Pandora Papers: The Kenyatta’s Secret Companies

By Africa Uncensored

Published by the good folks at The Elephant.

The Elephant is a platform for engaging citizens to reflect, re-member and re-envision their society by interrogating the past, the present, to fashion a future.

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President Uhuru Kenyatta’s family, the political dynasty that has dominated Kenyan politics since independence, for many years secretly owned a web of offshore companies in Panama and the British Virgin Islands, according to a new leak of documents known as the Pandora Papers.

The Kenyattas’ offshore secrets were discovered among almost 12 million documents, largely made up of administrative paperwork from the archives of 14 law firms and agencies that specialise in offshore company formations.

Other world leaders found in the files include the King of Jordan, the prime minister of the Czech Republic Andrej Babiš and Gabon’s President Ali Bongo Ondimba.

The documents were obtained by the International Consortium of Investigative Journalists and seen by more than 600 journalists, including reporters at Finance Uncovered and Africa Uncensored, as part of an investigation that took many months and spanned 117 countries. Though no reliable estimates of their net worth have been published, the Kenyattas are regularly reported to be one of the richest families in the country.

They are well known in Kenya as the owners of a vast business empire, including significant interests in the banking, insurance and media sectors, as well as hotels, agricultural land and the large Brookside dairy on the outskirts of Nairobi.
But what has not been known is their activity through tax and secrecy havens, maintained by a network of bankers, advisers, offshore service providers and front figures.

Seven members of the Kenyatta family are revealed through the Pandora Papers as being variously connected to 11 offshore companies and foundations.

The documents reveal that family members have used offshore companies to own three properties in the United Kingdom. One, a flat near Westminster in London, now worth an estimated £1m, was until this summer rented out to a British Member of Parliament, although she did not know who owned it.

The Pandora Papers also show that Muhoho Kenyatta, the president’s younger brother who manages large sections of the family’s businesses, owned an offshore company with a portfolio of cash, stocks and bonds worth $31.6m in 2016.

Other documents in the leak show a foundation set up in Panama in 2003 for the president’s now 88 year old mother, “Mama” Ngina Kenyatta. Upon her death, all the assets held in the foundation were to pass to her son, Uhuru.

The Pandora Papers contain only a handful of clues about the purpose of the Kenyattas’ offshore interests or what funds and assets they might have placed in these secretive entities.

One document simply says a company in the British Virgin Islands (BVI) had been set up by Kenyatta family members with “savings from their family and their activities”.

In 2018, President Kenyatta (pictured below in Nairobi last week) was asked about his family wealth during an interview on the BBC’s Hardtalk programme. He said: “I have always stated, what we own, what we have, is open to the public. As a public servant, I am supposed to make my wealth known and we declare every year.

The Pandora Papers also show that Muhoho Kenyatta, the president’s younger brother
who manages large sections of the family’s businesses, owned an offshore company with a portfolio of cash, stocks and bonds worth $31.6m in 2016

“And I have always said: ‘If there is an instance where somebody can say that what we have done or obtained has not been legitimate,’ say so: we are ready to face any court.”

Jack Blum, an American financial crime lawyer and former staffer on the U.S. Senate Foreign Relations Committee, said: “If you see that a prominent political family has set up offshore arrangements it certainly would pique one’s interests. You would really have to begin to investigate further because the question would be: Have state assets... been moved and used for the benefit of the individuals involved?”

However, Blum added: “Now, can we say with certainty that the simple use of [offshore companies] is evidence of some kind of criminal activity? I would have to say ‘No’. You have to do a lot more work.”

The Pandora Papers show no evidence that state assets have been stolen or hidden in offshore entities controlled by the Kenyattas.

We tried to contact President Uhuru Kenyatta, his brother Muhoho, his mother Ngina and all relevant members of the Kenyatta family, as well as the president’s office in Nairobi. We asked why they had set up complex corporate structures in some of the world’s top secrecy havens, how much money they had taken offshore and where that money came from. We also asked whether they still used the entities and if so what assets they currently contain.

No-one acknowledged or responded to our letters, emails, phone calls and texts.

There is nothing unlawful about using secrecy structures or making overseas investments. Many wealthy families choose to spread their investments overseas, particularly when their home country faces political or economic turmoil. This is known as capital flight.

However, capital flight — whether lawful and illicit — often drains local investment and increases inequality.

Attiya Waris, Professor of Fiscal Law at the University of Nairobi, said that when ruling elites are discovered to have parked cash offshore, it “is a signal to the rest of the economy that they can do the same”.

She said: “The kind of knowledge on how to do this circulates among professional classes such as lawyers and accountants and they use it to implement the system for others, drawing even the middle classes into engaging with capital flight.”

The Pandora Papers contain only a handful of clues about the purpose of the Kenyattas’ offshore interests or what funds and assets they might have placed in these secretive entities.

Transparency and anti-corruption campaigners have long argued public officials should fully disclose their assets and earnings.

Waris said while complete transparency was never realistic, the concept itself is critical, particularly
when countries are trying to rebuild themselves in the wake of the global pandemic.

“The greater the disparities in wealth are in a country, the more you have social problems,” she added.

Under Kenyan law, President Kenyatta is required to make asset declarations for him and his wife, though they are not made public. However, as in most other countries with such requirements, asset disclosure rules do not extend to the wider family.

The findings from the Pandora Papers come as Kenya enters an election period. President Kenyatta is constitutionally bound to step down from office in 2022 after eight years in office — two terms that have seen improved infrastructure yet concerns about inequality and national debt.

First Family

President Kenyatta has carefully nurtured the reputation of the country’s “first family”. It is a family whose history is tied inextricably to the country’s independence and a business empire employing thousands of people.

Uhuru’s father, Jomo Kenyatta, swept to presidential power as a near-penniless independence activist in 1963, ushering in the birth of a new republic.

His status and reputation as the father of the nation grew. So too did his family’s wealth.

But by the time he died in 1978, there were already murmurs.

As noted in a now declassified report by the US Central Intelligence Agency (CIA), written days after Jomo’s death, there were allegations of controversial land dealings involving the Kenyattas.

The report said funds provided by foreign governments — earmarked to pay for redistribution of land from colonial settlers back to landless Kenyans — had instead allegedly been used by the Kenyattas and their associates to buy land for themselves.

US intelligence officers wrote that there was “growing public disenchantment with the Kenyatta clan’s economic monopoly”.

While Jomo Kenyatta himself owned only about half a dozen properties, on roughly 4,000 hectares of land, his fourth wife Mama Ngina owned at least 115,000 hectares including a large ranch, two tea plantations and three sisal farms, the report said.

The Pandora Papers show that in the late 1990s, Swiss wealth advisers had begun helping with the financial affairs of Mama Ngina and other members of her family.

The Swiss advisers, in turn, used an offshore law firm called Alemán, Cordero, Galindo & Lee — or Alcogal.

The Pandora Papers include a leak of thousands of documents from Alcogal.

They show that in 1999, Alcogal incorporated a BVI registered company called Milrun International Ltd for Mama Ngina, a minority shareholder, and her two daughters.

Alcogal also provided the registered office for Milrun and supplied Alcogal staffers to act as the company’s official directors.
The result, explained in the diagram below, was an entirely anonymous company, with an address and directors that could not be traced back to the true beneficial owners.

This company was used a year later to buy an apartment thousands of miles from Kenya and Panama, in Westminster, central London, for £280,000.

The Pandora Papers show that the Kenyatta daughters still owned Milrun until at least 2017. We asked them if they still owned the company but they did not respond.

Today, Milrun is still listed on UK Land Registry records as the proprietor of the apartment — now estimated to be worth £1m.

Until this summer, Emma Hardy, a British Labour party MP, rented the apartment when away from her constituency on parliamentary business. As she did so, she lawfully reclaimed £2,600 a month in rent expenses from state funds.

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After Ms Hardy was shown the findings from the Pandora Papers, a spokesperson for the MP said: “Emma had absolutely no knowledge of this. She signed a standard tenancy agreement through a reliable agency approved by the independent organisation that administers MPs’ accommodation costs. She is shocked at what this investigation has uncovered, and believes it shows why more transparency is urgently needed.”

In December 2002 Mwai Kibaki was elected Kenya’s third president, defeating Uhuru Kenyatta. It triggered a mood change among the country’s elites as Kibaki promised an anti-corruption drive.

“The era of ‘anything goes’ is gone forever,” Kibaki said at his inauguration rally. “Corruption will
now cease to be a way of life in Kenya."

In the wake of these remarks, there was a rush of money leaving the country. There were disputed allegations that Kibaki’s predecessor as president, the deeply unpopular Daniel arap Moi, had been among those sending money abroad, in part using offshore structures and Swiss banks.

Uhuru had been Moi’s choice to succeed him and his defeat was a blow for the Kenyattas.

It was around this time in 2003 that a trust-like entity called Varies Foundation was formed in Panama, again with the assistance of the Swiss wealth advisers and Alcogal, the Pandora Papers show.

The documents show that Mama Ngina was the beneficiary, and that upon her death this secret foundation was to be run for the financial benefit of her son, Uhuru.

The Pandora Papers do not show what funds, if any, were held by Varies. According to searches of public files in Panama, the foundation is still active. However, it has not paid local regulatory taxes in the Central American country since 2014, suggesting it may now be in disuse.

A spokesperson for Mama Ngina Kenyatta did not respond to our questions.

President Kenyatta’s press office did not respond to any of our questions, including those about his offshore inheritance.

Secrecy haven

Another member of the Kenyatta family named in the Pandora Papers is Udi Gecaga, former brother-in-law to Uhuru Kenyatta. The 76-year-old today has another link to the president through his son, Jomo Gecaga, who serves as his personal secretary.

Gecaga’s fortunes had risen quickly under president Jomo Kenyatta after Lonrho, a powerful and controversial British conglomerate, with land and mining interests throughout post-colonial Africa, picked him out to be a senior executive.

Gecaga was flown to London and offered a huge sum to take the job on account of his influence within the Kenyatta family, according to a biography of Lonrho’s late chairman Tiny Rowland by journalist Tom Bower. Rowland wrote out a cheque for a five-figure sum and handed it to Gecaga: “Is this enough?... It’s for you and your family. Take care of the political problems.”

Later, Rowland occasionally said he eventually wanted Gecaga to succeed him as chairman, but within days of the death of Jomo Kenyatta in 1978, the Lonrho boss demanded his dismissal. He was eventually replaced by a close associate of Kenyatta’s successor, Moi.

Gecaga’s name appears only fleetingly in the Pandora Papers, but further investigations have shown he was no stranger to offshore investments. While he worked at Lonrho, an exotic corporate entity called Blim Securities Anstalt, formed in Liechtenstein in 1977, bought a large mansion an hour’s drive from London, which became his family home. In 1999, Blim Securities also bought an apartment near in the upmarket London neighbourhood of Knightsbridge.

An anstalt is an obscure type of trust in Liechtenstein, one of the world’s top secrecy havens.

Neither Udi Gecaga nor his son Jomo responded to our questions.
In response to questions, a spokesperson for Alcogal said it leaves clients when it suspects clients are involved in money laundering. The company added it has “a robust compliance department, comprising around 20 professionals with high-level education, that receive ongoing training in compliance according to the highest industry levels.”

The company added: “It is equally important to note that corporate providers are not legally responsible for the activities of the companies which they incorporate. While no corporate service provider or financial institution is infallible, we have always acted according to the law, and have cooperated in all respects with competent authorities.”

Having received no response from the Kenyatta family, Pandora Papers journalists searched public records in the BVI and Panama to establish whether the entities linked to the Kenyatta family were still active.

Three of the four Panamanian foundations are active and one is suspended. However, none of the four have paid the required regulatory taxes in Panama since 2014, suggesting they may have fallen into disuse.

Of the seven BVI companies we examined, one was struck off the corporate register in 2014, five were struck off between 2018 and 2021, and one remains active. A company that has been struck off the BVI register is not dissolved, and can, if required, be reinstated once outstanding regulatory fees are paid.

**UPDATE October 4 2021:**

On October 4, a day after our investigation was published, President Kenyatta issued a statement to say: “My attention has been drawn to comments surrounding the Pandora Papers. Whilst I will respond comprehensively on my return from my State Visit to the Americas, let me say this:

“That these reports will go a long way in enhancing the financial transparency and openness that we require in Kenya and around the globe. The movement of illicit funds, proceeds of crime and corruption thrive in an environment of secrecy and darkness.

“The Pandora Papers and subsequent follow up audits will lift that veil of secrecy and darkness for those who can not explain their assets or wealth. Thank you.”

* Graphics by Clement Kumalija
* Editing by Ted Jeory and Nick Mathiason
* This story was updated to include President Kenyatta’s public statement on October 4.
Youngsters loiter at their ‘base’. The base, an assembly point in a poor neighbourhood, is the place to play a game of cards, smoke bhangi (marijuana), plan criminal activities or preach the ideology of extremism. Drunken chatter from the bar nearby and rap music from the CD vendor fight for dominance. The stench of gasoline from a garage cannot compete with the smell of bhangi. It is here that young people get radicalised and express their disgust of the ‘stinking rich.’

‘We’re trapped here,’ says one boy as he lets bhangi smoke escape from his mouth, ‘My base is the centre of my world. And beyond I see rich neighbourhoods built with stolen money. On television I watch corrupt politicians. It’s my neighbourhood against yours. You’re rich because I am poor.’

The boy will not talk about the recruitment that is taking place in slum areas under the Somali terror group Al-Shabaab, the reason why I came to report in this area. ‘We have learned that we do not need to fight in Somalia’, says his friend. ‘There are plenty of reasons to fight in Kenya.’

The gap between rich and poor is enormous in Kenya. That is not just because of their different income, but primarily because of their different outlook on the country. From the perspective of the
poor inhabitants – the majority – Kenya’s elite is rich thanks to massive corruption. Large-scale corruption does not only suffocate an economy, it kills any feeling of brotherhood and nationhood. ‘I am therefore declaring with immediate effect corruption as a national security threat’, declared President Uhuru Kenyatta in 2015.

In an interview I conducted a few years with Dr. Willy Mutunga, the former Chief Justice of Kenya, he said: ‘We have become a bandit economy. Africa has become stuck after 50 years of independence, after looting of resources. Inequality is also stuck.’ Putting the blame on the corrupt political elite, Mutunga added, ‘If our constitution and the clause Chapter 6 about corruption were being implemented, I am sure 80% of [politicians] would not be suitable for political leadership.’

Mutunga is averse to the pomp, wealth and self-regard that is the hallmark of many Kenyan politicians. He has been nicknamed, ‘the Robin Hood of the Kenyan judiciary.’ Mutunga claims corruption in Kenya has never been worse than today. ‘The influence of the cartels is overwhelming,’ he said. ‘They are doing illegal business with politicians. If we do not fight the cartels, we become their slaves. But leaders who do take on the cartels must be prepared to be killed or exiled.’

Mutunga’s opinion is similar to the view from the “hood”. The perception that Kenya is more corrupt than ever seems to be vindicated in reading Kenyan newspapers. One of the more sensational stories focused on a judge called Philip Tunoi. It was reported to Mutunga’s office that the judge from the Supreme Court took a two million dollar bribe to sway the opinion in an election petition in favour of Evans Kidero, the former governor of Nairobi. The shock was the amount; Kenya is not (yet) Nigeria and high amounts like this are not common in bribing officials.

An even more intriguing newspaper story was about former minister Anne Waiguru, under whose watch 8 million dollars reportedly vanished in her ministry. No minister accused of abuse of office has ever been taken to court and then prison in Kenya’s history. The first big opportunity to show that the rule of law is paramount occurred in 1966. Journalists at the Daily Nation had uncovered evidence that minister Paul Ngei had stolen money from the Maize Marketing Board. Ngei’s political opponent, the equally powerful minister Charles Njonjo, called the editor of the newspaper and consequently gave permission to publish the story.

But the revelation regarding Ngei presented the then president Jomo Kenyatta with a dilemma. A strong bond existed between the two dating back to the anti-colonial struggle. More importantly, Kenyatta could not do without the support of Ngeis Kamba tribe. So the minister went free. The government proposed an inquiry, a usual trick in the cover-up culture. Since then a secret code has applied in Kenya: powerful politicians are above the law, no matter what newspapers reveal about them. Yet it was in Jomo Kenyatta’s time that a mania of predatory profiteering, a system of corruption and patronage, took hold.

The case of Anne Waiguru makes it an even more interesting reading because she was rumored to have had an affair with Uhuru Kenyatta, a rumor denied by the president. But why is she so well protected? Kenyans speculate. She seemed to have everybody in the state apparatus on her side. She was quickly cleared by the official Anti-Corruption Commission. Until a businesswoman involved in the scandal signed an affidavit claiming that Waiguru not only shared in the loot but also played a role in the cover-up. That raised many disturbing questions about the Anti-Corruption Commission.

Waiguru hit back saying that the businesswoman ‘was only … a front for a broader, more powerful cartel with various beneficiaries from the political establishment and the bureaucracy.’ Waiguru pointed fingers at a group around deputy president William Ruto, laying bare the mistrust within the ruling coalition of Kenyatta and Ruto, painting a picture of a political marriage marked by vicious infighting over lucrative procurement tender deals.
That brings to mind what Mutunga told me. ‘As long the cartels are protected, you cannot achieve anything. You are taking these people into a corrupt investigating system, through a corrupt anti-corruption system, and a corrupt judiciary.’ Mutunga’s challenge is a historic fight indeed.

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By Africa Uncensored
The Berlin Conference of 1886 set the forces responsible for creating the map of modern Africa in motion. This demarcation of the continent by colonial interests resulting in the consolidation of spaces on a map into countries was for the most part an arbitrary exercise. It resulted in the formation of a wide-ranging set of artificial nation states. Kenya and most other African nations are, by this definition, historical accidents.

The colonial cookie cutter changed everything, rerouting resources and labour into new avenues with new beneficiaries, rewiring the system of production and exchange in fundamental ways. All of this had massive consequences for populations falling within their borders, and beyond. Ironically, imposing a Eurocentric version of the central state turned out to be even more disruptive for what were arguably the Greater Horn of Africa’s more organically constituted units like Somalia, the intra-lacustrine region, and the former Kingdoms in Rwanda and Burundi.

Africa’s colonial reorganisation, by the standards of historical conquest and exploitation, was short-lived. In some pockets, it acted as an accelerator where its benefits have outlived its negative impacts, for the most part. In others, the disruption and confusion engendered still appear to be a permanent condition. In all cases, colonialism provided the context for the problems that came afterwards, diverting blame for the continent’s issues to external forces and actors when convenient.

This is one way of looking at Africa’s state at this point in time. But what if we look closer, and dig deeper? We are now in the territory of complex systems science, which has demonstrated the influence of initial conditions on any given system’s pathway over time. Colonialism articulated within other parameters such as the natural contours of geography, spatial factors, demographic conditions, and other variables that account for the region’s long-term historical trajectories.

Maybe the accident is not so accidental. A certain regression back to the African mean has been observable over the past several decades, giving rise to the counter-factual hypothesis that a different historical trajectory sans colonial intervention would have likely produced a similar configuration of political units, marked by the same initial conditions in the form of demographic, environmental, and technological parameters.

The localised nature of political organisation and the isolation of many areas of the continent would still have ended up acting as an entry point for outside interference and domination by invaders.
speaking different languages and representing other civilisations. Computer simulations modelled on the same system parameters would no doubt inscribe developmental pathways not so different from the one now prevailing. The end result would still be the rise of an economic and political elite, albeit perhaps not the product of formal education based on the Western mindset, because the emergence of state organisation is in any case an eventuality that has been occurring in Africa according to its own historical patterning since pharaonic times.

This is one point. The other is that countries sharing a given region or sector tend to converge once during periods of transition. The influence of initial conditions becomes more pronounced during these episodes, which by definition appear chaotic because they involve the break-up and reconfiguration of the system’s units and linkages. This has been occurring in clear sight during the current shift from an agrarian to a diversified, multi-sectoral economy in Kenya.

The process of change is accelerating apace at this juncture, telescoping internal changes that occurred over several centuries in other parts of the world and within several generations in Africa. The significance of Kenya’s transition transcends its borders because, due to whatever accidents of the past hundred years, its transformation will influence developments elevating the synergies of the larger region.

According to this thought experiment, the conventional analyses and the assumptions they are based on are no longer as compelling as they were during the heyday of radical political economy praxis. Despite the revival of the colonialism argument by millennial commentators who are trying to make sense of the economic cul-de-sac they find themselves in, the decolonisation narrative is not an issue for most of the region’s economically active population.

Decolonisation and reorganisation

We can nevertheless carry Franz Fanon’s diagnosis forward with a view towards anticipating the emergence of a new Africa more aligned with the region’s initial conditions, and hosting a distinctively African capitalism. We are actually witnessing these processes occur before our eyes. The turbulence erupting across the Horn will hopefully prove to be a necessary part of the larger transformational dynamic at work.

The process is sufficiently advanced to make some of us believe that countries like Kenya and others on the global periphery are positioned to make a vital contribution to the planet’s salvation. But sorting out the nation’s internal order is a prerequisite for achieving this station, and progress towards this point is in danger of stalling.

During the past two decades, Accidental Kenya has entered the territory of the release phase, as detailed in analyses about the Moi transition and the reorganisation taking form in its wake. The analyses were based on a developmental cycle comprising four phases: exploitation, consolidation, release, and reorganisation leading to a new cycle. There is no guarantee societies undergoing such phase transitions will complete the process. They can retreat to the previous state and stagnate, break-up, or even collapse—as was the fate of previous African civilisations.

After decades of hard-fought effort to decentralise decision-making and redistribute institutional governance, the executive branches of government in this part of the world are doing everything they can to reconcentrate decision-making power in the centre. Rwanda has already become an exemplar of the elite-controlled surveillance state.

The benefits of political decolonisation are typically usurped by other actors, and its role replaced by new forces. The decision to build a railway to the source of the Nile to protect the shipping route to
India set in motion a chain of reactions that continues up to the present. A deeper form of decolonisation than self-rule will be needed to initiate a new cycle.

**The big fix deception**

“If it’s broken, just get under the hood and fix it.” So went the rallying cry for billionaire Ross Perot’s 1992 presidential candidacy (“hood” refers to the bonnet of an automobile). It helped make his on-and-off campaign the most successful third party run in the United States since 1912. More significantly, the notion of “just fixing” the “broken” political system became a meme that has resonated ever since, providing a gaping entry point for the politics of restoration championed by the likes of Jair Bolsonaro, Narendra Modi, and Donald Trump.

Systems of governance can be repaired, but can politicians fix them? It seems the more we depend upon them, the bigger the problem. In Kenya, for example, a submission to the recent court of appeal deliberations on the latest scheme to fix Accidental Kenya described our politicians as “job seekers who stand for nothing”. The description, strictly speaking, is not accurate: those often capricious Kenyan “job seekers” actually represent the entrenched tradition of pursuing personal accumulation by any means available.

Rwanda has already become an exemplar of the elite-controlled surveillance state.

This goes to the beating heart of Kenya’s colonial legacy, which endorsed the exploitation of Accidental Kenya by a numerically small elite committed to the creation of a capitalist political order. Small cliques of individuals have been in the business of applying fixes ever since the country’s creation. During the formative period, the administration established this by passing a comprehensive set of statutes limiting preferential access to land and markets for agricultural production.

After independence, Jomo Kenyatta endorsed the primacy of opportunistic accumulation when he castigated former Mau Mau fighter Bildad Kaggia for not grabbing the fruits of political independence like Paul Ngei and many of his other colleagues in the fight for independence. The unbalanced relationship between accumulation and the public good has persisted because the great majority of Kenyans endorsed the unbounded quest for private wealth in both principle and practice.

Independence in 1963 allowed Kenyans to participate in the economy established by colonial exploitation, the accumulation and resulting growth resulting in the consolidation of its accidental formation. The release phase highlighted the breakdown of the colonial-designed, state-centric economic order, and was accompanied by an unprecedented feeding frenzy triggered by World Bank and IMF-mandated privatisation of public land and other resources.

The trauma eventually led to the comprehensive reforms demanded by a mobilised and increasingly militant cross-section of the nation’s citizens. This opened the way for the long and tortuous process of public participation and political deal-making culminating in the 2010 Constitution. Anointed with the blood of citizens, the new charter signalled the onset of a fundamental reorganisation of Kenyan society and an economy attuned to the challenges facing future generations. It opened the door for the nation to seek its real post-colonial destiny.

**A bridge too far**

Kenyan political power relations being what they are, it only took one electoral cycle for the job seekers to decide they needed to “get under the hood and fix it” once again. Renewal got
sidetracked into the Building Bridges Initiative, launched with the full resources of the government behind it. BBI in turn gave rise to the noise unleashed by the Uthamaki-Hustler narrative, which obscured the fact that the fix was actually a top-heavy Chinese political model clothed in the language of magical developmental thinking.

The circus accompanying these developments attempted to conjure up the illusion that BBI and its quasi-legitimisation by county legislatures were post-reform steps forward needed to resolve, once and for all, the nation’s most fundamental divisions that fall beyond the scope of the new Constitution.

The gambit to fix what is regarded as one of the most well-thought-out constitutions of the contemporary era became the source of one of those dangerous month-of-August Kenyan moments. Once again, a few gallant individuals came to the rescue. The judgements delivered by Kenya’s High Court and Court of Appeal, and Judge Kiage’s critique of executive bad faith rescued another generation from being trapped inside Accidental Kenya.

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Judge Kiage’s deconstruction of the BBI juggernaut bundled together the wisdom of Western jurisprudence with key historical interpretations of society and governance. His robust application of these sources to expose the bad faith characterising Kenya’s top-down fixology was perhaps the most powerful defence of democracy the world has witnessed since the rise of Trumpism.

The Court of Appeal secured the integrity of the 2010 Constitution for the time being, but there is no reason to expect the leadership at the top here and in neighbouring countries to change course in regard to their usual transactional goals and their quest to remain in power.

The nation-state in its current form has proven poorly adapted to the distinctive features of sub-Saharan Africa, and the political class will continue to enjoy the relative autonomy conferred by the state due to its position in the international system of nation states, its relationship to the Western military intelligence networks, and the temporary largesse of Xi Jinping’s Chinese chequebook—for the time being.

**The quest for autonomy**

The international order based on nation-states is not going away, even though its civilisational operating system has clearly reached its limits with respect to ensuring the planet’s survival over the longue durée. The majority of people on Planet Earth will nevertheless continue to follow their social media, the news fed to them by the usual suspects, and their appetites for material consumption while the signs and omens of the changing climate and its ramifications manifest around them.

The African state may look the same at the top, but it is part of a larger, complex system that has been evolving in the presence of systemic stressors. The sequence of developments over the post-independence period that appears indicative of dysfunction and incapacity and incoherence from without camouflages massive shifts occurring within.

This is the backdrop to Judge Kiage’s reminder that a constitution is “not a mechanical statute but the mirror of a nation’s soul.”
Kenya has progressed through a series of calamities including economic shocks, an attempted military coup, droughts and famines, unprecedented population growth, the politics of secession, ethnic insurgencies, terrorist attacks, grand corruption, devastating El Nino rains, desert locust invasions, privatisation from above and other inappropriate policies, and the HIV and coronavirus pandemics.

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We all come of age doped up on something. Then we pick up all kinds of baggage as we move on. Decolonisation in this context, involves adopting a forward-looking orientation transcending the accidental circumstances of our individual and collective upbringing.

This form of decolonisation synchs with the growing movement across the world striving to combine our scientific, technological, anthropological, ecological and other knowledge traditions with our direct experience of the sacred in order to transcend the accidents that create a new civilisational operating system. The advocates of this movement in my homeland refer to it as GameB. The content of GameB deserves its own discussion, but for the time being we can note that Kenyan society is already a player in this movement.

The Muslim poet and mystic Rumi said, “In the beginning I wanted to change the world, but then I realised the only thing I can do is change is myself.”

This is where we are right now. Nation-building in Kenya begins with creating a community of diverse communities. Wandia Njoya set the ball rolling in her insightful essay on Kenya’s twisted educational system by telling us we can start “by learning to love our children.”

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The return to multipartyism in the early 1990s and the implementation of the 2010 constitution were seen by many as seminal moments in the democratisation of Kenya. However, in truth, they merely masked what essentially remains an unchanged bureaucratic-security state dating back to the colonial era that is today reproducing itself at the county level. The continuity and longevity of this state has chiefly been the product of an ideology of law and order created to protect the class and commercial interests of an African colonial elite.

For the colonial enterprise in Kenya to succeed, it needed local allies who would bring existing economic and political institutions into the newly created colonial order. However, this arrangement, which privileged the small white settler community, irrevocably corrupted and even usurped indigenous African authority and generated a collaborating class of African big men whose loyalty was no longer to kinship networks and ties but to the newly established colonial government.

Over time, the newfangled chiefly power and leadership of men like Koinange wa Mbiyu, Karuri wa Gakure, Njiiri wa Karanja, Mumia of Wang'a, Ole Murumbi of the Maasai, Owuor Kere of Nyakach, Kinyanjui wa Gathirimu, Muhoho wa Gathecha, Michuki wa Kaywi and Ogola Ayieke resulted in a ready-made socioeconomic and political class to whom independence and state power could be entrusted in 1963.

It is therefore no coincidence that many of the politicians and senior government administrators who have dominated the top ranks of government and the civil service in post-colonial Kenya were scions of this class. These include the recently deceased Simeon Nyachae (son of Chief Musa Nyandusi), Joab Omino, the Mwendwa brothers (Eliud Ngala Mwendwa, who served as the Minister of Labour in Jomo Kenyatta’s cabinet, and Kitili Mwendwa, the first African Chief Justice of Kenya), John Njoroge Michuki, Kariuki wa Njiiri, Peter Mbiyu Koinange (son of Chief Koinange who also served as a
powerful Kenyatta minister).

Although he was not himself the scion of a colonial-era chief, Jomo Kenyatta wisely married into chief Koinange wa Mbiyu’s family and, later, into that of Chief Muhoho wa Gathecha, thus founding one of Kenya’s foremost and lasting political dynasties. His immediate successor, Daniel arap Moi, established his own dynasty that is showing a similar political tenacity.

The return to multipartyism in the early 1990s and the implementation of the 2010 constitution were seen by many as seminal moments in the democratisation of Kenya. However, in truth, they merely masked what essentially remains an unchanged bureaucratic-security state dating back to the colonial era that is today reproducing itself at the county level.

Jomo and the presidents who succeeded him have all sung the same refrain of law and order that was sang in colonial times. For this class of big men, political stability and the peaceful maintenance of the status quo has been the singular objective. Through a masterful stroke of political genius, Moi repackaged it into the populist appeal of his Nyayo philosophy of love, peace and unity. Mwai Kibaki, for his part, hinted at it when he reminded people that Kenya was a working nation and that there was nothing for free. At every stage of its evolution, the Kenyan state has had a steady hand at the helm ensuring the continuity of the ideology of order.

However, ensuring the survival of this vision amid the political reality of the Kenyan state with its veneer of democracy demands the suppression of all alternatives articulated and championed through political dissent. Beyond its preoccupation with the preservation of power, the ideology of order is thus also committed to protecting the Kenyan state and its brand of democracy from the people.

‘The danger to democracy is the people’

One of the colonial state’s greatest fears is the masses. Colonial authorities, and later, independent Kenya’s African ruling elite, were afraid the hordes of have-nots might rebel and challenge the politics of law and order as they had in 1952. Therefore, the imperative was to coopt, exclude or crush all dissenting voices in society. This is a task that the political heirs of the colonial state — led by Kenyatta and the scions of chiefly power such as his attorney general Charles Njonjo — fulfilled to the hilt.

Having already been recognised as the rallying political symbol through whom the hopes of the European community, London’s commercial interests and continued military presence, and the ideology of order could be secured, Kenyatta had his task already cut out for him on the eve of independence. He faced-off with the Kenya Land and Freedom Army — the Mau Mau — who sought to create an equitable society by any means, including violence. Unsurprisingly, early during Kenyatta’s tenure at the helm, much of the time was spent coaxing fighters to leave the forest and surrender their weapons.

One of the colonial state’s greatest fears is the masses. Colonial authorities, and later, independent Kenya’s African ruling elite, were afraid the hordes of have-nots might rebel and challenge the politics of law and order as they had in 1952

On the whole, Kenyatta attempted to temper the high expectations of ordinary Kenyans with his calls
for Harambee (pooling together), pleas to forgive and forget the past and, consistent with the ideology of order which he understood only too well, entreating people to celebrate and embrace “uhuru na kazi” (“freedom and work”) — an appeal later echoed by Kibaki.

Toward the end of Kenyatta’s tenure, as his faculties were dulled by age, his ideological lieutenant, Njonjo, a chiefly big man in his own right, held guard against “dangerous agitators”. Njonjo openly threatened to jail the radical novelist Ngugi wa Thiong’o who had just penned his incendiary novel, Petals of Blood which both London and Nairobi feared would inspire a revolution. The palpable and shared crowd-phobia by the custodians of the ideology of order shows they understood that “the danger to democracy is the people”, who had to be thwarted at every turn and by every means available to the state.

**Moral anarchy and the culture of impunity**

The colonial state was built not through consensus as a democracy, but by decree. Not only did the colonial system corrupt African traditional authority and contribute to the destruction of African morality — thus creating moral anarchy — but it also sowed the seeds of a political culture of impunity. Indeed, the colonial state was itself a result of impunity.

Two of Kenya’s largest corruption scandals, Goldenberg and Anglo Leasing, were enabled by this culture of impunity. The Goldenberg scandal, which occurred between 1990 and 1993 under Moi’s imperial presidency, entailed the government paying Goldenberg International special compensation for fictional exports of gold and diamonds. The total cost of the scandal is unknown, but some estimates indicate that up to 10 per cent of Kenya’s GDP was lost.

Anglo Leasing, which occurred between 1997 and 2003, involved payments to a British company under the guise of investing to improve Kenyan security services, such as $36 million for new high-technology “tamper-proof passports”. However, the scandal also involved payments to other fictitious corporate entities that were paid to supply naval ships and forensic laboratories. The fact that this scandal straddles both the Moi and Kibaki administrations is quite telling. It shows that high-level corruption in the country is deeply entrenched in the bureaucracy and is, therefore, systemic or institutionalised. Alluding to this repugnant systemic morass of corruption, John Githongo, the former anti-corruption tsar and whistleblower who served in the first half of Kibaki’s first administration as the Governance and Ethics Permanent Secretary, sadly observed in a public personal statement on May 2, 2019 that:

> “The Anglo Leasing model of misappropriation of resources from the Kenyan people has continued unabated since 2001. . . . Over the past six years in particular the plunder of public resources has accelerated to levels unprecedented in Kenyan history since independence. Increasingly the economic, political, social and very personal cost of this plunder by officials in positions of authority has been borne by the Kenyan people directly.”
The Uhuru Kenyatta government too has been rocked by several corruption scandals including the Eurobond scandal which entailed the mysterious disappearance of over $1 billion after Kenya issued its first sovereign bond in 2014. The amounts of money said to have gone missing under Uhuru Kenyatta are staggering. It is not surprising that skyrocketing corruption under President Kenyatta, the country’s fourth, dwarfs all previous corruption scandals.

Flagrant and rampant corruption in the post-independence era has surprised even Kenya’s erstwhile rulers. Reacting to Anglo Leasing, the biggest scandal of the Kibaki era, Sir Edward Clay, the then British High Commissioner to Kenya, lamented that top figures of the hegemonic regime were eating “like gluttons” and vomiting “all over our shoes”.

This “eating” culture at various levels of the bureaucracy and in the high echelons of government is mirrored throughout society. Corruption permeates Kenyan society because it is the sort of society that the predatory state has created. In 2015, exasperated by rampant corruption, Dr Willy Mutunga, then Kenya’s Chief Justice of the Supreme Court of Kenya, concluded that Kenya had become a “bandit economy”. The respected and high-ranking jurist complained that corruption stretched from the very bottom to the very top of society. As an apparatus transforming society, the Kenyan predatory state has created a sukuma wiki bandit economy characterised by survival by any means necessary.

Indeed, corruption so permeates society that it scarcely leaves anyone untouched or unaffected. The unwritten code is expressed in the African proverb, “the goat eats where it is tethered”. It is, therefore, not surprising to find corruption and the trading of favours, bakshish, among lawmakers,
among revenue collection officials, among parents, teachers and students in schools and universities, among doctors, nurses and staff in hospitals, in the corridors of justice among judges and magistrates and even in the so-called disciplined forces including the police.

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The poor remuneration of public servants, a poor incentive system for hard and honest work (due to nepotism and ethnic discrimination) and socioeconomic frustrations caused by unemployment or underemployment, force ordinary citizens to resort to corruption. Working people, much like a tethered goat, tend to eat where they are “tethered”, or, put differently, use the nature of their work to look after themselves. Professional people, therefore, do not only find it necessary but also morally easy to exploit their professions or their workplace because of such tacit African cultural sanction of *bakshish* – acceptance of relatively small gifts or money in return for services rendered. In the meld of African traditional values and modernity in a society imbued by corruption, the line between gratitude and corruption is blurred.

In this way, therefore, the strategies adopted for material survival by school principals, the military, lawmakers, judges, magistrates, the police and other civil servants, people in the private sector, and even criminals, are not dissimilar from those used by leaders to accumulate power and wealth. Thus, the tempting image of innocent, by-standing masses, or viewing the Kenyan public as victims of grand corruption, is shattered. There is, therefore, no prospect of a united demand for clean government. It could even be said that very few Kenyans qualify to make such a demand.

In Kenya, the bribes collected go by many words: *bakshish, chai* (tea) or *kitu kidogo* (something small). In this *sukuma wiki* bandit economy characterised by predatoriness, survival is at any cost. Hence, the civil servant and other officials who are poorly remunerated, or simply harbour an insatiable greed for riches, make their living or build their fortunes off the people they serve rather than from their meagre salaries.

![State actors are considered the most corrupt in Kenya](source: Afrobarometer)

In Kenya, the bribes collected go by many words: *bakshish, chai* (tea) or *kitu kidogo* (something small). In this *sukuma wiki* bandit economy characterised by predatoriness, survival is at any cost. Hence, the civil servant and other officials who are poorly remunerated, or simply harbour an insatiable greed for riches, make their living or build their fortunes off the people they serve rather than from their meagre salaries.
Even heads of public schools are known to charge exorbitant tuition and illegally admit students, while in hospitals, necessities like mattresses and bed sheets, even prescription drugs, are known to be sold-off by poorly paid staff. At times, members of the police force, politicians and other public authorities, are forced to collude with the criminal underworld. Facing harsh laws or the lynch mob, young criminals have no choice but to kill or be killed, unleashing a veritable balance of urban terror. This can also be interpreted as an unlawful effort at a re-distribution of the resources hoarded by the rich in society. In major cities, rural areas and townships, local people engage in all sorts of vandalism of public service installations and petty theft. In other more remote localities, traditional raiding or cattle rustling, for example in the North Rift region and the North Eastern Province, this survival-by-all-means bandit economy translates into a form of political action.

Culturally and structurally, therefore, both the state and Kenyan society have mutually transformed each other, producing a national psyche characterised by moral anarchy and primal greed; the state and society mutually reinforce each other in entrenching unabated, runaway corruption, a culture of impunity, and politics of (dis)order.

Illustration: Gado

The twin tyranny of political tribalism

At the core of the bane of politics in post-independent Kenya is the twin tyranny of political tribalism. On the one hand is the tyranny of the masses, that is, the pressure that different ethnic groups — and seasonal and shifting ethnic-political alliances — place on their respective ethnic bigwigs. On the other is the tyranny of the ruling class that is responsible for the institutionalisation of grand malfeasance. These two tyrannies feed off each other and are, as such, inextricably connected.
With political consciousness and organisation restricted only within the bounds of discrete, administratively designated “ethnic regions” during the colonial era and well into the postcolonial period, wealthy politicians have acted as guardians or custodians of their respective ethnic groups to the exclusion of all others within the political context of perceived stiff competition for public goods or state power.

The masses, as ethnic political “patrons” — either pursuing their real or perceived pan-ethnic interests — neither have tribal innocence nor are they innocent of the endless accumulation and concentration of power in the hands of the political elite without accountability, and the perpetuation of corruption. After all, when they act, whether at the ballot box or when they defend their ethnic elite “clients” even when they are accused of grand corruption, they do so simply along ethnic lines.

Both in the colonial and postcolonial periods, therefore, ethnicity (political tribalism) acts as the main vehicle through which dominance and the preservation of power and resources are achieved. In turn, ethnic political elites are beholden to “their own”; they are expected by their respective ethnic groups to defend and expand real or perceived pan-ethnic interests and opportunities with regard to the modern economic, or civic public, sector.

This, then, is the first tyrannical twin of political tribalism. A classic case of the tail wagging the dog or, as E.S.A. Odhiambo puts it in *The Political Economy of Kenya*, the logic of patron-client relationships turned upside down. According to Odhiambo, political entrepreneurs:

> “Came to the threshold of state power with a specific objective. The bottom line for all of them was that they had to ‘deliver the goods’. . . . To maintain and reproduce their bases of power, they had to recruit, sustain, and reward their followers from time to time. . . . The peasants have the latitude, at elections, to shift their patronage. The fascination with the fact that the Kenyan member of Parliament is vulnerable at election time should acknowledge the fact of peasant choice as well as the peasants’ success at insisting on accountability by the parliamentary representative to his constituents. Put more directly, the masses put the leaders on the run to the gates of Parliament. ‘They invaded the state with society at their heels rather than imposed it on the people. They were accountable to an elected democracy’.”

But at times, indeed, more often than not, and increasingly over the course of time, to do so — delivering public goods to sustain the support of their patrons, namely, their close individual supporters/enablers or cronies and tribes — politicians, as tribal clients, have no recourse but to seek to gain private capital out of the public domain. State coffers are, therefore, raided rather blatantly by the political elite in order to benefit their immediate and extended families (nepotism), ethnic communities (tribalism) and/or elite cronies and political allies.

This, then, is the second twin tyranny of political tribalism: rampant, massive and seemingly endemic institutionalised corruption unleashed on the nation by the political elite in their quest for the accumulation, concentration and perpetuation of power and (re)producing themselves. This is the conundrum of the twin tyranny of political tribalism. On the one hand, a collection of patron-tribes acting as rational actors exacting high expectations of public goods on their clients, their corresponding ethnic political elites. And on the other hand, insatiable politicians who exploit ethnicity and such tribal expectations and demands to profit by looting the public domain. There are, after all, no serious investigations into subsequent and ever increasing corruption scandals.

Tribal bigwigs are untouchable sacred cows even when implicated or involved in appalling corruption scandals. After all, they enjoy the unstinting support of their tribes who would rather be “eaten” by the hyena they think they know (a politician from their own ethnic group) than one they
It is not surprising, therefore, that when it comes to fighting corruption, Kenyans are rather resigned to their fate. Politics, for the most part, is viewed as an inherently flawed and dirty game; a rather cynical acceptance that ordinary citizens can do nothing about it except vote for political tribalism. This languid attitude ensures that, collectively, ordinary people are unsafe and are, more often than not, not at the table but, rather, on the menu. And so goes the vicious cycle, the Kenyan political circus window-dressed as a paragon of Western democracy in Africa although multiparty elections are largely nothing more than ethnic contests that take place every five years.

The Configuration of State Patronage / National Finance Grid (NFG)

![Diagram of the Configuration of State Patronage / National Finance Grid (NFG)](image)

Fig. 1. The distribution of state finance capital in the Kikuyu-centric Kenyatta state, 1963–1978.
The ideology of the propertied elite is thus shored up by the pervasive ideology of tribalism which defines the struggle and capture of state power. The corresponding democracy emanating from within such a political system is one in which the election-winning strategy is based purely on ethnic considerations. Political and economic competition in the context of tense inter-ethnic relations has a deleterious and blighting effect on a range of important institutions that generally give states their form, stability and longevity.

The highly ethnicised nature of Kenyan politics and the stultifying and stunting sway and monopoly of ethnic kingpins has historically created personality cults and hegemonic political dynasties that hark back to the very first collaborating class of African big men who were produced by the colonial order of the early 20th Century.

Culturally and structurally, therefore, both the state and Kenyan society have mutually transformed each other, producing a national psyche characterised by moral anarchy and primal greed

Having reproduced itself over the years, this political class has consolidated a hegemony that enables it to flaunt, subvert or circumvent institutions based on democratic values such as the constitution that guarantees freedom of expression, freedom of conscience, freedom of meeting, freedom of association, the rule of law; a free and independent judiciary; an independent election commission; public integrity and control bodies; and the civil service, among others.

But it is the generic political party founded on principles or championing social issues of concern and pursuing clear ideological positions that has, arguably, borne the brunt of dynastic and tribal politics. In the face of political tribalism and dynastic politics, the democratic multiparty political system is weakened and stultified. Ethnicity, the fulcrum on which national politics revolves has, therefore, implied the inexorable death of the political party in Kenya.
This is the unspoken consequence of the double tragedy of the twin tyranny of political tribalism that exists beneath the thin veneer of the preponderant ideological insistence on “order”, a political “order” underpinned by moral anarchy and the assorted vagaries of political tribalism. One, moreover, that suppresses political dissent and one, therefore, that is, at once, anti-people and, thus, anti-democratic, chaotic and violent; and one that perpetuates the endless search for, and accumulation of, power accompanied by skyrocketing corruption. It is, alas, political disorder that is based on a false political stability enforced by the state security apparatus – regular and anti-riot police, intelligence services and the army.

In post-independent Kenya, therefore, the colonial ideology of order is sustained through the very means that were used at the state’s inception – force, authority, bureaucracy and power.

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Pandora Papers: The Kenyatta’s Secret Companies

By Africa Uncensored
The formation of factions is part of group dynamics, and is therefore to be found in every society. However, it was 18th century Western Europe and its North American corollary that invented the idea of institutionalising factions into political parties — groups formally constituted by people who share some aspirations and who aim to capture state power in order to use it to put those aspirations into practice. Britain’s Conservative Party and the Democratic Party in the US were the earliest such formations. Thus party politics are an integral part of representative democracy as understood by the Western liberal democratic tradition. Nevertheless, Marxist regimes such as those in China, Cuba, the former Soviet Union and the former East Germany also adopted the idea of political parties, but in those countries single party rule was the norm.

The idea of political parties gained traction in the various colonial territories in Africa beginning with the formation of the African National Congress (ANC) in South Africa in 1912. The founders of the ANC were influenced by African American political thinkers with whom they associated in their visits to the US.

Political organisations during the colonial period in Kenya

Kenya’s first indigenous political organisation, the East African Association (EAA), formed in 1919, had a leadership comprising different ethnic groups – Kikuyu, Luo, Kamba, the various communities later subsumed under “Luhya”, and some Ugandans, then the dominant ethnic groups in Nairobi. Its political programme entailed protests against the hut-tax, forced labour, and the *kipande* (passbook). However, following the EAA-led Nairobi mass action of 1922 and the subsequent arrest and deportation of three of EAA’s leaders, Harry Thuku, Waiganjo Ndoto and George Muigekenyi, the colonial government seemed to have resolved not to encourage countrywide African political activity, but rather ethnic associations. The subsequent period thus saw the proliferation of such ethnic bodies as the Kikuyu Central Association, Kikuyu Provincial Association, Kavirondo Tax-payers Association, North Kavirondo Tax-payers Association, Taita Hills Association, and the Ukamba Members Association.

In 1944, the colonial government appointed Eliud Mathu as the African representative to the Legislative Council (LegCo). On the advice of the governor, the Kenya African Study Union (KASU) was formed as a colonywide African body with which the lone African member could consult.
However, the Africans changed its name to the Kenya African Union (KAU), insisting that their grievances did not need study but rather organisation.

In 1947, James Gichuru stepped down as chairman of KAU in favour of Jomo Kenyatta whose mandate was to establish it as a countrywide political forum. However, there were serious disparities in political awareness, and the colonial government continued to encourage the masses to think of the welfare of their own ethnic groups rather than that of the country as a whole. Besides, KAU’s links with other communities were often strained because of what was perceived as Kikuyu domination of the organisation. By 1950, KAU was largely moribund because, through the Mau Mau Uprising, Africans challenged the entire basis of colonial rule instead of seeking piecemeal reforms. In June 1953, the colonial government banned KAU after it concluded that radicalisation was inevitable in any countrywide African political organisation.

From 1953 to 1956, the colonial government imposed a total ban on African political organisation. However, with the Lyttelton Constitution — which provided for increased African representation — in the offing, the colonial government decided to permit the formation of district political associations (except in the Central Province which was still under the state of Emergency and where the government would permit nothing more than an advisory council of loyalists). Argwings-Kodhek had formed the Kenya African National Congress to cut across district and ethnic lines, but the government would not register it, so its name was changed to the Nairobi District African Congress.

Consequently, the period leading up to independence in 1963 saw a proliferation of regional, ethnic and even clan-based political organisations: Mombasa African Democratic Union (MADU), Taita African Democratic Union (TADU), Abagussi Association of South Nyanza District (AASN), Maasai United Front Alliance (MA), Kalenjin Peoples Alliance (KPA), Baluhya Political Union (BPU), Rift Valley Peoples Congress (RVPC), Tom Mboya’s Nairobi People Convention (NPC), Argwings-Kodhek’s Nairobi African District Council (NADC), Masinde Muliro’s Kenya Peoples Party (KPP), Paul Ngei’s Akamba Peoples Party (APP) later named African Peoples Party (APP) and others.

However, between 1955 and 1963, there developed a countrywide movement led by non-Mau Mau African politicians who appealed to a vision of Kenya as a single people striving to free themselves from the shackles of colonialism. Nevertheless, it was a fragmented movement, partly because the different peoples of Kenya had an uneven political development, becoming politically active at different times. The difficulties of communication and discouragement from the colonial government also contributed to the weakness of the movement.

Nevertheless, on the eve of Kenya’s independence in 1963, the numerous ethnically-based political parties coalesced into two blocks that became the Kenya African National Union (KANU), whose membership mainly came from the Kikuyu and the Luo, and the Kenya African Democratic Union (KADU) which mainly had support from the pastoralist communities such as the Kalenjin, Maasai, Samburu, and Turkana, as well as the Giriama of the Coast and sections of the Luhya of Western Kenya. During the 1963 elections, on the eve of independence, KADU only secured control over two out of the eight regions, namely, the Rift Valley and the Coast.

**KANU under Jomo Kenyatta**

Although at his release from detention in 1961 Jomo Kenyatta was not keen to join KANU, he ended up as its leader through the machinations of its operatives. He ascended to state power on its ticket at Kenya’s independence, first as Prime Minister, then as President. As Prime Minister, Kenyatta was directly answerable to Parliament, and it is this accountability that he systematically undermined.
First, the KANU government initiated a series of constitutional amendments and subsidiary legislation that concentrated power in the hands of the central government at the expense of the regional governments entrenched in the Independence Constitution. This KANU easily achieved because KADU was greatly disadvantaged numerically in Parliament. Thus within the first year of independence, KANU undermined the regional governments by withholding funds due to them, passing legislation to circumvent their powers, and forcing major changes to the constitution by threatening and preparing to hold a referendum if the Senate - in which KADU could block the proposals - did not accede to the changes.

It was clear to KADU that it was outnumbered and outmanoeuvred, and that the prospects for enforcing the compromise federalist Independence Constitution were grim. It was also clear to KADU that it was highly unlikely that it would win power through subsequent elections. Consequently, KADU dissolved and joined KANU, resulting in Kenya becoming a de facto single-party state at the beginning of 1964. These amendments produced a strong provincial administration which became an instrument of central control.

Second, with the restraining power of the opposition party KADU out of the way, KANU initiated amendments that produced a hybrid constitution, replacing the parliamentary system of governance in the Independence Constitution with a strong executive presidency without the checks and balances entailed in the separation of powers. Thus KANU quickly created a highly centralised, authoritarian system in the fashion of the colonial state.

In 1966, Oginga Odinga, the Luo leader at the time, who had hitherto been the Vice President of both the country and KANU, lost both posts due to a series of political manoeuvres aimed at his political marginalisation. Odinga responded by forming a political party — the Kenya Peoples Union (KPU) — in April of the same year. KPU was a loose coalition of KANU-B “radicals” and trade-union leaders. Although a fifth of the sitting MPs initially supported it, KPU was widely perceived as a Luo party. This was mainly due to the fact that Kenyatta and his cohorts, using the hegemonic state-owned mass media, waged a highly effective propaganda war against it.

Kenyatta took every opportunity to promote the belief that all his political opponents came from Oginga Odinga’s Luo community. Through a series of state-sponsored machinations, KPU performed dismally in the so-called little elections of 1966 occasioned by the new rule, expediently put in place by KANU, that all MPs who joined KPU had to seek a fresh mandate from the electorate.

During the 1969 General Election, KANU was for the first time unopposed. Those who were nominated by the party in the party primaries — where they were held — were declared automatically elected as MPs, and in the case of Kenyatta, President. Thus during the 1969 general election, Kenyatta also established the practice where only he would be the presidential candidate, and where members of his inner circle would also be unopposed in their bids to recapture parliamentary seats.

During Kenyatta’s visit to Kisumu in October 1969, just three months after the assassination of Thomas Joseph Mboya (Tom Mboya), a large Luo crowd reportedly threatened Kenyatta’s security, and was fired on by the presidential security guards in what later came to be known as the “Kisumu massacre”, resulting in the death of forty-three people. In an explanatory statement, the government accused KPU of being subversive, intentionally stirring up inter-ethnic strife, and of accepting foreign money to promote “anti-national” activities. Soon after this incident, the Attorney-General, Charles Njonjo, banned KPU under Legal Notice No.239 of 30th October 1969, and Kenya again became a de facto one-party state. Several KPU leaders and MPs were immediately apprehended and detained.
In 1973, the Gikuyu, Embu and Meru Association (GEMA) was formed with Kenyatta’s consent. In a chapter in *Ethnicity and Democracy in Africa*, the immediate former Attorney-General Prof. Githu Muigai, explains that GEMA had a two-pronged mission: to strengthen the immediate ethnic base of the Kenyatta state by incorporating the Embu and Meru into a union with the Kikuyu, and to circumvent KANU’s party apparatus in the mobilisation of political support among these groups. While posing as a cultural organisation, GEMA virtually replaced KANU as the vehicle for political activity for most of the Kikuyu power elite. Consequently, many other ethnic groups formed “cultural groups” of their own such as the Luo Union and the New Akamba Union. As Prof. Muigai further observes, with the formation of GEMA, the façade of “nationalism” within KANU had broken down irrevocably.

In October 1975, Martin Shikuku, then MP for Butere, declared on the floor of Parliament that “anyone trying to lower the dignity of Parliament is trying to kill it the way KANU has been killed”. When Clement Lubembe, then Assistant Minister for Tourism and Wildlife, demanded that Shikuku substantiate his claim that KANU had been killed, the then Deputy Speaker, Jean-Marie Seroney, stated: “According to Parliamentary procedures, there is no need to substantiate what is obvious.” Consequently, Shikuku and Seroney were detained without trial, and were only released after Kenyatta’s death in 1978.

**KANU under Daniel arap Moi**

Two years before Kenyatta’s death, more than twenty MPs sought to amend the section of Kenya’s constitution which stipulated that the vice president would become the interim president should the incumbent become incapacitated or die. Although the “Change the Constitution Movement” involved MPs from across the country, members of GEMA were among the most vociferous in seeking to block Daniel arap Moi’s succession in this way. Thus, upon assuming the Presidency, Moi set about reducing the influence of GEMA, especially its leaders who had been closest to his predecessor. Whereas Kenyatta had by-passed KANU, Moi revitalised and mainstreamed it, using it as the institution through which his networks would be built. By so doing, he undercut the power of established ethno-regional political leaders, and made the party an instrument of personal control.

Besides, Moi persecuted advocates of reform among university lecturers, university students, lawyers and religious leaders, many of whom were arrested, tortured, detained without trial, or arraigned in court to answer to trumped up charges and subsequently face long prison sentences, and all this forced some of them into exile.

Furthermore, Moi co-opted into KANU the Central Organisation of Trade Unions (COTU), *Maendeleo ya Wanawake* (the countrywide women’s organisation), and any other organisation that he viewed as a potential alternative locus of political power. At one point during Moi’s reign, the provincial administration even harassed people who did not have KANU membership cards in their possessions in markets, bus stops and other public places. I remember my father purchasing these cards to give to all his grown-up children in a bid to help them avoid such harassment. MPs lived under the fear of being expelled from KANU — which would mean automatic loss of their parliamentary seats — and so outdid one another in singing Moi’s and KANU’s dubious praises inside and outside Parliament. On the Voice of Kenya (VOK), the state-run radio station which enjoyed a monopoly, songs in praise of Moi and KANU and others castigating dissenters were played after every news broadcast.

Moi only conceded to restore multi-party politics at the end of 1991 due to the effects of his mismanagement of the economy coupled with the end of the Cold War, both of which increased internal and external pressure for reform. Nevertheless, he declared that people would understand that he was a “professor of politics”, and went on to emphasise that he would encourage the formation of as many parties as possible — a clear indication that he was determined to fragment
the opposition in order to hang on to power for as long as possible. Indeed, the opposition unity that had influenced the change was not to last, as ethnically-based parties sprang up all over the country, enabling Moi to win both the 1992 and 1997 elections. Furthermore, the Moi regime was reluctant to put in place the legal infrastructure for a truly multiparty democracy, and the same was later to prove true of the Kibaki regime that took over power on 30th December 2002.

**Parties as obstacles to democratisation**

In a chapter in *A Companion to African Philosophy*, Makerere University philosophy professor Edward Wamala outlines three shortcomings of the multi-party system of government in Ganda society in particular, and in Africa in general.

First, the party system destroys consensus by de-emphasising the role of the individual in political action. Put simply, the party replaces “the people”. Consequently, a politician holding public office does not really have loyalty to the people whom he or she purportedly represents, but rather to the sponsoring party. The same being true of politicians in opposing parties, no room is left for consensus building. We have often witnessed parties disagreeing for no other reason than that they must appear to hold opposing views, thereby promoting confrontation rather than consensus.

Second, in order to acquire power or retain it, political parties act on the notorious Machiavellian principle that the end justifies the means, thereby draining political practice of ethical considerations that had been a key feature of traditional political practice. We are thus left with materialistic considerations that foster the welfare not of the society at large, but rather of certain suitably aligned individuals and groups.

Third, as only a few members at the top of a party wield power, even the parties that command the majority and therefore form the government are in reality ruled by a handful of persons. As such, personal rule, after seeming to have been eliminated by putting aside monarchs and chiefs, makes a return to the political arena of the Western-type state. Thus the KANU-NDP “co-operation” and ultimate “merger” was the result of the rapprochement between Daniel arap Moi and Raila Odinga; the Grand Coalition Government was formed as a result of the decision of Mwai Kibaki and Raila Odinga; The Handshake and the Building Bridges Initiative was the result of private consultations between Raila Odinga and Uhuru Kenyatta. In all these cases, party organs were only convened to ratify what the party leaders had already decided, and dissenters threatened with disciplinary action. We have very recently seen the same approach in the debate on the allocation of revenue, where what was supposed to be the opposition party acquiesced to the ruling party’s view simply because of the Handshake and the Building Bridges Initiative.

In my youth, I was convinced that if only multi-party rule would be restored in Kenya, autocracy would be a thing of the past. With hindsight, however, it is now clear to me that just as middlemen enjoy the bulk of the fruit of the sweat of our small-scale farmers, so party leaders enjoy the massive political capital generated by the people. In short, party politics, whether with one, two or many parties in place, hinder true democratisation by perpetuating political elitism and autocracy.

**Towards a no-party system of governance**

In *Cultural Universals and Particulars*, the Ghanaian philosopher Kwasi Wiredu advances the view that the no-party system has evident advantages over the multi-party system:

When representatives are not constrained by considerations regarding the fortunes of power-driven parties they will be more inclined in council to reason more objectively and listen more open-mindedly. And in any deliberative body in which sensitivity to the merits of ideas is a driving force,
circumstances are unlikely to select any one group for consistent marginalisation in the process of decision-making. Apart from anything else, such marginalisation would be an affront to the fundamental human rights of decisional representation.

However, Yoweri Museveni’s “no-party system” which he instituted when he took power in Uganda in 1986 was simply a one-party system in disguise. Indeed, in his *Sowing the Mustard Seed*, Museveni unintentionally reveals a party orientation in his analysis of his electoral victory in 1996: “Although I was campaigning as an individual, I had been leading the movement for 26 years. Therefore, the success of the NRM and my success were intertwined.”

Our various peoples had clear democratic practices in their pre-colonial political formations without the inconvenience of political parties. For example, Prof. Wamala, in the chapter already cited, informs us that the Kabaka of the Baganda could not go against the decision of the Elders. It is high time we learned from our indigenous heritages.

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**Pandora Papers: The Kenyatta’s Secret Companies**

*By Africa Uncensored*
The furore over Kapsaret MP Oscar Sudi’s recent comments regarding the first family has left many Kenyan women baffled, not least because Kenyan men are not known to be great defenders of women or their body parts. It has been alleged – and the media has erroneously reported – that, in alluding to her breasts, Mr Sudi insulted Mama Ngina, the former first lady and mother of the current president, Uhuru Kenyatta.

When I first heard about this on social media, I thought it was yet another typically crude example of Kenyan misogyny. There are countless examples of Kenyan men, particularly politicians, insulting and deriding women. Female politicians and activists are a favourite target. Women who dare to defy patriarchal norms do not find a comfortable home here. In fact, they have to fight tooth and nail to be recognised.

The late President Daniel arap Moi, for instance, once referred to Nobel laureate Wangari Maathai as a woman who had “dudus in her head” when she was protesting the building of a tall office block in Uhuru Park. Recently, Mutahi Ngunyi, a State House operative, referred to Martha Karua, a former Minister of Justice and a presidential candidate in the 2013 election, as “a grandmother with average intelligence and a bloated ego” after she gave a TV interview that challenged the president and Raila Odinga to come clean on the motives behind their rapprochement. (Note: Ngunyi’s use of the word “grandmother” was to suggest that Karua had reached her sell-by date and that she should focus on family matters, not politics. In this case, the insulting of grandmothers was not viewed as hate speech by the authorities.)

Those of us who have cared to listen to the speech that caused so much uproar in the country will agree that Sudi did not insult Mama Ngina’s breasts. He merely stated that Uhuru Kenyatta should not believe that the breasts that he suckled are better than the breasts that Sudi suckled.

What Sudi was simply trying to say (and which got lost in the state’s accusations of “hate speech” and “incitement”) was that all Kenyans are equal and that Uhuru and his family should not believe that they are more important than the rest of Kenyans or that the country belongs to them.

In any other period in our political history, these comments might even be considered heroic – an act of rebellion against hegemonic forces. I would go further to say that Sudi has the right to freedom of expression, which is guaranteed by our constitution, so he can say what he wants as long as his
utterances are not inflammatory or based on lies. After all, did the young Jomo not say similar things against the British in London’s famous Hyde Park? Is this not what the Mau Mau were saying to the British colonialists when they took up arms against them? Is this not what was conveyed to President Moi during the “Second Liberation” protests? Did Raila Odinga (who was once the leader of the opposition) not challenge election results several times because he wanted Mwai Kibaki and Uhuru Kenyatta to know that Kenya does not belong to just one tribe or to one political party? Fighting for your rights is guaranteed by the 2010 constitution.

But then you have to remember that it was during Jomo Kenyatta’s time that insulting the first family became a criminal offence. Jomo’s Machiavellian Attorney General Charles Njonjo deemed that even imagining the death of the president was punishable. Are we returning to those days of the imperial presidency?

Before I return to the issue of breasts and their significance in the Kenyan imagination, let us recall how we got to this place.

Faustian pact

You may remember that prior to the 2013 elections, Uhuru Kenyatta made a Faustian pact (some call it a marriage of convenience) with William Ruto – his fellow indictee at the International Criminal Court (ICC). The deal – amplified by the likes of Cambridge Analytica, which manipulated a highly gullible electorate – was that the election should be viewed as “a referendum against the ICC”. Part of the pact was that if the duo won the presidency, Uhuru would rule the country for ten years and then hand over to Ruto for the next ten years. In other words, Jubilee – their coalition party – would rule Kenya for the next two decades.

But maybe promising to honour a deal was not part of that deal. That Faustian pact has been broken. Ruto has now been relegated to the sidelines following another Faustian pact called the Building Bridges Initiative (BBI) that has brought Raila into the Uhuru fold, and which has resulted in an orchestrated assault against Ruto. Some might say that it is Kikuyu privilege and hegemony reasserting itself by coopting dissent. Others say it is a way of healing past wounds and uniting a country fractured by political divisions and disillusionment. Only time will tell which scenario will unfold.

Unfortunately, this pact might lead to more, not less violence. The government’s unreasonably aggressive response to Sudi’s comments, complete with police raids on Sudi’s home, and the open defiance of Sudi’s Kalenjin supporters, who threaten to go to war to defend their leader, suggest that we might be on the brink of a civil war. As one Kenyan on Twitter wryly commented, BBI has turned into a “Burning Bridges Initiative”.

The “handshake” between Uhuru and Raila, instead of easing tensions, has created different forms of polarisation. Ruto’s Kalenjin supporters feel betrayed. Opposition and civil society activists who would have come to Sudi’s defence are now taking sides; those who might have defended his right to free speech are now silent because speaking up might be construed as siding with Ruto. These fractures are most evident on social media.

Let us be very clear on one fact, which somehow gets conveniently brushed under the carpet. The 2013 election was premised on fear. Fear that if the Kalenjin and the Kikuyu do not unite, there will be a constant threat of violence and mass displacement of Kikuyus in the Rift Valley. Fear that historical injustices will resurface as a rallying cry during elections – a scenario that neither the Kikuyu nor the Kalenjin elite want because both have blood on their hands.
Although many analysts insist that the Uhuru-Ruto victory was simply a mathematical probability, in that it united two of Kenya’s largest ethnic groups into one formidable voting bloc, thereby outnumbering the opposition, some believe that the alliance between the two politicians was based more on primal instincts that had to do with self-preservation vis-à-vis the ICC, and the general fear in the country that the 2013 election would be as bloody, if not more, than the 2007 one, as the issues that turned Kenyatta’s Kikuyu ethnic group against Ruto’s Kalenjin in 2007/8, and vice versa, had still not been resolved.

“Though tribe was the watchword in this [2013] election, their alliance, and their victory, was nationalistic, not tribal,” wrote James Verini, a Foreign Policy contributor based in Nairobi. “Their unspoken but resounding message was this: Yes, we killed. We killed for you, for Kenya. And we’ll kill again. It’s the most seductive platform in politics.”

At that time, anti-corruption crusader John Githongo said that the wounds of the violence in the Rift Valley – the site of most of the ethnic conflicts that have taken place during every election cycle since the first multiparty elections in 1992 – had still not healed, despite the public hand-holding and hugging among the Jubilee Alliance’s leaders. “Those who doubt his [Ruto’s] grip and the extent of his leverage need only consider the fact that despite the alliance of ‘peace’ and ‘reconciliation’ between the Gikuyu and the Kalenjin that now prevails, Rift Valley IDPs are not racing back to farms from which they were evicted in 2008. All of us know, quietly and without too much fuss, that we aren’t even close. It is such inconveniences that interrupt the ‘move on’ narrative for now,” he wrote in African Arguments on 22 May 2013.

**Breasts in the Kenyan imagination**

The Faustian pact between Uhuru and Ruto, and now between Uhuru and Raila, has lessons for Kenyans. In the classic German legend from which this pact gets its name, Faust is a highly successful but dissatisfied man who makes a pact with the devil, exchanging his soul for unlimited knowledge and worldly pleasures. By selling his soul to the devil, Faust is condemned to “The Eternal Empty”. However, female spirits of the earth intervene on his behalf and forgive him for his foolish mistake. Faust suffers some tragedies because of his folly, but in the end he is granted redemption and his soul ascends to heaven in the presence of God and the Virgin Mother. (One moral of the story: female energy is more powerful than the devil.)

We might be tempted to believe that the attacks on Sudi and his ilk are invoking female power. The fact that so many Kenyans (including elderly Kikuyu women who have threatened to strip in front of Sudi) have come out in defence of Mama Ngina’s breasts might suggest that we have reached a Faustian moment. Or perhaps we have evolved into a country that actually cares about women and their dignity.

But let us not fool ourselves. For one thing, Mama Ngina, arguably the richest woman in Kenya, is hardly “Wanjiku”. I do not recall her ever defending the rights of poor Kenyan women, or women in general. Two, we are not invoking female energy here to seek redemption. If Kenyan politicians, including Sudi, really cared about women, the two-thirds gender rule would have been enforced in parliament by now.

What we are doing is weaponising the former first lady’s breasts. And sexualizing them, which is very un-African. As Sylvia Tamale writes in African Sexualities, African women’s sexualities were the antithesis of European mores of sex and beauty. Traditional African women had no problems displaying their breasts because breasts in African culture were not objects of sexual desire or titillation; they had one primary purpose – feeding an infant. So talking about breasts was no different from talking about a nose or a leg. If Sudi had “insulted” Mama Ngina’s ear, would we be
so upset? The African breast became the object of forbidden fantasy and fetishisation during colonialism when Christian missionaries began their “civilizing mission” in Africa.

In fact, in certain African societies, nakedness was associated with defiance. The Kenyan mothers of political prisoners who “cursed” the Moi government in the early 1990s by stripping at Uhuru Park - because seeing your mother naked is considered a curse in certain Kenyan communities - were not displaying their sexuality; they were displaying their anger. They were defying Moi. Kenyans with a political conscience saw them as heroines. In fact, these mothers will forever remain as symbols of defiance in the annals of Kenyan history.

Maybe now is the Faustian moment when positive female energy can be invoked, not to redeem those who have made selfish pacts, but to take Kenyans down a more enlightened path.

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Pandora Papers: The Kenyatta’s Secret Companies

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Ever since it was pronounced as one of his “Big Four” legacy initiatives, Uhuru Kenyatta’s manufacturing agenda has been blurry but an extensive television interview given two weeks ago was very revealing; in a nutshell, it is protectionism. “We want to ensure that we protect our industries, work with our industries to ensure that they are competitive but we also encourage them not to take advantage and extort Kenyans by overpricing their products.”

Protectionism is a policy regime that puts tariff and other barriers on imports that compete with domestically produced goods. A simple definition of competitiveness is a company, industry or country that is able to produce goods and services that are comparable in price and quality with those traded internationally. Competitiveness is benchmarked against internationally traded goods
and services. But the purpose of protecting domestic industries is to shield them from competition. Once they are shielded from competition, they do not need to be competitive.

Ever since it was pronounced as one of his “Big Four” legacy initiatives, Uhuru Kenyatta’s manufacturing agenda has been blurry but an extensive television interview given two weeks ago was very revealing; in a nutshell, it is protectionism.

We have a problem. A protected competitive industry is a contradiction in terms. Tea and sugar, two industries that have featured in this column on a number of occasions, provide a perfect case study.

As an export-oriented industry, the tea industry has to be globally competitive to survive. There is little the Kenyan government could do to help the industry if it was not able to produce quality tea at a price that its international customers are willing to pay. Consequently, there is no need to protect the local market from imported tea. Even though imported tea brands are available in supermarkets, they do not cause owners of domestic brands sleepless nights.

Sugar is a different kettle of fish altogether. It is the country’s most protected industry. Kenyan sugar costs $800 per tonne ex-factory, against a global price of $280. The only way Kenya’s sugar industry can stay in business is by being heavily protected. For the last twenty years or so, the country has sought and secured safeguards from the Common Market of Eastern and Southern
Africa (COMESA) so that the country can restructure the industry, to no avail.

Why is Kenya’s tea globally competitive and sugar the complete opposite? Competitiveness is closely related to, and in fact, derives from productivity. Kenya has the highest tea farm productivity in the world, at about 4,507 kilograms of green leaf per acre, closely followed by Sri Lanka at 4,440. Unsurprisingly, Kenya and Sri Lanka are the leading tea exporters, each accounting for between 20 and 23 per cent of the world market. By contrast, of the COMESA trading partners, Kenya has the lowest sugar cane yields (see chart).

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But the sugar cane yields are only part of the low productivity story. Kenya’s sugar cane also has less sugar content, and the state-owned factories are less efficient, i.e. they achieve lower extraction rates than those of the trading partners—low cane yields, poor quality cane, inefficient factories. To keep this industry alive, it is protected by a 100 per cent import tariff, or $460 per tonne, whichever is higher. At the price of $280 a tonne, the applicable tariff is $460, which is an import duty of 164 per cent.

Why are the sugar cane yields so low? We have the wrong model of sugar industry. Sugar cane is a capital intensive crop, that is suited to large-scale integrated farm and factory operations. Kwale International Sugar, which revived the failed Ramisi Sugar, reports obtaining 60 tonnes a hectare using a “state of the art subsurface irrigation system”. Smallholder farmers do not have the capital or knowhow to do this, and it probably would not make sense to invest in such systems on a small scale. Moreover, once the cane is planted, it requires very little labour until harvest time.

Tea, on the other hand, is a labour-intensive crop. It needs to be picked and tended meticulously by hand throughout the year. Smallholder tea farmers work in their fields every day. The economic law of comparative advantage predicts that a country’s competitiveness will reflect its factor endowments, that is, capital-rich countries will be competitive in capital intensive goods, and labour-rich countries in labour-intensive goods. Because we have relatively more labour than capital, the global competitiveness of our tea vis-à-vis the uncompetitiveness of our sugar reflects our comparative advantage.

Why are the sugar cane yields so low? We have the wrong model of sugar industry. Sugar cane is a capital intensive crop, that is suited to large-scale integrated farm and factory operations. Kwale International Sugar, which revived the failed Ramisi Sugar, reports obtaining 60 tonnes a hectare using a “state of the art subsurface irrigation system”.

It is instructive to compare sugar with coffee. Since the early 90s, Kenya has failed to reform the coffee industry to keep up with changes in the global market. Production and exports have plummeted from a peak 140,000 tonnes in the late 80s to just over 40,000 tonnes today. There is nothing that the Government can do to protect the coffee industry. It simply has to shape up or ship out. But the most important thing is that the resources that were producing coffee—land, capital and labour—have been redeployed to other products including macadamia nuts, avocado, dairy, bananas, real estate and so on.
The same would have happened in western Kenya if the sugar industry was not so heavily protected. The long-suffering smallholder sugar cane farmers would have long since switched to other products of which they would be competitive producers such as cereals, livestock, horticulture, oil crops and so on. Instead, protectionism misallocates 440,000 acres of some of Kenya’s best rain-fed agricultural land—a very scarce resource—to a crop that generates a mere $400 per acre, compared with tea, which generates $2,200 an acre.

Protectionists often bolster their case by observing, correctly, that the East Asian Tigers also protected their infant industries during the early stages. The best documented, and arguably also the most insightful case, is that of South Korea. South Korea’s industrialisation took place in two phases spanning two decades, 1955-65 and 1965-75. During the first phase, it pursued both import substitution and export promotion simultaneously, but with a heavy bias towards import substitution. By the early 60s it had run into the chronic balance of payments crises that have plagued all countries pursuing import substitution industrialisation through protectionism—including Ethiopia currently. The government realised that import substitution had hit a dead end, and changed course, as Larry Westphal and Kwan Suk Kim, of the World Bank and Korea Development Institute respectively, explain in their 1977 study, *Industrial Policy and Development in Korea*:

> Policymakers came firmly to accept that rapid economic development depended upon an export-oriented industrialisation strategy. This view was predicated on the understanding that Korea’s natural resource base was very poor and on the realisation that further opportunities for import substitution were only to be found in intermediate and durable goods, where the limited domestic market could not justify establishing plants large enough to realize technological economies of scale.

The Koreans then embarked on trade liberalisation, devaluation and other policy reforms that the rest of the developing world was to adopt two decades later, and that we now call structural adjustment. These reforms were implemented between 1961 and 1964. Export-led manufacturing took off. By 1975, manufactured goods contributed a third of the GDP, and 75 per cent of exports.

As noted, Korea’s industrial policy pursued both import substitution and export promotion simultaneously from the outset. The policy regime, referred to as the “export-import link,” pegged incentives directly to export earnings. Like most other countries at the time, Korea had a controlled fixed exchange rate that maintained an overvalued currency, as well as a rigid import control regime. Exporting firms were allowed to retain a portion of their foreign exchange earnings, which they could sell at a premium, or to import restricted consumer goods for sale in the domestic market. Another element was generous “wastage allowances” on imported raw materials. To illustrate, if garment exporters were allowed 15 per cent wastage on fabrics imported to make clothes for export, and the actual wastage was 5 per cent, this was the same as allowing them to sell 10 per cent of their products in the domestic market.

The effect of these incentives was to substantially offset the protection of the domestic market and to keep domestic-oriented producers on their toes. Other incentives included subsidised credit and discounted tariffs on utilities and railway transport, also pegged to export performance. As export manufacturing grew, the case for protecting the domestic market diminished, since Korean goods could compete both abroad and at home. The protection regime was progressively rolled back such that by the late 70s, South Korea was, by and large, an open economy.

Embarking on a protectionist industrial policy today raises a number of vexing issues. I will highlight three.
First, what is it in aid of? The stated objective is to increase the manufacturing share of GDP. I have heard a figure of 15 per cent of GDP by 2022 mentioned. The manufacturing share of GDP has actually been trending downwards lately—7.7 per cent in 2018, down from 10 per cent five years ago. How much can protecting domestic industry contribute? In 2018 we imported Sh.218 billion worth of finished consumer goods—excluding motor vehicles—accounting for 12 per cent of total imports, and 9 per cent of the value of domestic manufactured goods. If all these goods were to be manufactured locally, it would increase the manufacturing share of GDP from 7.7 to 8.5 per cent. But of course, whatever protectionist policies are envisaged will not constitute anywhere near total substitution and will at best have a negligible impact.

Tea, on the other hand, is a labour intensive crop. It needs to be picked and tended meticulously by hand throughout the year. Smallholder tea farmers work in their fields every day. The economic law of comparative advantage predicts that a country’s competitiveness will reflect its factor endowments, that is, capital-rich countries will be competitive in capital intensive goods, and labour-rich countries in labour intensive goods.

The most critical imperative that any industrial policy ought to address is jobs. We need millions of jobs. Kenya’s industry is capital intensive and not job-creating. A World Bank study from a decade ago showed that Kenya’s manufacturing sector was 50 per cent more capital intensive than China’s, and almost five times as capital intensive as India’s (see chart below). Although the data is old, the structure of the industry has not changed that much. This is of itself a legacy of an import substitution industrial policy which promoted the capital intensive goods that the country imported, as opposed to an export-oriented policy which would promote the industries that could utilise developing countries’ abundant labour.

Second, Kenya is a member of the East African Community (EAC), COMESA, and the new African Free Trade Area (AFTA) trading blocs, which agreements we have signed and ratified. Under the EAC in particular, Kenya is bound by a common external tariff (CET). Kenyan manufacturers are the biggest beneficiaries of these trading blocs. In 2018 Kenya exported goods worth Sh.90 billion ($1.9 billion)
to EAC and COMESA, accounting for 30 per cent of total exports. We made imports of Sh.123 billion ($1.23 billion), thus running a surplus of Sh.67 billion ($670 million). Virtually all of Kenya’s exports to the region are manufactured goods. The country can ill afford to begin a trade war with the regional partners, who would only be too delighted to find reasons to lock Kenyan goods out of their markets. How is the government going to protect local industries without jeopardising regional integration?

Third, the case for protectionist import substitution regimes was predicated on the infant industry argument—protecting nascent industries until they were strong enough to compete. The problem arose because, like our sugar industry, and Pan Paper for that matter, there was no incentive to grow up, and the state lacked the political will to roll back the protection until economic crises compelled them. The industries that are now to be protected are not babies. What is the case for protecting grown-up industries, some of which are already dominant oligopolies in their sector? Until when will they be protected, and what new policy instruments are there to ensure that this protection regime will not go the route of the old one? Protecting mature incumbents translates to not just protection from competing imports, but also giving them more muscle to fight potential entrants into their markets. Essentially, it amounts to entrenching cartels, and Kenyatta’s statement—which makes reference to taking advantage, extortion and overpricing—demonstrates that Kenyatta is actually alive to this fact. Why is he contradicting himself? State capture.

Read Also

- Crony Capitalism and State Capture: The Kenyatta Family Story
- Crony Capitalism and State Capture 3: Uhuru Kenyatta’s Manufacturing Agenda

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“Uhuru Kenyatta’s assumption of the presidency has injected fresh energy into his family’s commercial empire, putting a number of its units on an expansion mode that is expected to consolidate its position as one of the largest business dynasties in Kenya” ~ Business Daily, Monday, November 11, 2013.

A few days ago, the Dairy Board of Kenya published, then recalled, draft regulations that sought, among other things, to outlaw and criminalize farmer-to-consumer raw milk sales. Essentially farmers would be compelled to sell milk to processors or other intermediaries (cooperatives or businesses) licensed and regulated by the Board. The withdrawal was in response to a huge public blowback, including a trending hashtag #Kenyattamilkbill, mobilising for the reactivation of the boycott against Brookside Dairy products. It was notable that the Dairy Board’s reversal of its draft regulations followed a press release by Brookside Dairies objecting to the regulations citing specifically the levies that the Board proposed on dairy businesses. Tellingly, Brookside’s statement was silent on the question of outlawing farmer to consumer raw milk sales.

This story is about an even more audacious scheme in the Kenyatta empire’s “expansion drive”, the most egregious case of policy and regulatory capture I have encountered...

As a previous column, Crony Capitalism and State Capture: The Kenyatta Family Story observed, Uhuru Kenyatta’s presidency has delivered remarkable returns-on-investment for the family enterprise:

“During Uhuru Kenyatta’s first term the consumer price of milk increased 67 percent (from KSh 36 to KSh 60 per half-litre packet), while producer prices remained unchanged at Sh 35 per litre), effectively increasing processors’ gross margin by 130 percent (from Sh37 to Sh 85 per litre). Given the industry’s 400m litre annual throughput and Kenyatta family’s market share,
which stands at 45 percent, the consumer squeeze translates to an increase of the Kenyatta Family’s turnover from KSh 13 billion to KSh 22 billion, and gross margin from KSh 6.7 billion to KSh 15 billion a year.”

Not enough, not by a long shot.

The platform will offer micro and small enterprises an overdraft facility of up to KSh 50,000, and a loan of up to 12 months with a limit of KSh 200,000. The initiative targets five million sign-ups, and two million users in the first year. How it plans to do this is a frightening demonstration of the workings of state capture in the Uhuru Kenyatta era.

Kenya’s annual milk production is estimated at 3.5 billion litres, of which 80 percent is consumed or traded informally. Put another way, only 20 percent, about 600,000 litres, is handled by processors. If these regulations were only to double the processors intake to 50 percent, we are talking of growing Brookside’s turnover and gross margin to KSh100 billion and KSh 67 billion respectively.

But this column is not about the milk, at least not literally – even if the milking metaphor is quite apt. This story is about an even more audacious scheme in the Kenyatta empire’s “expansion drive”, the most egregious case of policy and regulatory capture I have encountered, and I have been round this block a few times. What follows is based on an internal document entitled ‘Restoring Credit Access to Micro and Small Sized Businesses’ shared by whistleblowers in institutions that have been corralled into the scheme by force.

The Huduma Number connection starts with an innocuous statement in a slide presentation titled “How Customers will Qualify” that ends with a bullet point stating that “customers that don’t immediately qualify can opt into a credit access plan”.

The name of the scheme is Wezesha (‘enable’). It is a proposed mobile phone lending platform described as a “collaborative initiative to bridge the access to credit by micro and small enterprises”. It will be managed by five banks, namely NIC Bank, Diamond Trust Bank (DTB), the Kenya Commercial Bank and Cooperative Bank under the leadership of the Kenyatta Family-owned Commercial Bank of Africa. CBA is in the process of acquiring NIC, alongside the smaller microfinance oriented Jamii Bora bank. KCB, Kenya’s largest bank by asset base, and Cooperative Bank, are quasi-public banks, while Diamond Trust Bank is associated with the Aga Khan. The platform will offer micro and small enterprises an overdraft facility of up to KSh 50,000, and a loan of up to 12 months with a limit of KSh 200,000. The initiative targets five million sign-ups, and two million users in the first year. How it plans to do this is a frightening demonstration of the workings of state capture in the Uhuru Kenyatta era.

When it was launched we were threatened that Kenyans who did not register would be denied public services. We are compelled to ask whether this threat, and its prominence in this scheme are related. Are the president’s commercial interests the force behind the Huduma Number?

First observation: the contentious Huduma Number initiative features prominently in the scheme. The Huduma Number connection starts with an innocuous statement in a slide (the documentation is a powerpoint presentation) titled “How Customers will Qualify” that ends with a bullet point stating
that “customers that don’t immediately qualify can opt into a credit access plan (consumer education).” How so, is elaborated in another slide titled “Customer Education At Huduma Universal Service Kiosk” complete with the Huduma Kenya logo. Further along, in another slide titled “Functional Schema” a bullet point: “Distribution: An integrated network of GoK Huduma Centres, Bank Branches and agent locations to ‘onboard’ customers and offer information and advice to capital and business opportunities.”

When Huduma Number was launched we were threatened that Kenyans who did not register would be denied public services. We are compelled to ask whether this threat, and its prominence in this scheme are related. Are the president’s commercial interests the force behind the Huduma Number?

But perhaps the question is already answered in another slide titled “Phase 2 Support for Scalability”: New Huduma ID to be integrated once it is ready. This scheme could be used as a registration incentive.”

The funding partners propose that the GoK establishes a credit risk guarantee fund, that is administered by the Central Bank of Kenya, to provide mezzanine credit risk cover for any credit losses above three percent, up to the prevailing NPL rate.

Also to be leveraged for scaling: “Moratorium from KRA Pin and Tax payment”. This statement requires some thought. What would give a private business scheme the audacity to propose a tax compliance waiver as a tactic to attract customers?

But the crux, is this:

“The funding partners propose that the GoK establishes a credit risk guarantee fund, that is administered by the Central Bank of Kenya, to provide mezzanine credit risk cover for any credit losses above three percent, up to the prevailing NPL rate.”

Some background is necessary. The cost of bank credit is arrived at as follows:

Cost of funds + Target income + Loan loss provision (NPLs)

Cost of funds is the interest the bank pays on deposits. Target income is the bank’s calculated profit margin that will translate into an acceptable return on investment. Loan loss provision is the income that the bank sets aside to compensate for loans that are not repaid. Banks are required by the regulator to “provide” from their income equivalent to non-performing loans (NPLs).

Based on this costing, the Scheme’s promoters seem to have arrived at the conclusion that the initiative is not commercially viable. They appear to have determined this in the following way: The lending rate is set at nine percent arrived at by setting cost of funds, target income and a target loan
loss provision at three percent each. Next, the Scheme factors in the Kenyan banking sector’s actual NPL rate, which was 11.6 percent at the close of 2018. They then calculate that at 9 percent the initiative would have run at loss of 5.6 percent (9 - 3 - 11.6 = -5.6).

This is how the case for a public credit guarantee scheme is made. In the computation provided, the public credit risk guarantee would cover the difference between banks’ target and the industry NPL. In the documents that we have seen, an example is provided in which the target NPL is set at three percent as above; the industry NPL at 10 percent and the actual NPL of the lending scheme is set at 12 percent. In this case, the public would pay seven percent (10% - 3%) and the banks would absorb five percent, the target income is projected at three percent, and the additional two percent that is over and above the industry NPL of 10 percent.

Let me illustrate. If for argument’s sake, the scheme lent out KSh 100 billion at nine percent, a 12 percent NPL reduces the performing portfolio to KSh 88 billion, which translates to an interest income of KSh 7.92 billion. A 12 percent loan loss provision (KSh 12 billion) changes that to an interest income loss of KSh 4 billion. But above three percent NPL the public credit insurance kicks in and injects KSh 7 billion, making a total revenue of KSh 14.92 billion (less KSh 12 billion loan loss provision) leaving a net revenue of Sh. 2.92 billion. This translates to a loss of KSh 0.8 million, given that the cost of funds is KSh 3 billion.

What are we missing?

This is a very strange way of pricing a product. The conventional way is to do one of two things: (a) cost the product and compare it with the market price; or (b) take the market price and work backwards to see whether you can beat the price. Sometimes, the product may cost more than the completion, then it becomes a question of whether it can be sold at a premium, like for example, an iPhone, or a Ferrari.

Either way, one arrives at a break-even interest rate of 17.6 percent by adding up the cost of funds (three percent), the targeted income (three percent) and industry NPL rate (11.6 percent).

The next question is whether they would get sufficient uptake of the product at say 18-20 percent. The answer is an unequivocal yes.

For mobile money loans, the money is not in the interest rate but in the transaction fees. So, why would these banks price the loans to SMEs, the riskiest segment of the market, at 9 percent (about the same as Treasury Bill rate), which for all intents and purpose is the risk-free rate?

For mobile money loans, the money is not in the interest income charged on loans but in the transaction fees. In fact, most products do not charge interest at all. The pricing structure varies widely. To get the actual cost of the loans, we need to calculate a standardized rate known as the Annual Percentage Rate (APR). The APR is obtained by adding up all the cost of the loan and converting them to the equivalent annual interest rate, for example a three month, KSh 10,000 loan with a 5% fee and interest of 2.5% per month costs 1250 (Sh. 500 fee plus Sh. 750 interest) which annualizes to KSh 5000 (Sh. 1250 x 4), which is an APR of 50%. KCB charges a 2.5 percent transaction fee and interest rate of 1.16 percent a month for loans ranging from one to six months which works out to APR of 19% to 44% for the six and one month loans respectively. In general, the shorter the term, the more expensive. CBA charges a 7.5 percent fee for a one-month Mshwari loan. This is an APR of 90 percent. The recently launched Fuliza overdraft tariff range from 5/- a day for amounts below KSh 500 to KSh 30 per day for amounts above KSh. 2500. A Sh.10,000 Fuliza
overdraft at KSh 30 per day translates to an APR of 110 percent.

When fees are factored in, the case for public credit insurance collapses like a house of cards.

Let’s go back to the monetary illustration. Assume the scheme achieves its borrowing target of two million customers. Our portfolio of KSh100 billion works out to an average individual loan of KSh. 20,000. Further, assume they churn the funds six times a year, that is, each of the customer borrows and repays a loan every two months on average. A five percent transaction fee translates to an income of KSh12 billion a year, and a total income of KSh19.92 billion — well above the 18 percent required for the scheme to meet its profit target.

So what is going on here? First, *Wezesha* is simply a scheme to fleece the public. In today’s financial lingo, the Scheme is fully “de-risked”...par for the course in “public-private partnership” (PPP) business, where the profits are privatized, but the losses are socialized (i.e. borne by the public). The second, is to see *Wezesha* as a strategy to finance undercutting the competition by pricing below cost at entry, with the intention of charging monopoly prices once the competition is driven out of business.

The nine percent interest is a bait. Its purpose is to make the case for the proposed government credit insurance scheme by *purporting to offer SMEs affordable credit*.

So what is going on here? There are two ways to look at it. First, *Wezesha* is simply a scheme to fleece the public. In today’s financial lingo, the Scheme is fully “de-risked.” This is par for the course in “public-private partnership” (PPP) ventures, where the profits are privatized, but the losses are socialized (i.e. borne by the public).

The second, is to see *Wezesha* as a strategy to finance undercutting the competition by pricing below cost at entry, with the intention of charging monopoly prices once the competition is driven out of business. In competition economics, we call this predatory pricing. It is illegal under competition law. In this case, the public insurance serves both as a financial cushion as well as insurance from regulatory scrutiny.

The CBA already controls consumer credit data on account of its Safaricom partnership. This Scheme is designed to make the CBA the gatekeeper for the entire banking and financial services to micro-and small-enterprises.

As students of economics and finance know from the concept of information asymmetry, the most important asset in credit markets is information about customers’ creditworthiness. On the strategy for “scaling up” the documents refer to “integration to other financial institutions and service providers.” The intention is clear. First, use the government machinery and public money to drive customer acquisition. The CBA already controls consumer credit data on account of its Safaricom partnership. This Scheme is designed to make the CBA the gatekeeper for the entire banking and financial services to micro-and small enterprises, and I quote: “CBA Digital shall play a lead arranger role to develop and operate the credit risk management model for the full credit lifecycle.”

Even if there was an economic rationale for a credit insurance scheme of this kind, no government in its right mind would confer such a market advantage to some players. It is instructive that, in what looks like a case of the tail wagging the dog, KCB the crown jewel of public banks has been brought into the scheme. We should not be surprised if down the road, it turns out to be an acquisition
Uhuru Kenyatta’s sole accomplishment after extricating himself from the ICC may turn out to be framing the corruption issue exclusively as plunder of the budget, perhaps even deliberately giving his associates leeway in that theatre—recall “mnataka nifanye nini” (what do you want me to do)—as he provides cover for the Family to do the more serious boardroom stuff. Plunder of the budget ends once the thieves leave office. Wholesale enclosure of large chunks of the economy will keep the dynasty in the black long after he has left office.

Welcome to the Kenyatta Republic Inc.

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Pandora Papers: The Kenyatta’s Secret Companies

By Africa Uncensored
THE current clamour by a certain section of the political class across the board to change Kenya’s constitution is not anything new; we have been here before. Two years before the death of Kenya’s first president, Jomo Kenyatta, in August 1978, and after the hotly contested 1974 general election, this clamour reached its zenith, with its protagonists coming out openly to hold public barazas across the country to caution people about the danger of having one Daniel arap Moi succeeding Jomo. This group wanted the constitution changed so that a vice president could not automatically become president upon the death of the president, an amendment that would have made it impossible for Moi to succeed Jomo. Moi was a Kalenjin from Baringo and the so-called “Kiambu Mafia” despised him and could not in their wildest dreams countenance the fact that a non-Kikuyu could ascend to State House.

Nearly forty years later, in February 2018, a little-known and first time MP for Tiaty constituency in Baringo County, received wide media coverage when, out of the blue, he proposed changes to Kenya’s 2010 constitution. The 45-year-old MP, William Kamket, through his Constitution Amendment Bill 2018, advocated for the inclusion of a powerful position of prime minister and the scrapping of the position of deputy president. (The current constitution is hardly a decade old, having been promulgated on August 27, 2010.)

Less than a month later, on March 9, President Uhuru Kenyatta and his strident political nemesis, Raila Amolo Odinga, in a surprise manoeuvre, appeared on the steps of Harambee House – the seat of government – to declare a political détente by publicly shaking hands and smiling broadly for the cameras. Soon after, Raila, who had successfully petitioned Uhuru’s contentious presidential win on August 8, 2017 at the Supreme Court, only to stay away from the fresh presidential election on October 26, 2017, started agitating for constitutional change.

Through the Building Bridges Initiative (BBI) formed immediately after the handshake, Raila has repeatedly said he is advocating for a future “all inclusive” government that will be devoid of cycles of violence that invariably manifest themselves every election year. The former prime minister, who has been tasked with spearheading BBI – a body made up of both President Uhuru and Raila’s circle of confidantes – has said that the Initiative will come up with suggestions on areas in the constitution that need to be changed. Since then, there have been additional disparate voices supporting this clamour for change, among them the National Council of Churches of Kenya (NCCCK) and the Kenya
Conference of Catholic Bishops (KCCB).

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**The Kiambu Mafia**

But we have been here before. Barely two years into his imperial presidency, the septuagenarian Jomo Kenyatta surrounded himself with political honchos from Kiambu, who in due course were to infamously acquire the sobriquet Kiambu Mafia. The group consisted of Jomo’s inner kitchen cabinet; among the most powerful were his brother-in-law Mbiyu Koinange, the de facto leader, his nephew Dr. Njoroge Mungai and James Gichuru, who, during Kenyatta’s detention years acted as the president of the KANU party, holding fort until 1960 when he vacated the seat for Kenyatta after the latter’s release from prison. It is this Kiambu Mafia that saw to it that political power was firmly established and consolidated among and within an emerging Kiambu cabal, so much so that the cabal boasted that “Uthamaki ndugakera Chania.” (“The political kingdom will never see the light of day beyond Chania.”) Chania is the river that flows through Thika town. It is the river that divides Kiambu County from Murang’a.

With cracks beginning to emerge between Mzee Kenyatta and his first vice president, Jaramogi Oginga Odinga, as early as 1965, the president and the cabal felt confident enough to take on Jaramogi and his band of supporters in the ruling party KANU. First, to show his disaffection and to dissociate from Jaramogi, Kenyatta did away with the Luo cap that Jaramogi had gifted him, which Kenyatta often proudly wore.

It was in the aftermath of this disagreement that the scheming of the Kiambu Mafia, with the full knowledge of the president, came into full view when it called for a KANU conference in Limuru town in 1966. With the sleight of hand of the cabal’s project now exposed, the mandarins, with the help of the brilliant, cosmopolitan and, urbane politician Tom Mboya (who happened to be a Luo), warily crafted the idea of eight vice presidents to tame and humiliate Jaramogi. The eight vice presidential slots were divided among the then eight provinces of the country.

The deliberate picking of Limuru town in Kiambu District as opposed to holding the meeting in Nairobi, the capital city, was very telling. Was Mzee Kenyatta and the Kiambu Mafia telling all and sundry that the country’s Uthamaki now rested in Kiambu District?

**Mysterious deaths and political assassinations**

However, the ideology of Uthamaki (based on the idea that only people from the Kikuyu ethnic group are entitled to run the country) only gained feverish currency among the Kikuyus after the assassination of the mercurial Minister of Economic Planning and Development, Thomas Joseph Mboya on July 5, 1969, at the tender age of 39. It was around this time that the famous 1969 oath-taking was secretly and hurriedly organised to ostensibly bind the Kikuyu community to defend its Uthamaki from andu aa ruguru (communities from Western Kenya).

“The secretive oathing of 1969 was the zenith of Uthamaki consolidation,” Nelson Mwangi Gichohi,
the former all-powerful Nakuru District Commissioner, once told me. “Most of the oathing was concentrated in Gatundu division. There was also oathing in Nyandarua District, but I will be lying if I tell you I know the specific locations.” (Gichohi died at the age of 96 and was buried on October 5, 2018 at his Nyandarua farm.)

The Mafia was wary of any politician who remotely seemed like he would succeed the aging monarch Jomo Kenyatta who had suffered his first stroke in 1969.

However, the ideology of Uthamaki...only gained feverish currency among the Kikuyus after the assassination of the mercurial Minister of Economic Planning and Development, Thomas Joseph Mboya (TJ) on July 5, 1969, at the tender age of 39. It was around this time that the famous 1969 oath-taking was secretly and hurriedly organised to ostensibly bind the Kikuyu community to defend its Uthamaki from andu aa ruguru (communities from Western Kenya).

“With an aging and ailing Jomo, who was prone to stroke attacks, the Kiambu Mafia worried that his death might occur before they had dealt with all the real and imagined opposition,” a retired politician from Central Kenya, who was then a young man and who witnessed first-hand the political machinations of the dreaded and ruthless Kiambu Mafia, told me. “Their first hurdle was to clear the opposition within the mainstream KANU party, before moving in to deal with the KADU wing of the ruling party.”

KADU, which stood for Kenya African Democratic Union, had been an opposition party in the lead-up to the 1963 general elections. Its chief protagonists, among others, were Ronald Gideon Ngala and Daniel arap Moi. The party propagated a “majimbo” constitution that would be based on federalism, a system of government that was favoured by the “White Highlands” British settlers who wanted regions to have more autonomy.

On January 29, 1969, five months before Mboya was gunned down on Government Road (today Moi Avenue) at 1.00pm as he stepped out of a chemist’s shop. But five months before, [Clement Michael George] Argwings Kodhek was involved in a fatal accident at the junction of the present-day Wood Avenue and Argwings Kodhek Road. He was 46 years old when he died.

Meticulous and suave, Kodhek, a UK-educated barrister, had been Jomo’s lawyer at his trial in Kapenguria in 1952, alongside Dennis Pritt, a Queen’s Council (QC) and Achhroo Ram Kapila, among others. At the time of his death, Kodhek, whose English names’ initials were turned into a play of words by his Luo people – Chiedo Mor Gem (meaning the oil of Gem), was the Minister for Foreign Affairs and the MP for Gem.

Read also: IT’S THE ECONOMY, STUPID: Why the current push for a referendum is a
distraction from the reforms Kenya needs

On December 12, 1972, Ronald Ngala, who had been KADU’s president and a founding member before the party was dissolved in 1964 to join KANU, was involved in a mysterious freak accident at Konza, 15km from the Machakos town junction. Thirteen days later, on Christmas Day, the former Minister of Power and Communications died at the Kenyatta National Hospital aged 49. Nobody has ever explained why Ngala, who traditionally celebrated Jamhuri (independence) Day with the president, was travelling to his coastal home on that Jamhuri day.

In March 1975, the Uthamaki “hyenas ate one of their own”, as the politician John Keen put it. The badly mutilated body of Josiah Mwangi Kariuki (popularly known as JM), the 46-year-old MP for Nyandarua North and an Assistant Minister in the Office of the President, was found in the Ngong Hills Forest. JM’s eyes had been gouged out and his lifeless body had been left in a path frequented by hyenas.

“Furious Nyeri Kikuyus immediately accused the Kiambu Mafia of killing JM,” recalled Gichohi. Although JM’s rural home was in Ol Kalou, where he had a big farm, his ancestral origins were in Nyeri. The Kikuyus from Nyeri vividly recalled what the Kiambu Mafia had said in 1966 – that Uthamaki would never transcend River Chania.

Gichohi narrated how three years before the death of Jomo, the Kiambu Mafia, suffering from “psychological insecurities generated by the founding president’s ill health”, felt sufficiently threatened by JM’s rising popularity countrywide to the extent that they decided to put a stop to his presidential ambitions. On many occasions, said the late Nakuru DC, the Mafia had warned JM to cease his political ambitions but he ignored them.

The formation of a parliamentary select committee to investigate the death of JM was aimed at assuaging the hurt nationalist feelings of a majority of Kenyans who identified with JM. It also sought to exonerate Jomo’s government from suspicions that it had ordered the killing of the populist politician. The select committee was chaired by Elijah Mwangale, the then the MP for Bungoma East. To seemingly lend credence to the committee, it included some of JM’s friends like Waruru Kanja.

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The committee’s final report incriminated Mbiyu Koinange, the then Minister of State in the Office of the President and Jomo’s bosom buddy and brother-in-law. Furious that the Mwangale-led committee had dragged Mbiyu’s name in the report, Jomo is reported to have said that to have Koinange’s name in the report was like having his own name there. The president trashed the report, which also led to the sacking of cabinet ministers John Keen, Masinde Muliro and Peter Kibisu. Keen was the Assistant Minister for Agriculture and the MP for Kajiado North. Masinde was the Minister of Co-operatives and the MP for Kitale East. Kibisu was the Assistant Minister for Labour and the MP for Vihiga. They all were accused of endorsing and supporting the report.

Within just six years, the Kiambu Mafia had snuffed out the lives and political careers of two political
heavy weights - Tom Mboya and JM Kariuki. Jaramogi Oginga Odinga, the former vice president, was put under house arrest between 1969 and 1971. Still, the years between 1970 and 1976 were dicey times for the Kiambu Mafia. Mzee Kenyatta’s health was failing by the day, and it was just a matter of time before they woke up to the fact that he was no more.

To the extent that they did not want to be caught flat-footed, the Mafia must have realised that it was impossible to eliminate every possible threatening political force, so they cleverly came up with a political scheme: the creation of a party within a party. The creation of Gikuyu Embu Meru Association (GEMA) by the Kiambu Mafia apparently coincided with the weakening of the ruling party KANU. GEMA, which was supposed to be a welfare organisation in theory, was in fact a vehicle for the Kiambu political protagonists’ scheme to propagate Uthamaki philosophy as they sought to strangle KANU’s nationalist credentials, which were a direct threat to their devious plan.

**The “Change-the-Constitution” movement**

As Mzee Kenyatta’s health was deteriorating quickly, the Kiambu Mafia hatched another plan towards the end of 1976: the Change-the-Constitution mantra. With a constitution that expressly said that in the event that the president was incapacitated or suddenly died, the vice president would automatically take over the reigns of power, the Kiambu Mafia fought tooth and nail to stop Daniel arap Moi from succeeding Mzee Kenyatta.

The front man for the group was Dickson Kihika Kimani, the MP for Nakuru North and the controversial leader of the Ngwataniro Mutukanio land buying company. In September, 1976, the group, led by the political operator Kimani, held its first meeting in Nakuru to propose that the rules of succession be modified. A month later, Kihika, whose base was Nakuru but who had aligned himself with the Kiambu Mafia, repeated the assertion on October 3 in Limuru as he held a fund-raising meeting.

The activities of the Change-the-Constitution protagonists were stopped by the all-powerful Attorney General, “Sir” Charles Njonjo, who, two days later, issued a terse statement: “It is a criminal offence for any person to encompass, imagine, devise, or intend the death or deposition of the President.”

Kenyatta followed Njonjo’s statement with his own from State House: “The government reiterates its earlier statement by the Attorney General.” Thus the Uthamaki project of the GEMA/Change-the-Constitution group of 1976 had been nipped in the bud.

Before his fall from grace in 1983, Charles Njonjo, the influential and powerful Attorney General, is reputed to have boasted that were it not for him, Vice President Moi would not have ascended to the presidency. “Had I not laboured single-handedly, to ensure that the provisions of the constitution were adhered to, Moi would not have been president and there would have been chaos in the country,” Njonjo is reported to have said this to all who cared after Moi had entered State House.

When Moi became president, Kihika Kimani pledged his loyalty to him with the following statement on September 8, 1978, two weeks after Mzee’s death: “President Moi is the only natural leader Kenyans have with the necessary qualifications to lead the nation following the untimely death of President Kenyatta...It is the people, the majority of Kenyans, if not all, who are now pleading with him to become their President.”

Cynics believed that this professed loyalty was just a scheme to buy time, as many in the Kiambu Mafia believed that Moi would be a lame duck president and would not hold office for long. They were wrong: Moi consolidated his power and remained in office for 24 years. (In their book, *The Kenyatta Succession*, Joseph Karimi and Philip Ochieng describe the various intrigues, plots and
Kenya’s political folklore has it that before his ouster from public life (through a commission of inquiry into his conduct by President Moi), Njonjo had since the early 1970s been conspiring and marking time to succeed President Jomo Kenyatta. His presumed support – apparently through proper constitutional means – for Moi and his wars with the Kiambu Mafia were a ruse in his master game plan to wrestle state power from Moi after taking credit for “planting” the former vice president in State House. His infamous remark, “Engethua ndogoria itingekinyera nyeki” (A limping leader sheep cannot lead the rest of the flock to greener pastures), suggesting that Moi was a weak president and therefore just “a passing cloud”, was used to incriminate and label him a traitor.

The return of Uthamaki

Twenty-four years after GEMA and the Change-the-Constitution adherents had failed to stop Vice President Moi from taking over from Kenyatta, who quietly died on the night of August 22, 1978, the Uthamaki project reared its head once more on the eve of the third multiparty elections in Kenya in December 2002. The scion of the Kenyatta family, Uhuru Muigai Kenyatta, was running for the presidency against Mwai Kibaki, a portly conservative politician from Othaya, Nyeri County, who had united with Raila Odinga to form a formidable opposition to the younger Kenyatta and Moi’s KANU party.

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The Change-the-Constitution movement of 1976 was a scheme by a certain section of the Central Kenya carpetbaggers to stop a Rift Valley Kalenjin politician from succeeding President Jomo Kenyatta. The current push for changing the constitution has been interpreted in certain quarters of the Rift Valley region as a plot by a certain Central Kenya political cabal to stop another Rift Valley Kalenjin politician – Deputy President William Samoei Ruto – from taking over from President Uhuru Kenyatta, who is serving his second and final term. In essence, then as now, Rift Valley is the political theatre of brinkmanship.

The Kiambu mandarins of Change-the-Constitution movement of 1976 sought the help of Jaramogi, who in their first meeting in Nakuru, sent his political ally and former Kenya People’s Union (KPU) leader, Achieng Oneko, to represent him. For some time it looked like Jaramogi was ready to lend the outfit his nationalist credentials. Even though the Kiambu Mafia had orchestrated Jaramogi’s political banishment, they craved for his singular political support.
Then as now, a section of the ruling Jubilee Party, led by a section of the Central Kenya political class, has roped in Raila Odinga, Jaramogi’s second son, to help them push for a change in the constitution. Although, these same political players have in the recent past called Raila all manner of names, including telling him he is a “slow punctured politician” and is “too old and should retire”, they now seem to have rediscovered his political usefulness. David Murathe, President Uhuru’s lackey and chairman of the Jubilee Party, recently said that Raila should not think of retiring from politics, since he was still energetic enough and Kenya needed his style of politics.

The build-up to the Change-the-Constitution push of four decades ago was preceded by deaths, house arrests, and incarcerations. Will the current Change-the-Constitution movement also be accompanied by the death of certain politicians’ careers? Only time will tell.

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Pandora Papers: The Kenyatta’s Secret Companies

By Africa Uncensored
Uhuru Kenyatta, the son of the founding president, Jomo Kenyatta, is now in his second and final term as President of the Republic of Kenya. He was first elected in 2013 in a hotly-contested presidential election in which he eked out a narrow victory that saw him escape a run-off between himself and his closest competitor, Raila Amolo Odinga. A critical look at Uhuru’s presidency and the manner in which he ascended to the top seat reveals some uncanny echoes from the experience of his father Jomo, which constitute three important dialectical lessons in our understanding of the essence of social change and development.

First, prior to assuming the presidency, Jomo, along with five others – Paul Ngei, Achieng Oneko, Kung’u Karumba, Fred Kubai, and Bildad Kaggia – was imprisoned in Kapenguria by the colonialists for seven years for allegedly masterminding and leading the Mau Mau war of independence. This group has since come to be known in the annals of Kenya’s political history as “The Kapenguria Six”. On his part, prior to assuming the presidency, Uhuru, along with five others – William Ruto, Francis Muthaura, Ali Hassan, Henry Kosgey, and Joshua Sang – was indicted by the International Criminal Court (ICC), then headed by the Chief Prosecutor, Luis Moreno Ocampo, for allegedly masterminding and funding the 2008 post-election violence in Kenya. This group was named “The Ocampo Six”.

Second, Jomo and his Vice President, Jaramogi Oginga Odinga, found common ground in advancing the cause of decolonisation. Indeed, Jaramogi was the first to politically rehabilitate Jomo by refusing to form a government while the latter was still in prison after KANU won the internal self-government elections of 1961. He argued for “Uhuru na Kenyatta” (Freedom with Kenyatta). The two, Jomo and Jaramogi, fell out over issues of ideology and national policy within the first few years of independence. On their part, Uhuru and his deputy Ruto began with falling out – they were on opposite sides when the 2008 post-election violence erupted – but found common ground once they were indicted by the ICC and partnered to save themselves by acquiring political power. Furthermore, whereas Jomo and Jaramogi were self-made icons of the nationalist struggle for independence, Uhuru and Ruto were protegés of President Daniel Toroitich arap Moi; created, perhaps, in the latter’s image and likeness.

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advancing the cause of decolonisation. Indeed, Jaramogi was the first to politically rehabilitate Jomo by refusing to form a government while the latter was still in prison after KANU won the internal self-government elections of 1961.

Third, as president, Jomo seemed to have demonstrated greater fidelity to rule of law than Uhuru. Jomo had parliament pass an Act to allow him to pardon election offenders. This was for purposes of pardoning his friend, Paul Ngei, who was found to have committed election offences in the 1974 elections, which rendered him ineligible to contest in the subsequent by-election. The new law ensured that Ngei contested and won his seat back. Uhuru demonstrates less fidelity to the rule of law. In the face of the Supreme Court decision to nullify the August 2017 presidential election, Uhuru referred to the judges as “wakora” (thugs) who had no powers to change the “will of the people” and vowed to “revisit” their case after the repeat election. Indeed, the drastic slashing of the judiciary budget and the arraignment of Deputy Chief Justice Philomena Mwilu on corruption charges in August 2018 may be interpreted as actualization of the “revisit” threat.

Fourth, Jomo had a penchant for using obscene language against the opposition and those he did not see eye to eye with. Similarly, Uhuru has taken to using obscene and abusive language against his opponents and those he doesn’t agree with. This was particularly evident on his triumphant return from The Hague after his case was dropped when he was addressing community members in Turkana in early 2017 where he lashed out against the local County Governor, Josphat Nanok.

Fifth, at the end of Jomo’s tenure, critics noted the disintegration of the nationalist coalition that fought for independence and the inauguration of an imperial presidency. Similarly, at the end of his first term in office, critics noted Uhuru’s tendency toward authoritarianism. Civil society was being referred to as “evil society”. There were attacks on the offices of the African Centre for Open Governance (Africog) and attempted deregistration of the Kenya Human Rights Commission, ostensibly on account of their perceived support for the political opposition following the contested results of the August 2017 presidential elections.

Sixth and finally, when he eternally left the political scene through death in August 1978, Jomo left a vibrant and growing economy, albeit one characterised by one of the highest income inequalities in the world, perhaps only exceeded by Brazil and South Africa. It was an economy described by Tanzania’s Julius Nyerere as a “man-eat-man society.” At the end of his first term in office, on the other hand, Uhuru’s legacy is one of an economy literally mortgaged to China because of his government’s penchant for borrowing from the latter to finance over-priced grand projects whose single-sourcing is tied to Chinese suppliers and Chinese labour.

From these six observations of similarities and differences between the old Jomo and his younger son Uhuru, we can glean three lessons based on the three laws of the dialectical method. The first dialectical law is the law of the unity and conflict of opposites. This states that the world, both social and physical, is a paradoxical terrain characterised by a unity of contradictions, a unity of opposites. For instance, in mathematics, we have the integral and the differential (plus and minus); in chemistry, we have fusion and fission (combination and dissociation) of atoms; in mechanics, we have action and reaction; in physics, we have positive and negative electricity by which we boil
water and freeze it.

Similarly, in the social world, we have the haves and have-nots; the rulers and the ruled; buying and selling; in war, there is advance and retreat, victory and defeat. Even the Bible says in Galatians Chapter 6 that the human being is a bundle of contradictions - the soul is always warring against the flesh and vice versa. To fully understand phenomena, therefore, we must seek out their internal contradictions. Note the contradictions in the Uhuru vs. Ruto saga: sworn enemies on opposite sides in the post-election violence in 2008 and bosom friends in the aftermath of their ICC indictment. Note the opposite in the Jomo vs. Jaramogi saga: intimate comrades in the nationalist struggle and sworn enemies a couple of years after independence, which resulted in the house arrest of the latter in 1969.

The second dialectical law is the law of the passage of quantitative changes into qualitative changes. For instance, loss of one hair does not make one bald. But continuous loss of hair culminates in a qualitative change called baldness. At the social level, change, development, or progress is not unidirectional and unilinear, nor does it occur gradually in a smooth straight line. Sometimes one step forward is followed by two steps backwards and vice versa. Note the convoluted and messy decades-long process of democratisation in Kenya that eventually led to the promulgation of a new constitution in 2010.

Indeed, even when nothing seems to be happening, small quantitative changes are usually taking place that add up eventually to a major qualitative change. Note here the seismic ruling of the Supreme Court of Kenya that nullified the August 2017 presidential election. This was preceded by periodic changes in the personnel of the Supreme Court: the retirement of Chief Justice Willy Mutunga brought in Chief Justice David Maraga; the dismissal of Deputy Chief Justice Nancy Barasa brought in Kalpana Rawal whose retirement brought in Philomena Mwilu; the retirement of Phillip Tunoi brought in Isaac Lenaola. It is hardly to be expected that without these little quantitative changes (not to mention the protracted changes that led to the new constitution that provided for a Supreme Court), the celebrated landmark ruling nullifying the presidential election, the first in Africa, would have occurred.

The third and final dialectical law is the law of the negation of the negation. This obtains in the repetition at higher levels of certain features and properties of the lower level and the apparent return of past features. For instance, when a grain of barley is put in fertile soil, it germinates into a plant. The original grain is negated. The plant grows, flowers, and produces even more and better grains, which are harvested and processed in the making of beer - the negation is thereby also negated!

Indeed, even when nothing seems to be happening, small quantitative changes are usually taking place that add up eventually to a major qualitative change. Note here the seismic ruling of the Supreme Court of Kenya that nullified the August 2017 presidential election.

Similarly, social development is a constant struggle between form and content and content and form, resulting in the eventual shattering of the old form and the transformation of the content. Like in the grain of barley case, this is a spiral process where the movement comes back to the position it started but at a higher level. Note the earlier referenced tendency on the part of President Uhuru to authoritarianism raising fears of a return to the old KANU days - the denigration of civil society, the attack on Africog, the harassment of Maina Kiai at the airport, the threats to the Supreme Court justices, the deportation to Canada of Miguna Miguna, etc. Nevertheless, we may have spiraled back
to some features of the past authoritarian order but we are at a higher level given the political and
social changes that have taken place – it can never be the kind of authoritarianism of the single-
party era.

The foregoing discussion amply illustrates the fact that socio-political change and progress is
achieved incrementally through a series of contradictions. In instances where the previous
developmental stage is negated, the negation does not imply it is wholly replaced. The new stage
does not completely wipe out its predecessor stage. This reality is captured in the popular adage,
“the more things change, the more they remain the same”.

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content.

Which brings us to the final consideration. As noted at the beginning, Jaramogi Oginga Odinga
facilitated Jomo Kenyatta’s ascendancy to the presidency by refusing to form a government while
Jomo remained in prison. Although Jomo made Jaramogi his vice president, they soon fell out and
Jaramogi never succeeded Jomo. Similarly, William Ruto facilitated Uhuru Kenyatta’s ascendancy to
the presidency by teaming up with him and mobilising the Rift Valley electorate to vote for Uhuru. In
so doing, Ruto became deputy president. Will he, unlike Jaramogi, succeed the man he helped propel
to power? Political developments following the celebrated “handshake” between Raila and Uhuru
indicate that it is highly unlikely that Ruto will succeed Uhuru to the presidency come 2022. The
mantra to the effect that kingmakers never become kings themselves seem to be well and alive in
the Kenyan political dispensation.

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