corruption" (which takes place at the political level) and "petty" corruption (which takes place at the administrative

⁶⁵ Kenya's commitment to reforms in the telecom sector can be traced way back to the 1985 First World Telecommunications Development Conference (WTDC) which was held in Tanzania, where Kenya, among other world governments undertook to ensure that there was a telephone line within "easy reach" by the early part of the 21st Century. See Mureithi, M. (2002), "Evolution of Telecommunications Policy Reforms in East Africa: Setting New Policy Strategies to anchor Benefits of Policy Reforms," The Southern African Journal of Information and Communication (Issue No. 2).

level).⁶⁶ Our concern at the moment, therefore, is with “grand” corruption. According to Wamalwa (1993), there is a close link between the prevalence of corruption in post-independence Kenya and the concentration of power in the chief executive.⁶⁷

In the post-independence Kenya, misuse of public resources has mainly revolved around misuse of public land. Soon after his ascent to power, for example, Kibaki appointed a Commission of inquiry led by Paul Ndung’u (2004) to look into past illegal/ irregular allocation of public land. The report of the commission revealed how established procedures designed to protect public interest have been perverted by the succeeding post-independence political elite in Kenya to serve both private and political ends in land allocation.⁶⁸

The report noted that both under the late president Kenyatta and the former president Moi, public land has been allocated without regard to either legal procedures or public interest, leading to what can be described as abuse of presidential discretion. The commission further noted that most of this illegal allocation of public land took place before or soon after the multi-party general elections of 1992, 1997 and 2002, which indicates that public land was allocated as a political reward or patronage.⁶⁹ Furthermore, in their public accountability statement for 2003-2008, the Kenya National Human Rights Commission (KNHRC) cited their publication of how Kenya’s forests and other public land have been irregularly allocated to influential individuals within the successive post-independence governments.⁷⁰

Jacqueline M. Klopp has noted that the combined effects of a decline in traditional sources of patronage such as aid, greater international scrutiny of some forms of

⁶⁶ Inge Amundsen, Corruption: Definitions and Concepts, (Chr. Michelsen Institute Development Studies and Human Rights, Draft, 17 January 2000 (Downloaded from the Internet)

⁶⁷ Wamalwa W. N., Causes and Consequences of Ethical Crisis in Africa’s Public Services, In Rasheed, Sadiq and Dele Olowu (eds), *Ethics in Public Administration*, (1993), pp.41-48

⁶⁸ See the Government of Kenya (2004), *Report of the Commission of Inquiry into the Illegal/ Irregular Allocation of Public land* (Government Printers, Nairobi).

⁶⁹ Ibid, p.83

⁷⁰ KNCHR, *The Kenya National Commission on Human Rights Public Accountability Statement for 2003-2008*, July 31st 2008

corruption, and enhanced political competition posed real threats to the Moi administration. In these circumstances, public land became an attractive asset, given that it is highly accessible, yet less exposed to international scrutiny. She also adds that increased obsession with land-grabbing during this time may have been occasioned by fear on the part of the members of the Moi administration, that a change in government would end their privileged access to public resources.⁷¹

Misuse of public resources in post-independence Kenya also resulted from the Africanization of the economy, in the sense that the extension of credit and other forms of support to budding African entrepreneurs through a number of parastatals (notably the Industrial and Commercial Development Corporation and the Kenya National Trading Corporation), was skewed in favour of Kenyatta's Kikuyu ethnic community. In fact, Kenyatta went as far as allowing his family members as well as his loyal followers to take advantage of the growing opportunities in the private sector, participating in joint-ventures with foreign direct investors, taking management positions in such undertakings, and receiving "commissions" from newly launched enterprises. The best example is the appointment of Udi Gecaga, his son-in-law as managing director of Lonrho East Africa, the biggest foreign conglomeration then operating in Kenya.⁷²

There has also been a tendency to use public resources in post-independence Kenya for partisan purposes as is best indicated by Oyugi's account of party-state relations during the post-independence period. According to this account, the emergence of one-party authoritarianism during the early 1960s led to the mingling of the ruling party KANU and the state machinery, whereby state resources were increasingly used to serve partisan interests. He continues to note that the fight between KANU and KADU following Kenya's attainment of self-government was as much a fight between the two parties as it was one between the KANU government and KADU. Many are the occasions when government officials doubled up as party agents at the local level during the single-party

⁷¹ Jacqueline M. Klopp, "Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya," *Africa Today*, (Downloaded from the Internet).

⁷² It is noteworthy that following Moi's ascent to power in 1978, Udi Gecaga was replaced by Mark Too, Moi's son, as the Managing Director of Lonrho East Africa. See *Ibid.*, p. 86

era.⁷³ The magnitude of misuse of public resources as a result of the emergence of single-party authoritarianism is yet to be systematically assessed.

Another instance of how a public resource has been used for partisan purposes involves the Kenyatta International Conference Centre (KICC), which is currently a public corporation offering hotel and conference services under the ministry of tourism. The construction of this facility was funded by the Ministry of Roads and Public Works between 1967 and 1974 at a cost of 79.9 million Kenya shillings and subsequently managed by the Ministry of Tourism. In 1985, it was leased-off to KANU for 99 years for just 1,680 Kenya shillings and negligible rent.⁷⁴ Subsequently, KANU took over the Centre, and assumed the role of landlord by collecting rent from tenants until February 2003, when the new NARC administration took it over on behalf of the government. The KICC is currently a public corporation⁷⁵

Moreover, the trend did not end with the introduction of multi-party politics. During the run-up to the December 2007 elections, the Coalition for Accountable Political Financing (CAPF)⁷⁶ reported of gross misuse of public resources by the governing party and the incumbent president. According to this report, between September 2007 and December 2007, there were 420 cases of government vehicles used in 71 constituencies to facilitate the campaign efforts of the Party of National Unity, which was sponsoring the incumbent president and his allies. Within the same period of time, there were 130 cases of personnel from provincial administration used to organize PNU rallies and events, 128 hours of political campaigns special news features devoted to the incumbent president by the Kenya Broadcasting Corporation, 154 cases of government vehicles used by cabinet Ministers to campaign for the incumbent president, 104 cases of government limousines accompanied by several chase cars used by the first lady and government officials to attend political rallies and 98 cases of state-owned helicopters and aircrafts used by

⁷³ See Walter O. Oyugi (1994), op. cit.

⁷⁴ The land title was written in the names of President Moi and the then KANU chairman, Peter Oloo Aringo.

⁷⁵ The Government of Kenya (2004), The Ndung'u Report, op. cit., pp. 112-113

⁷⁶ CAPF is an alliance of governance focused civil society organizations in Kenya intent on coalescing their expertise, experiences, and programmatic resources towards the improvement of the regulation, management and culture of political party financing in the country.

government officials to attend political rallies. In CAPF's estimation, the total fiscal cost of the use and abuse of state and public resources by incumbent politicians for election campaigns was Kenya shillings 139 million.⁷⁷

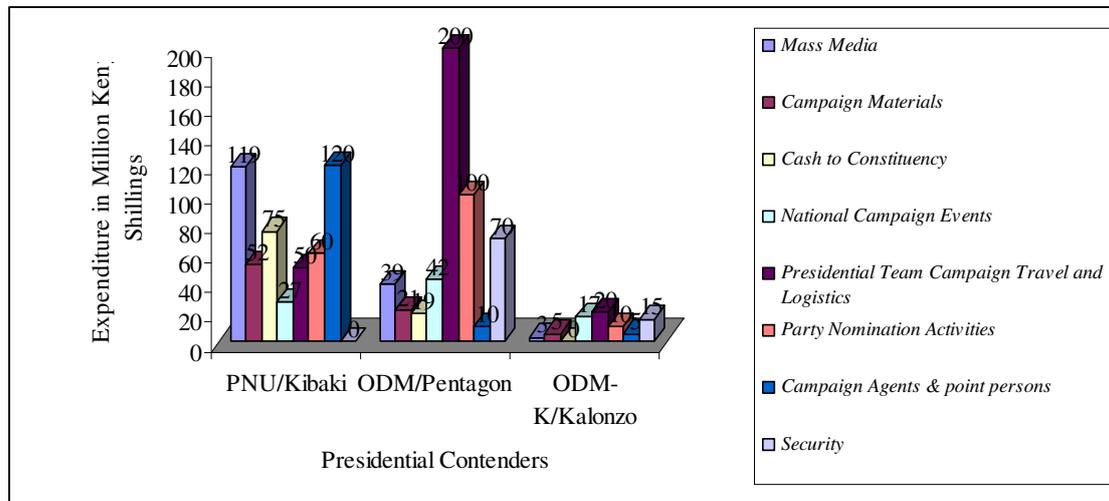
Of particular interest in as far as misuse of public resources during election campaigns is concerned is the fact that ODM's expenditures for national campaigns events, presidential team travel and logistics, party nomination activities and security were well above those of PNU (see Figure 1 below).⁷⁸ This points to misuse of public resources by the PNU, which for the most part relied on the state for these services. For example, unlike the case in the ODM, the incumbent president's party (PNU) did not have to hire its own elections board for purposes of nomination since it could easily use the services of the Electoral Commission of Kenya. Likewise PNU did not have to hire security for its political rallies as it had at its disposal the entire state security machinery (refer to the above paragraph for the specific figures relating to misuse of personnel from the provincial administration).

⁷⁷ UNDP, Kenya 2007 Election Assistance Programme CAPF Campaign Finance Monitoring Initiative (Interim Report on Presidential Campaign Expenditure, Presented at Serena Hotel on 17th December 2007),

p. 6

⁷⁸ See Ibid., p. 7

Figure 1: Presidential Campaign Expenditure 1st September 2007- 15th December 2007



Source: CAPF Party & Presidential Candidate Monitoring Report Election 2007

In their public accountability statement for 2003-2008, the Kenya National Commission on Human Rights⁷⁹ included among its achievements its revelations on how Kenya's public resources are wasted in the purchase of luxurious vehicles for Ministers and senior public servants, following which the government undertook to reduce the number of public vehicles used by cabinet ministers.⁸⁰

Another aspect of misuse of public resources in post-independence Kenya pertains to fiscal indiscipline. Fiscal indiscipline in post-independence Kenya can be associated with reduced levels of public accountability following the attainment of independence. Thus, whereas the last Colonial Auditor-General's Report for the financial year 1962/63 did not suggest any misuse of public funds, the situation drastically changed with the advent of independence. Thus, the Controller and Auditor General's reports from 1963/64 all the way down to the late 1980s indicated that misuse of public resources at the political level

⁷⁹ The Kenya National Commission of Human Rights (KNCHR) was established in 2003 through collaboration between the Government, Civil Society and the Office of the United Nations High Commissioner for Human Rights. It is a successor to the Standing Committee on Human Rights (SCHR) that had been established through a presidential decree in 1996. Its broad mandate is the promotion and protection of all human rights for everyone in Kenya, which also includes monitoring the use of public resources by politicians and public servants.

⁸⁰ KNCHR, The Kenya National Commission on Human Rights Public Accountability Statement for 2003-2008, July 31st 2008

was worsening with time. Moreover, despite the parliament's endowment with two watchdog institutions (the Public Accounts Committee and the Public Investment Committee), no action followed the successive reports of the Controller and Auditor General.⁸¹ It is in this way that "grand" corruption took root in Kenya during the late 1980s as indicated by the emergence of the Goldenberg Affair.

The Goldenberg scandal is itself a product of the introduction of export compensation in the late 1980s by the government in order to encourage legitimate export of gold and to eliminate smuggling of gold. The stated aim of the government in introducing export compensation was to ultimately gain control of Kenya's gold mining industry so as to gain revenue that accrued from a legitimate business. By July 1990, gold-related export compensation claims had dramatically shot up. By 1993, one of the companies that had gotten involved in this trade, Goldenberg International, claimed that the value of its gold exports had reached Kenya shillings 9.4 billion (N/B: the country's number one export earner that year was tea, valued at Kenya shillings 9.5 billion). The Catch-22 was that the Goldenberg International's gold exports were not captured in the Kenya Economic Survey, 1993. Investigations have since revealed that during the life of the Goldenberg International's alleged exports of Gold, real gold was purchased only once. It has been further revealed that the Goldenberg International stole from Kenyans up to US \$ 500 million, among other long-term and indirect impacts.⁸²

Following the Goldenberg Affair, mounting donor pressure has been responsible for successive initiatives by the government to deal with corruption in post-independence Kenya, including:

1. The formation of the Kenya Anti-Corruption Authority in 1997. However, this was later declared unconstitutional as it had both investigative and prosecutorial powers, thereby being seen to encroach on the powers of both the police and the Attorney-General. It is, however also true that its major undoing was to attempt to

⁸¹ C. Odhiambo Mbai (2003), Public Service Accountability and Governance in Kenya since Independence, in African Journal of Political Science (2003)

⁸² Transparency International, Kenya (2004), National Integrity Systems Country Report, p. 15

- prosecute a number of Treasury officials (including the then Minister for Finance Simon Nyachae) in connection with fraud involving wheat and sugar imports.⁸³
2. The establishment of the Kenya Anti-Corruption Police Unit through an executive order in 2001 within the Kenya Police, to take over KACA's cases, following an abortive attempt to re-instate the latter through a bill in parliament.
 3. The establishment of the current Kenya Anti-Corruption Commission in 2003, with *only* investigative powers. It simply forwards all its cases to the Attorney-General for prosecution following investigations. Hence, it may simply amount to a "toothless dog" that cannot bite.⁸⁴

Despite these successive initiatives, there are still clear evidences of misuse of public resources in post-independence Kenya. Although Kibaki's NARC government was elected in 2002 on an anti-corruption ticket, it seems to have lost momentum somewhere down the line as senior members of his government were implicated in a variety of scandals of which the most notable is the Anglo-leasing scandal.⁸⁵ Further incidences of misuse of public resources under the Kibaki's NARC administration were revealed by the report on wasteful government expenditure by the Kenya National Commission of Human Rights (KNCHR)⁸⁶ and the Transparency International Kenya (TI) (2006), where it was noted that between January 2003 and September 2004, the new NARC government had spent at least Kenya shillings 878 million in the purchase of luxury cars for senior government officials including Ministers, Assistant Ministers and Permanent Secretaries (N/B: Following their publication, the government undertook to reduce the number of public vehicles used by cabinet ministers).⁸⁷

⁸³ Ibid, p. 45-46.

⁸⁴ Ibid., p. 44

⁸⁵ Among those implicated in the Anglo-leasing scandal are Chris Murungaru, Daudi Mwiraria, and Kiraitu Murungi. For details, see Gladwell Otieno (2005), "The NARC's Anti-Corruption Drive in Kenya: Somewhere over the Rainbow?" in *African Security Review*, 14 (4). 2005) pp.69-79

⁸⁶ The Kenya National Commission of Human Rights (KNCHR) was established in 2003 through collaboration between the Government, Civil Society and the Office of the United Nations High Commissioner for Human Rights. It is a successor to the Standing Committee on Human Rights (SCHR) that had been established through a presidential decree in 1996. Its broad mandate is to the promotion and protection of all human rights for everyone in Kenya, which also includes monitoring the use of public resources by politicians and public servants.

⁸⁷ The Kenya National Commission of Human Rights (KNCHR) and Transparency International Kenya (TI) (2006), *Living Large: Counting the Cost of Official Extravagance in Kenya* (Research Report on Wasteful Government Expenditure), p.5

With the formation of the Grand Coalition Government following the post-election violence in early 2008, hopes were high that whatever reforms have been delayed by the previous successive administrations would be undertaken given the renewed political goodwill. However, the current indications are that squabbles within the coalition government are undermining the efforts at genuine political reforms. The long life of the current KACA despite its apparent inability to deal with the perpetrators of such cases of “grand” corruption as the Goldenberg Affair and Anglo-leasing scandal attests to the prevailing belief that it is really a “tooth-less” dog.

4.2: Misuse of Public Resources at the Administrative Level

Misuse of public resources in Kenya has also been a direct result of the emergence of a bloated bureaucracy as evidenced by the phenomenal expansion of the post-independence Kenyan state into the social and economic spheres of life. It has been argued that the post-independence Kenyan state’s preference for the ideology of African socialism (N/B: The expansion of the public sector had less to do with socialist ideology than it had to do with nurturing capitalist development amidst a volatile private sector) was mainly informed by the dilemma in which it found itself, in its bid to articulate diverse modes of production (capitalist, cooperative and subsistence). It is against this background that the post-independence Kenyan state took shape as an instrument of *primitive accumulation*, thereby opening the door for widespread official corruption.⁸⁸

The concept primitive accumulation has been widely used in explaining the widespread misuse of public resources in post-independence Kenya with specific reference to the management of public enterprises.⁸⁹ Also useful in explaining misuse of public resources in the public enterprise sector is Goran Hyden’s concept of the “economy of affection,” to the extent that the post-independence Kenyan state, like other African states, went out of its way to play a largely benevolent role, despite having been merely a developing

⁸⁸ Connie Ngondi-Houghton, op.cit., pp.7

⁸⁹ See the section on the management of public enterprises in post-independence Kenya below.

country, which is a contradiction in terms. This leads logically to what Hyden considered to be “*putting the cart before the horse.*”⁹⁰

In other words, owing to their respective narrow power-basis, the post-independence African states opted to become benefactors to their citizens, seeking to provide them not only with cheap social amenities and goods and services, and in the process leading to the deterioration of their economies.⁹¹ The behaviour of the post-independence African state is here comparable to that of a native African, who is unable to develop himself/ herself because he/ she must take care of the extended family members. Likewise, it is comparable to the behaviour of public servants who are forced by social pressure to provide favours to their kinsmen using their official positions.

4.2.1: Mismanagement in the Mainstream Public Sector

One result of the expansion of the state into the economic and social spheres of life was the excessive expansion of the mainstream civil service, with the result that, especially since the 1970s, Kenya’s public sector grew more rapidly than the available resources. For example, in the 1980s, despite uneven growth of the economy and increasing fiscal constraints, civil service employment continued to grow at 7.4 per cent per year, rising from 160,000 in 1979 to 277,600 in 1989. The share of public sector in formal wage employment rose from 32 per cent in 1964 to 50 per cent in 1990 (Collier and Gunning, 1999: 10).⁹² During the 1960s and 1970s, the Kenyan Public service was relatively well paid and the government could attract qualified staff.

The excessive growth in the public sector during this period is attributable to, among other things:

⁹⁰ Goran Hyden, “Bringing Voluntarism Back in,” in Joseph Semboja and Ole Therkildsen (eds), The State, NGOs and Peoples Organizations in Kenya, Tanzania & Uganda (Nairobi: East African Educational Publishers), pp. 35-50

⁹¹ See Goran Hyden, (1983), No Short-cuts to Progress: African Development Management in Perspective (Berkeley: University of California Press)

⁹² Paul Collier and Jan Willem Gunning (1999), “Why has Africa Grown so Slowly?,” Journal of Economic Perspectives, 13 (3): 3-22

1. Government guarantee of employment to anyone passing through a government training institute
2. A de facto guarantee of public sector employment to all university graduates.⁹³

As a result, the 1980s saw falling real wages of public servants at a time when the government was also facing serious deficits within its professional and managerial cadres of civil servants. Whereas the Ndegwa Report of 1970-71 (elaborated below) is most renowned for allowing civil servants to have private business interests so long as these were publicly declared (Kenya, 1971),⁹⁴ it did off-set to a limited extent the long-term decline in public sector real wages thus temporarily postponing reform in the public sector.⁹⁵ In the long-term, however, the decline in real wage in post-independence Kenya has been held responsible for the proliferation of corruption in the public sector.⁹⁶

Another instance of misuse of resources in the mainstream public sector has been in the recruitment system. The fact that the goals of the post-independence Kenyan state far outweighed its political and economic power bases is not in doubt. Owing to its decision to play a leading role in national development, it needed qualified manpower. Yet in its bid to Africanize the civil service, it embarked on a replacement of the qualified European expatriates with the less qualified Africans, who were mainly Kikuyus and more specifically, those with links to the then ruling coalition. Kenyatta seems to have been aware that his own security in government mainly depended on the extent to which he was surrounded by people that he could trust, meaning his friends, members of his ethnic community and his kinsmen.⁹⁷ It is for these same reasons that Moi was to transfer his political power base to the Rift Valley Province which hosts the members of his Kalenjin community. However, while the predominance of the members of the Kikuyu community under the Kenyatta regime could be explained by their disproportionate access to formal education and economic opportunities during the colonial era, the same

⁹³ Ibid

⁹⁴ This controversial report has been severely criticized on the grounds that it has encouraged conflict of interest within Kenya's Public Service.

⁹⁵ F. S. O'Brien and Terry C. I. Ryan, Kenya (Downloaded from the internet)

⁹⁶ Claude Ake(1993), "Causes of Poor State of Ethics in African Public Service", in Rasheed, Sadiq and Dele Olowu (eds), Ethics in Public Administration,

⁹⁷ See C. Odhiambo Mbai, op. cit.

cannot be done for the predominance of the members of the Kalenjin community (who were obviously less qualified and less economically empowered) under the Moi regime.⁹⁸

4.2.2: Management of Public Enterprises and Other Parastatals

Public enterprises in Kenya have been viewed as sources of primitive accumulation, that is, not as ends in themselves, but as means to self-enrichment by the members of the ruling coalition in Kenya. This perception of public enterprises is mainly attributable to the prevalence of acquisitive culture in Kenya, which is itself traceable to the decision by the post-independence Kenyan state to promote capitalist development by way of primitive accumulation.⁹⁹ The term acquisitive culture has been used by Mukandala (1994) to describe the management pattern of public enterprises in post-independence Kenya, whereby, the latter are viewed by the ruling coalition as ends in themselves rather than means to some end (as was the case, for instance, in post-independence Tanzania).¹⁰⁰

The Ndung'u Report (2004) (discussed above) provides the best indication of how state corporations have been implicated in the misuse of public resources. According to the report, corporation lands in Kenya have frequently been allocated by the Commissioner of Land to individuals without any reference to corporate management whatsoever. Through such methods, civil servants, politicians, and political operatives would transform themselves from ordinary Kenyans into Millionaires within the shortest period of time. Corporations which have lost large areas of land under such dubious circumstances include the former Kenya Railways, the Kenya Agricultural Research Institute, the Kenya Power and Lighting Company, the Kenya Airports Authority, and the Kenya Industrial Estates. At the same time, other bodies such as the Kenya Food and Chemical Corporation, which ended up in liquidation following mismanagement nonetheless proceed to sell off their remaining assets, including land, at throw away prices.¹⁰¹

⁹⁸ Ibid

⁹⁹ Rwekaza S. Mukandala (1994), in Walter O. Oyugi (ed), op. cit. 128-149

¹⁰⁰ Ibid.

¹⁰¹ The Government of Kenya (2004), The Ndung'u Report, op.cit.

For example, in 1994, the Numerical Machining Complex Ltd (owned wholly by the Kenya Railway and the University of Nairobi), was allocated 840 hectares of land belonging to the Kenya Meat Commission for “industrial purposes.” Within a few weeks, the then head of Public Service, Professor Phillip Mbithi, who was a Director of the Company, wrote to the head of the National Social Security Fund (NSSF) informing him that the president had suggested that the NSSF purchase the land at market value. In February 1995, the NSSF proceeded to purchase 136 hectares of land at a cost of 268 million Kenya shillings, which was 8.5 times more than the professionally assessed value. Today, the land purchased by the NSSF remains largely undeveloped, as does the one remaining with the Numerical Machining Complex.¹⁰²

This is an example of how state corporations have been pressurized into making illegal purchases of public land, thereby becoming “captive buyers of land from politically connected allottees” with the most abused corporation in this regard being the NSSF. It is noteworthy that between 1990 and 1995, the NSSF, spent some 30 billion Kenya shillings in buying both developed and undeveloped plots throughout the country.¹⁰³ For details regarding the extent to which the NSSF’s land purchases during the year 1989 were fraudulent, see [Table 1](#) below.

Table 1: Parcels of Land Acquired by NSSF in 1989 (N/B: Denominations are in Kenya shillings)

L.R. No.	Acreage	Evaluation by M/S Town Properties.	Evaluation by Commissioner of Lands	Negotiated Price paid by NSSF
209/10662	2.645	32,000,000	17,500,000	30,000,000
209/342/2	1.689	15,000,000	7,500,000	13,000,000
209/342/3	5.07	65,000,000	21,000,000	63,000,000
209/1066	0.8	30,000,000	7,000,000	30,000,000
Statutory				3,600,000

¹⁰² Ibid., pp. 91-92

¹⁰³ Ibid.

Related Costs				
Total	10.2	142,000,000	53,000,000	139,600,000

Source: National Assembly, *Fourth Report of the National Investment Committee of Accounts of State Corporations*, Vol. 1, 1995, page 78

Another instance of misuse of public resources in the Management of Public enterprises pertains to price controls. The state's involvement in the sugar industry for example took the form of majority share-ownership in the major sugar companies (including Sony, Chemelil, Muhoroni, Mumias and Nzoia Sugar Companies) and sugar distribution through the now defunct Kenya National Trading Corporation, a parastatal that had been created with the aim of Africanizing trade in the country.¹⁰⁴ The purchase of sugar-cane by the KNTC at a price determined by the state was obviously a disincentive to increased sugar-cane production by farmers and unnecessary.¹⁰⁵

Moreover, in 1973, the government declared sugar a special product and the Kenya Sugar Authority (KSA) was created to facilitate the development of the sugar industry on behalf of the government. The KSA was, therefore, charged with the responsibility of determining the price of sugar-cane in collaboration with the Ministry of Agriculture. It was also expected to control the Sugar Development Fund (SDF) following the latter's establishment in 1992 to help finance sugar-cane development in the country. Yet the KSA was a purely government body without representation from the farmers. At the same time, its management of the SDF has been queried on the grounds that it is non-transparent. It is, therefore, not surprising that the state-owned sugar companies have not been able to meet production targets, despite existence of sugar estates.¹⁰⁶

5: Conclusion

In the course of discussing the factors contributing to the persistence and change of neo-patrimonialism in post-independence Kenya, a number of issues have emerged. Various

¹⁰⁴ The Kenya National Trading Corporation was rendered defunct by the wave of liberalizations that was set in motion since the 1980s

¹⁰⁵ Peter Wanyande (2001), "Management Politics in Kenya's Sugar Industry: Towards an Effective Policy Framework," in *African Journal of Political Science*, op. cit.

¹⁰⁶ Ibid.

aspects of neo-patrimonialism seem to be persistent, despite the introduction of multi-party politics in the early 1990s and the various attempts to review the constitution. This persistent nature of neo-patrimonialism can partly be attributed to the ethnicized nature of Kenyan society.

The foregoing discussion also reveals that the persistence of neo-patrimonialism is probably attributable to the narrow power basis of the post-independence Kenyan state. Given the artificial nature of the boundaries in post-independence Kenya, the political elite did not benefit from widespread acceptance (legitimacy). Hence, they have had to resort to frequent use of force (concentration of power) and provision of personal favours in order to project the power of the state. On the other hand, the narrow economic base meant that they would not be able to fulfil most of the expectations of the post-independence state, both from within and abroad. Again the propensity was towards use of force, provision of favours and surplus appropriation.

Changes in the patterns of neo-patrimonialism in post-independence Kenya have been occasioned by the transition from the Kenyatta era to the Moi era on the one hand and the advent of economic and political reforms on the other. The coming of Moi to power brought with it new patterns of neo-patrimonialism because Moi's power-resource base was substantially narrower than that of his predecessor. Moreover, by the time Moi was coming to power, the resource patronage had substantially dwindled. The export revenues from primary agricultural commodities declined owing to fluctuation of food prices and poor management. Foreign exchange became scarce. At the same time, the donors became more assertive in their demands for both political and economic reforms. Hence, Moi's government had to yield to a variety of donor conditionalities. Yet, Moi's ascent to power was faced with more opposition than Kenyatta's. This is because he had to deal with the "Kiambu Mafia," which constituted Kenyatta's "kitchen cabinet.

In his bid to deal with the threat from the "Kiambu Mafia", Moi adopted a wide range of strategies. He transformed KANU into an instrument of control by strengthening its

headquarters, revitalizing its apparatus in the countryside¹⁰⁷ and the transformation of Kenya from a de-facto to a de-jure one-party state. Through the local party branches and sub-branches, Moi was able to under-cut the authority of leaders that had previously been allied to Kenyatta right from their home areas. He also systematically replaced the top officials of the provincial administration¹⁰⁸ with either people from his own ethnic group (Kalenjin) or those allied to it (e.g. the Maasai), while at the same time either transferring or retiring such prominent Kikuyu public servants as permanent secretaries, deputy permanent secretaries and heads of state corporations (N/B: security of tenure of senior public officials was removed in 1988 through a constitutional amendment no 4 of 1988).¹⁰⁹

It is also noteworthy that through the use of state patronage, the government ceased favouring the advancing Kikuyu businessmen and instead focused on extending favours to the far weaker Kalenjin and selected Kenyan-Asian business. Hence, the Kikuyu businessmen were increasingly either treated with indifference or actively harassed, leading to what Frank Holmquist has called “disaccumulation”. As a result, many Kikuyus found it difficult to do business or, in some cases, to even retain their property. Moreover, in his bid to eliminate the social and economic power that was represented by the Kikuyu and related groups, Moi banned all ethnic associations in 1982. This ban is strongly believed to have targeted the Gikuyu, Embu, Meru Association (GEMA).¹¹⁰

In these circumstances, Moi had to invent new sources of patronage, which were less under the surveillance of the donors. These were found in illegal land transactions and privatization of public enterprises. These new forms of patronage have seriously undermined the effects of the donor pressure in reducing neo-patrimonialism. However,

¹⁰⁷ Note that elections for national office-bearers were held for the first time in 1979 after 13 years, while elections for branch office-bearers were not held until 1985.

¹⁰⁸ By 1980, all but one of Kenyatta’s 8 Provincial Commissioners (including 4 Kikuyus) had been removed. Approximately half of the District Commissioners (predominantly of Kikuyu ethnic origin), were also transferred from provincial to other departments.

¹⁰⁹ See Joel D. Barkan (1994), *op cit.* pp.24-26. Also Kennedy J. Omollo (2002), “When the Constitution Begins to Flower,” in Lawrence Murugu Mute and Smoking Wanjala (eds), *op.cit.* p.21

¹¹⁰ Frank Holmquist (2002), *Business and Politics in Kenya in the 1990s, Occasional Paper* (Centre of African Studies, University of Copenhagen), p. 8

the effects of the donor pressure on neo-patrimonialism are so mixed that it is not yet clear whether it will ultimately lead to net reduction in neo-patrimonialism.

The coming to power of Kibaki in 2002 was accompanied by widespread expectations that his NARC government would help in bringing about fundamental changes in governance, including “zero-tolerance” to corruption, new constitution, rule of law and lean government. Moreover, his government’s commitment to change was demonstrated by its initial moves, including the appointment of Transparency International’s (TI) John Githongo to the position of the Permanent Secretary in the Office of the President for Governance and Ethics, the passage of a number of anti-corruption bills (including the Anti-Corruption and Economic Crimes Act {ACECA}, which created the Kenya Anti-Corruption Commission {KACC} and the Public Officer Ethics Acts {POEA}, which provides for Codes of Conduct for all public Officers and compels them to declare their wealth), the establishment of various commissions of inquiry to look into past abuses of power (including the Commission of Inquiry into the Goldenberg Scandal {also known as the Bosire Commission} and the Commission of Inquiry into Irregular and Illegal Allocation of Public Lands {also known as the Ndung’u Commission}), the jumpstarting of the constitutional review process and the “radical surgery” of the judiciary, among others. Hence, Kenya’s relation with the donors was also drastically improved.

However, the Kibaki administration soon fell into the trap of ethnic bigotry, as indicated by his open preference for the “Mount Kenya Mafia” in his appointment of close advisors and his decision to appoint some members of the preceding (corrupt) KANU government into the NARC Government. Hence, Kibaki’s NARC government increasingly relaxed in its war against corruption, as indicated by the emergence of the Anglo-leasing, in which several top government officials were named. Moreover, in response to the increasing loss of popularity by his government, Kibaki reneged on his earlier promise of a lean government by significantly expanding his cabinet to wasteful levels. The best indicator that the war against corruption had been lost by Kibaki’s government came with the flight of his Permanent Secretary for Governance and ethics, Mr. John Githongo amidst claims

that his life was in danger.¹¹¹ On realization that Kibaki's NARC administration was reneging on its earlier commitments to change, the donors (especially the US and Britain) reacted swiftly, by way of publicly condemning the emerging tendencies towards grand corruption and revoking the visas of some members of the NARC administration (as well as the preceding KANU administration), who had been adversely mentioned in allegations of corruption.

The formation of the Grand Coalition government was aimed not only at stopping the violence that followed the disputed general elections of December 2007, but also at addressing the perceived long-term causes of the violence, most of which are associated with neo-patrimonialism. However, with 40 cabinet ministers, the Grand Coalition government has been described as the most wasteful since Kenya's independence.¹¹² Yet this has been justified, especially by the donors, on the grounds that it is a small price to pay for peace in the country. Currently, the main parties to the Grand Coalition government are locked in a struggle over the appointment of senior administrative personnel,¹¹³ positions that should ideally be filled on the basis of merit. Moreover, the Grand Coalition government has also had its own share of corruption allegations, including the Kenya shillings 2.9 billion Grand Regency Hotel sale saga¹¹⁴, the Kenya shillings 825 million maize scandal, the Kenya shillings 7.6 million oil scandal and the Kenya Tourist Board debacle that is estimated at Kenya shillings 43 million.¹¹⁵

It, therefore, appears that the pursuit of power in post-independence Kenya is still linked, to a very large extent, to ethnicity rather than political parties. These various ethnic groups rally around individuals who are seen to be their respective agents rather than being agents of the entire nation. Political patronage is, therefore, still deeply entrenched into

¹¹¹ Gladwell Otieno (2005), "The NARC's Anti-Corruption Drive in Kenya: Somewhere over the Rainbow?" in *African Security Review*, 14 (4). 2005) pp.69-79

¹¹² See the report entitled "Cabinet of 40: What ODM, PNU will get" in the headline of the *Standard*, Friday, April 4th 2008, p. 1

¹¹³ See the report entitled "Jobs row threat to ODM, PNU unity," in the *Standard*, Friday November 14th 2008, p.1

¹¹⁴ Kipiriri MP Amos Kimunya was relieved of his duties as Finance Minister as the government sought to unravel the mystery behind the Grand Regency Saga.

¹¹⁵ See the report entitled "Top team to mediate Coalition Wrangles," in the *Daily Nation*, Friday January 16, 2009, pp. 1-2

the political system. In these circumstances, it is not far-fetched to say that the main remedy to the problem lays in the structure of the government. So long as this remains unchanged, it is unlikely that neo-patrimonialism will reduce in Kenya in the foreseeable future.

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