



**Strathmore University**  
**Law School**

---

Corruption and The Law: A Critical  
Examination of the Legal and Institutional  
Framework Concerned with The Fight  
Against Corruption in Kenya.

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree, Strathmore  
University Law School

By Daniel Baraka Maina.

145042.

Prepared under the Supervision of

H. Chacha Odera

December 2024.

10,809 Words.

**Declaration**

I, MAINA DANIEL BARAKA, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....D.B.M.....

Date: .....30/01/2025.....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:.....

H. Chacha Odera.

Date: .....

### **Acknowledgements.**

First and foremost, I would like to thank my supervisor, Mr. Chacha Odera, for offering much needed advice and guidance that allowed me to complete this paper. I would also like to thank Ms. Anne Kadima, for her invaluable help in this endeavour. I would also like to thank my parents for believing in me and supporting me throughout my journey in law school. Furthermore, I would also like to thank my twin brother for sharing this journey with me. Lastly, I would like to thank God for giving me the strength and will to get this far. Without the Lords grace and the intercession of my loved ones, I would never have been able to accomplish this.

### **List of Legal Instruments.**

1. Constitution of Kenya (2010).
2. Anti-Corruption and Economic Crimes Act (2003).
3. Ethics and Anti-Corruption Act (2011).
4. The Public Finance Management Act (2012).
5. Leadership and Integrity Act (2012)
6. The Bribery Act (2016).

### **List of Abbreviations.**

IMF- International Monetary Fund.

KEMSA- Kenya Medical Supplies Authority.

EACC- Ethics and Anti-Corruption Authority.

ODPP- Office of the Director of Public Prosecutions.

DCI- Directorate of Criminal Investigations.

ARA- Asset Recovery Agency.

KHRC- Kenya Human Rights Commission.

ICAC- Independent Commission Against Corruption.

### **Abstract.**

Corruption has been a long-standing problem in Kenya. The object of this research paper is to undertake a critical examination the legal and institutional framework tasked with fighting corruption, pinpointing its failures and determining possible solutions to this problem. This paper shall be limited to the Kenyan jurisdiction and shall only make reference to other jurisdictions in the case studies performed therein. This paper relies on legal doctrinal research and case studies in order to substantiate its claims. And it is from this research that the conclusion that the corruption problem in Kenya is largely and institutional one, as institutions have been co-opted by those in power to serve their own interests and at the expense of the people. This co-option is marked by patrimonial and tribal politics which further worsens the problem, as people excuse it as long as they can benefit from it. It is from a case study of two jurisdictions; Hong Kong and Rwanda that we can glean lessons for our own context, especially in the fields of institutional design, enforcement and social education.

# Contents

CHAPTER ONE. ....	1
1.1 Background. ....	1
1.2 Statement of the Problem. ....	2
1.3 Statement of Objectives. ....	3
1.4 Hypothesis. ....	4
1.5 Research Questions. ....	4
1.6 Significance of the study. ....	4
1.7 Theoretical Framework. ....	4
1.8 Literature Review. ....	6
1.9 Research Design. ....	9
1.9.1 Research Design and Methodology. ....	9
1.9.2 Chapter Breakdown. ....	9
1.9.4 Limitations of The Study. ....	10
CHAPTER TWO. ....	11
2.1) The Legal Framework. ....	11
2.1.1) The Anti-Corruption and Economic Crimes Act of 2003. ....	13
2.1.2) The Ethics and Anti-Corruption Commission Act (2011). ....	14
2.1.3) The Public Finance Management Act (2012). ....	14
2.1.4) The Leadership and Integrity Act (2012). ....	15
2.1.5) The Bribery Act (2016). ....	15
2.1.6) Other Supporting Statutes. ....	16
2.2) The Institutional Framework. ....	16
2.2.1) The Ethics and Anti-Corruption Commission. ....	16

2.2.2) The Office of the Director of Public Prosecutions. ....	17
2.2.3) The Directorate of Criminal Investigations. ....	17
2.2.4) The Judiciary. ....	17
CHAPTER THREE.....	18
3.1) Understanding corruption in Kenya.....	18
3.2) The Legal and Institutional Framework: Is it sufficient enough to deal with this system?21	
3.2.1) The Constitution and Corruption. ....	21
3.2.2) Politics and its Interference in the Fight Against Corruption. ....	22
3.3) Conclusion. ....	23
CHAPTER FOUR.....	24
4.1) Hong-Kong: Lessons to be Learnt. ....	24
4.1.1) Enforcement. ....	24
4.1.2) Education. ....	25
4.1.3) Institutional Design. ....	25
4.2) Lessons from Rwanda’s Anti-Corruption Efforts.....	26
4.2.1) Transforming social norms about Corruption.....	27
4.2.2) Pillar 1: Prevention. ....	27
4.2.3) Pillar 2: Sanctions. ....	28
4.3) Relevance and Application in Kenya. ....	28
4.3.1) Social Transformation. ....	29
4.3.2) Institutional redesign. ....	29
CHAPTER FIVE.....	31
5.1) Conclusions Drawn.....	31
5.2) A Way Forward. ....	31

5.3) Conclusion. .... 32

Bibliography..... 33

# **CHAPTER ONE.**

## **1.1 Background.**

Corruption can be defined as the misuse of public office for private gain that fuels trans-national crime, wastes public resources, destabilised countries and impedes good governance<sup>1</sup>. This wide definition provided by the IMF gives us a good glimpse of the nature of corruption and the possible consequences. The definition of corruption also seems to imply that corruption and poor governance are intertwined.

Ever since independence, it seems that Kenyans have always had the same grievances against each of the successive administrations. Graft has indelibly stained the image of each of the administrations since 1963. From accusations of embezzlement, fraud, nepotism and even bribery, the citizens of this Republic have had gripes with the government and its response to corruption and poor governance within its ranks. A cursory look at our media outlets is enough to convince a person that the country is indeed facing a crisis. As of 2016, Kenya has been losing almost six billion dollars every year to graft<sup>2</sup>, which is almost nine hundred and sixty billion shillings with today's exchange rates.

The definition of corruption demonstrates, that it leads to poor governance as it undermines the principles of good governance including transparency, accountability and the rule of law. This results in unsavoury consequences like; the erosion of public trust as the citizens lose faith in the ability of the government to act in their best interests. Practises like bribery and embezzlement influence important decision-making processes as they are influenced by personal gain and not the interest of the people. It also leads to the erroneous and skewed allocation of resources as funds required for critical needs such as healthcare are diverted elsewhere. Practices like nepotism lead to increased inequality and exclusion, which is contrary to the core principles of the Constitution of Kenya and a democracy such as ours. Delivery of services like education and infrastructure is impaired due to the missing funds, therefore negatively impacting the welfare of the public. Corrupt conditions also stifle economic progress as they deter foreign investment and hinder

---

<sup>1</sup> <<https://www.imf.org/en/Topics/governance-and-anti-corruption>> on 16 of November, 2023.

<sup>2</sup> <<https://www.reuters.com/article/us-kenya-corruption-idUSKCN0WC1H8/>> on 16 of November 2023.

economic growth. The current administration, in its first year, grappled with the shame of having four scandals materialise under its nose<sup>3</sup>. The first one was the KEMSA mosquito net scandal. The Kenya Medical Supplies Agency had reportedly mismanaged a 3.7 billion shilling tender for the supply of mosquito nets as reported by the Nation Media Group<sup>4</sup>. Furthermore, this expose revealed that there was the possibility of a massive embezzlement to the amount of USD 1.353 million by rogue officials at the Ministry of Health. The second scandal was the disappearance of a thousand metric tonnes of brown sugar had been condemned. The sugar in question was valued at Kenya Shillings twenty million. This transaction aroused suspicion after there were large and unexplained withdrawals involving large sums of money. There was also the edible oils scandal<sup>5</sup>. Private firms would import oil without paying taxes and then sell the commodity to a government agency at a higher price, most likely in cahoots with corrupt officials in the government. The government would then sell the oil through other agencies at a higher price than locally manufactured ones.

These scandals are just a small part of the litany of incidences of corruption in this country. The shadow of other infamous scandals such as the National Youth Service Scandal, the Goldenberg affair and the Eurobond saga all paint a vivid picture of Kenya's troubled and chequered history with government corruption and poor governance.

## **1.2 Statement of the Problem.**

Ideally, Kenya's legal framework would be sufficient enough to deal with cases of corruption. Global Legal Insights describes this framework as being robust, and evidently so, as there are numerous pieces of legislation in this framework such as; the Proceeds of Crime and Money Laundering Act, the Anti-Corruption and Economic Crimes Act, , the EACC Act, amongst many

---

<sup>3</sup> <<https://ntvkenya.co.ke/news/the-graft-burden-major-corruption-allegations-in-president-rutos-administration/>> on 16 November 2024.

<sup>4</sup> Wasuna B, 'Kemsa in eye of a fresh storm in Sh3.7bn mosquito nets deal' Daily Nation, 10 May 2023  
-<<https://nation.africa/kenya/news/kemsa-in-eye-of-a-fresh-storm-in-sh3-7bn-mosquito-nets-deal-4229192>> on 28 February 2024.

<sup>5</sup> Obuya B, Ondieki E, 'How Ruto's first Cabinet meeting birthed questionable edible oil deal' Daily Nation 19 June 2023  
-<<https://nation.africa/kenya/news/how-ruto-s-first-cabinet-meeting-birthed-questionable-edible-oil-deal-4274150>> on 28 February 2024.

others such as the Leadership and Integrity Act<sup>6</sup>. These pieces of legislation are also supplemented by the Constitution of Kenya and the functioning of agencies such as the Ethics and Anti-Corruption Commission all serving the purpose of preventing, investigating and prosecuting cases of corruption in Kenya.

Unfortunately, as lofty as these ideals are, this is not the reality in our country. Billions of shillings are lost every year through incidences of embezzlement and fraud within the government. Corruption cases in the law courts drag on for years without conclusion. Moreover, a large majority of the perpetrators are never held accountable for their illicit actions. They either manage to cover their tracks through extensive networks of graft that create distance between them and their offences, or are protected by their deep political affiliations and connections to powerful individuals. The citizens of Kenya have lost confidence in the ability of the state to combat government corruption. Many have accepted it as a reality of life in Kenya and is often the subject of humorous discussion in social gatherings. The Kenyan public has resigned itself to the idea that they will always be at the mercy of corrupt officials in government, and that attempts to combat corruption will almost always fall short of expectations. The Kenyan public as the source of all sovereign power in the republic should not accept this raw deal from its leaders.

### **1.3 Statement of Objectives.**

1. Exploring the legal and institutional framework that is concerned with the fight against government corruption.
2. Assessing the effectiveness of the legal and institutional framework concerned with the fight against government corruption.
3. Determining the failures of the legal and institutional framework of anti-corruption measures in Kenya.
4. Using the findings from the above objectives, come up with solutions and make recommendations to the relevant state players.

---

<sup>6</sup> <<https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/kenya>> on 1 March 2024.

#### **1.4 Hypothesis.**

The problem of government corruption can be resolved by addressing the failures of the legal and institutional framework that is concerned with the fight against government corruption.

#### **1.5 Research Questions.**

1. What is the legal and institutional framework that is concerned with the fight against government corruption in Kenya, and how does it work?
2. How effective has the legal and institutional framework concerned with anti-corruption been in the fight against government corruption?
3. What have been the failures of the legal and institutional framework concerned with the fight against government corruption?
4. What solutions can be created and what recommendations can be made? And to whom can these recommendations be made?

#### **1.6 Significance of the study.**

Kenya is clearly facing a very large problem in the form of corruption and poor governance that seem to go hand in hand. Therefore, it is imperative that this problem be explored in depth and analysed so as to come up with solutions and enable a transformation in governance in Kenya. By conducting research on these issues, one can understand the root causes of this problem and work out solutions. It is from these solutions that policy-makers in government and legislators can design and implement effective policies and laws that will turn the tide in the fight against this vice. Furthermore, this research will benefit the Judiciary as it will be armed with the necessary tools to adjudicate these cases and dispense justice in the name of the citizens of this republic. Ultimately, this research will benefit the people of Kenya as policies designed from this research will be able to protect them from the consequences of government corruption.

#### **1.7 Theoretical Framework.**

Academics over the years have come up with different theories that attempt to decipher the complex nature and form of government corruption.

The first theory that is the Critical Legal Theory by Roberto Mangabeira Unger in his book *The Critical Legal Studies Movement*. In this book, he makes the agreement that a legal system is a tool that represents the interests of the powerful by shaping and reinforcing existing social structures<sup>7</sup>. Furthermore, Unger also criticises legal formalism and objectivism, stating that legal reasoning cannot be objective and is instead beholden to political factors<sup>8</sup>. His theory posits that the law and legal systems are shaped by social, political and economic forces and is a tool that can be used to perpetuate injustice. However, if the law can be used to perpetuate injustice, it can also be used to correct it.

Another one of these theories is the Principal- Agent theory<sup>9</sup>. This is a theory that assumes that the agents (public officials) are supposed to act in the best interests of the principals, who are the public. However, the reality is that the private interests of the agent can diverge from the interests of the principal and due the knowledge asymmetry between the principal and the agent, the agent is able to act according to their own private interests. This theory is dependent on the assumption that the agent has more information about the system they are supposed to use for the benefit of the principle but then co-opt it for their own benefit. Moreover, when the agent perceives the knowledge asymmetry between themselves and the principal as being skewed in their favour, they will be able to act more irresponsibly as a lack of knowledge on the part of the principal ensures that they shall not be held accountable.

It is through the lens of the principal-agent theory that we can be able to understand the dynamics of government corruption and how it has been allowed to thrive despite being illegal. By exploring the relationship between the principal and agent, the research to be conducted will be able to achieve the intended end of coming up with suitable solutions to deal with the menace of government corruption.

---

<sup>7</sup> Unger R, *The Critical Legal Studies Movement*, Harvard University Press, Cambridge, 1986, 66.

<sup>8</sup> Unger R, *The Critical Legal Studies Movement*, 4-12.

<sup>9</sup> <<https://www.unodc.org/e4j/en/anti-corruption/module-4/key-issues/theories-that-explain-corruption.html>> on 29 February 2024.

## **1.8 Literature Review.**

This research will be primarily focused on government corruption and its origins, as seen in the research objectives and questions. The end product of this research will be to determine suitable solutions for the failures of the current legal and institutional framework present in the fight against corruption. The issue of government corruption is a pertinent one; it is the subject of a lot of public discourse and has been so since independence. Therefore, it is important that I pay special attention to all that has been previously written about it.

I shall begin with the work of Kempe Ronald Hope, Sr. His article, 'Kenya's Corruption Problem; Causes and Consequences' attempts to answer the question of the origins of the government corruption problem. He makes the claim that the culture of corruption is deeply rooted in Kenyan society. He argues that institutions that were meant to fight corruption by restraining government power have been co-opted by rogue government officials to the end of lining their own pockets with the proceeds of graft within the government. He states that corruption exists in Kenya because there are people who derive benefits from it and that the existing institutions lack both 'the will and capacity' to restrain such bad faith players from doing so<sup>10</sup>. When we go deeper into the details, Kempe states that corruption persists primarily because the institutions that were designed to uphold the rule of law and good governance have been deliberately undermined by the perpetrators of government corruption. This, coupled with a centralised presidency that was at its peak during the Moi administration contributed to an environment that enabled the looting of public funds from government coffers. Perpetrators could not be held accountable for their crimes due to this and so many Kenyans resigned themselves to the idea that nothing can be done about government corruption<sup>11</sup>. He concludes that patronage has become standard practice in the public sector<sup>12</sup>. Patronage can be defined as the culture of exchanging political favours, appointments or contracts for personal gain at the expense of fair and transparent governance. It often takes the form of nepotism and cronyism, with cronyism being the most common form of patronage within the

---

<sup>10</sup> Sr. Ronald Hope K ' Kenya's Corruption problem; Causes and Consequences' *52 Commonwealth and Comparative Politics* 4, 2014, 493.

<sup>11</sup> Sr. Ronald Hope K ' Kenya's Corruption problem; Causes and Consequences', 494.

<sup>12</sup> Sr. Ronald Hope K ' Kenya's Corruption problem; Causes and Consequences', 507.

Kenyan government. Patronage enables rogue government officials to be protected via extensive political connections and thus avoid being held accountable. Kempe's work seems to agree with a part of my initial hypothesis; that government corruption is a result of the failures of the legal and institutional framework concerned with anti-corruption measures. However, he does not provide a solution to this problem. He merely states the problem as it is and its consequences.

When we consider the work of Alexia Van Rij, she attributes the phenomenon of government corruption to its character as neo-patrimonial system, which is a legacy of colonialism<sup>13</sup>. She labels it as Kenya's 'original sin' at independence<sup>14</sup>. She makes this claim by making reference to the events surrounding the first few years of the Jomo Kenyatta administration. He was faced with the task of soothing post-colonial frustrations resulting from the numerous atrocities committed by the British colonial authorities. His response was to appropriate vast tracts of land from white farmers in his capacity as the president and hold it in the same manner as a private landowner. He held these vast lands for personal gain and for the benefit of his cronies (mostly his kinsmen from the Kikuyu community, as members of the so-called Mount Kenya Mafia)<sup>15</sup>. This created the basis for the neo-patrimonial system that still reigns supreme today in the upper echelons of power. Kenyatta would then vest the land upon his associates in order to leverage their political clout for his benefit. Van Rij states that such outcomes had their origins in the days of British rule when the authorities would bribe local leaders with wealth in order to secure their loyalty to the colonial cause and to ensure that they cooperated with them. Daniel Moi, Kenyatta's successor inherited this system and he used it to secure more political power and enrich his cronies. And by co-opting this colonial order, Kenya's first two presidents set the stage for a neo-patrimonial state that put the interests of the ruling elite above all else<sup>16</sup>. Power was viewed as the avenue to personal enrichment of oneself and one's cronies (usually from the same ethnic group). Corruption became the avenue to power that begot more power via the system of neo-patrimonialism. These are the

---

<sup>13</sup> Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon' French Institute of International Relations, 2021, 28.

<sup>14</sup> Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon', 9.

<sup>15</sup> Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon', 10.

<sup>16</sup> Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon', 11.

origins of government corruption as put forward by Alexia Van Rij. Kempe Ronald Hope Sr also mentioned the system of patrimonialism as enabling corruption to subsist within the government. But also similarly, Van Rij does not propose any solutions to the problem. She does however make reference to subsequent administrations' attempts at tackling the problem. Van Rij urges a contextual approach to anti-corruption efforts in Kenya<sup>17</sup>. It is from such an analysis that a solution can be created, which is what I aim to do.

The next piece of literature by Hussein Khalid and Tabitha Pilgrim Thompson does provide solutions, but in the realm of civil society organisations and movements. They note that the Kenyan civil society has made strides in promoting transparency and accountability with more left to be done towards that end<sup>18</sup>. They gave solutions such as organising creative and non-partisan ways for citizens to understand and engage with the concepts of corruption, transparency and corruption. They also emphasise the role that international donors can play in these efforts in several ways such as flexible and long-term support for civil society organisations, fostering collaboration between civil society organisations and state officials working to combat corruption, supporting Kenyan-driven efforts that encourage citizen participation and using diplomatic channels and media platforms to amplify the message of accountability and transparency. As previously stated, these may be solutions, and the literature says that they have been working, but they just are not the ones this paper would like to propose. The solutions this paper will propose will be within the field of the law itself and the legal and institutional framework concerned with government corruption.

These pieces of literature all point towards several propositions regarding the origins of government corruption such as the colonial legacy of neo-patrimonialism and the undermining of the systems that prevent and fight it. But these pieces do not provide the solutions to the problem and therefore coming up with them shall be the primary focus of the research that will be carried out.

---

<sup>17</sup> Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon', 28.

<sup>18</sup> Khalid H, Thompson T, 'Conflict Prevention in Kenya: Combating Corruption through Nonviolent Action' US Institute of Peace, 2019, 20.

## **1.9 Research Design.**

### **1.9.1 Research Design and Methodology.**

This study shall rely upon legal doctrinal research in order to analyse the existing laws that are concerned with the fight against government corruption. This paper shall focus on reviewing what has been written about the nature of government corruption in secondary sources such as journal articles, books and reports on the subject matter. Furthermore, this study shall also rely upon primary sources such as statutory law in order to analyse the law regarding anti-corruption measures in Kenya. It is through the methods described above that a critical interrogation of the existing anti-corruption framework will be done and thus achieve the intended objective of assessing its adequacy and based on those findings, make the necessary recommendations.

### **1.9.2 Chapter Breakdown.**

#### **Chapter One; Introduction.**

This chapter lays out the background of the study and the statement of the problem of the study. It contains the research objective, research questions, the hypothesis and the significance of the study.

#### **Chapter Two; An Exploration of the Legal and Institutional Framework Concerned with the Fight Against Corruption.**

Chapter two shall delve into the legal and institutional framework concerned with the fight against corruption and shall include discussions on how it functions.

#### **Chapter Three; An Appraisal of the Effectiveness of the Current Legal and Institutional Framework Concerned with the Fight Against Corruption.**

This chapter shall take a look at the current framework surrounding anti-corruption efforts in Kenya and carry out an appraisal of its effectiveness with the aim of identifying its failures. It will also contain a discussion on the nature of the problem.

#### **Chapter Four; A Case Study and Lessons to be Learnt.**

This chapter shall include a case study of how other jurisdictions dealt with the problem at hand. This study will be used to gain important lessons to be applied in our own jurisdiction.

#### **Chapter Five; Conclusion and Recommendations.**

This chapter shall provide the findings of the study and give recommendations to be adopted.

#### 1.9.4 Limitations of The Study.

The research to be carried will face several limitations. One of the limitations in this study shall be the time limitation that arose from the sheer scope of this project. This topic requires a deep analysis of the system that will require a lot of time that is limited by the timeline I have given myself. Another limitation to this study will be the inherent biases that come from relying on the principal-agent theory as the backbone of my work. This theory will end up characterising public officials as being inherently primed to act contrary to the public interest, which would not be entirely true as there are still good faith actors within the public service. Furthermore, critical legal theory has been criticized as being too radical and lacks a practical dimension.

## **CHAPTER TWO.**

This chapter shall be focusing on the framework tasked with tackling corruption in Kenya. As seen in the previous chapter, this country has grappled with this issue since independence. Since then, there have been numerous initiatives and efforts against corruption, all varying in degrees of success. But, for the purposes of this study I shall be limiting myself to the framework in its current incarnation. Reference to past incarnations, however, shall be made in order to put parts of this discussion in context.

This framework is a consists of a number of statutory laws and enforcement agencies tasked with enforcing them. This framework coupled with the judiciary is what constitutes anti-corruption efforts in Kenya.

### **2.1) The Legal Framework.**

As the supreme law of the republic, the Constitution is the bedrock of this framework. Promulgated in August 2010 by the then President, Mwai Kibaki, the constitution ushered in a new Kenyan republic, promising the people that things would indeed be different from what they were used to. The Preamble outlined the wishes and aspirations of all Kenyans in creating a nation based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law, not just for the current generation, but for all that came after them<sup>19</sup>. This was an exercise in transformative constitutionalism, defined by Karl Klare as a long term project committed to transforming a country's political and social institution in an egalitarian, democratic and participatory direction<sup>20</sup>. It is national reform on a large scale through a peaceful political process that has its basis in the law. The promulgation and adoption of the 2010 constitution was the first step in this exercise of creating a new Kenya. With regards to the topic at hand, the Constitution pronounced itself on a number of issues. National values and principles of governance that are binding upon all state organs and public officials are provided for in Article 10 of the Constitution. These values and principles are said to be<sup>21</sup>;

---

<sup>19</sup> Klare K, 'Legal Culture and Transformative Constitutionalism' 14 *South African Journal on Human Rights* 1, 1998, 150.

<sup>20</sup> Klare K, 'Legal Culture and Transformative Constitutionalism', 150.

<sup>21</sup> Article 10, *Constitution of Kenya* (2010).

- a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.
- b) Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.
- c) Good governance, integrity, transparency and accountability.
- d) Sustainable Development.

Furthermore, the constitution provides for the guidelines for leadership and integrity in Chapter Six. Article 73<sup>22</sup> provides for the responsibilities of leadership, while Article 75<sup>23</sup> provides for the manner in which state officers must conduct themselves. Moreover, Article 79 directs parliament to enact legislation to establish an independent ethics and ant-corruption commission for the purposes of ensuring compliance with Chapter Six<sup>24</sup>. The Constitution also provides for the values and principles of public service in Article 232 in Chapter Thirteen<sup>25</sup>. These values are stated to be:

- a) high standards of professional ethics;
- b) efficient, effective and economic use of resources
- c) responsive, prompt, effective, impartial and equitable provision of services
- d) involvement of the people in the process of policy making
- e) accountability for administrative acts
- f) transparency and provision to the public of timely, accurate information
- g) Fair Competition and merit as the basis of appointments and promotions.
- h) Representation of Kenya's diverse communities
- i) Affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of both men and women, members of all ethnic groups and persons with disabilities.

---

<sup>22</sup> Article 73, *Constitution of Kenya* (2010).

<sup>23</sup> Article 75, *Constitution of Kenya* (2010).

<sup>24</sup> Article 79, *Constitution of Kenya* (2010).

<sup>25</sup> Article 232, *Constitution of Kenya* (2010).

This Article also further directs parliament to enact legislation to give full effect to it<sup>26</sup>. The constitution also provides for the mechanisms in which citizens can take action through the judicial process whenever they claim that the constitution is being contravened<sup>27</sup>.

From the above mentioned provisions, the Constitution clearly envisions a Kenya in which the law and the people take a stand against corruption. This is a part of the greater exercise of transformative constitutionalism in which the law and the people are able to change the status quo in the country by enacting widespread changes to their laws and institutions. Prior to the promulgation of the 2010 Constitution, corruption had been at the top of the list of grievances that every Kenyan had against the government. The 2010 constitution promised a Kenya in which public officials could be trusted and would exercise their duties for the good of the people. But has this promise been kept? That shall be a discussion for the next chapter when we perform an appraisal of the framework concerned with anticorruption efforts in Kenya.

It is from the constitution that all other statutes within this framework draw their legitimacy from.

#### 2.1.1) The Anti-Corruption and Economic Crimes Act of 2003.

The Anti-Corruption and Economic Crimes Act was passed in 2003. The objective of this particular act is to provide for the prevention, investigation and punishment of corruption, economic crimes and all other related offences. The Act also established the now defunct Kenya Anti-Corruption Commission and Advisory Board, which is the predecessor of the Ethics and Anti-Corruption Commission<sup>28</sup>. Furthermore, it also gives the Chief Justice the power to appoint as many special magistrates as may be necessary for the trial of offences under the act. Section 23 to 37 provide for the manner in which investigations of these offences are to be conducted, including affording the investigators the power to search any premises of suspects<sup>29</sup> and a requirement for the DPP to prepare an annual reports regarding corruption prosecutions<sup>30</sup>. The Act

---

<sup>26</sup> Article 232(3), *Constitution of Kenya* (2010).

<sup>27</sup> Article 258, *Constitution of Kenya* (2010).

<sup>28</sup> Section 16, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>29</sup> Section 29, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>30</sup> Section 37, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

also defines offences from section 40 all the way to section 47A. Such offences include; secret inducements for advice<sup>31</sup>, deceiving a principal<sup>32</sup>, conflicts of interest<sup>33</sup>, improper benefits to trustees for appointments<sup>34</sup>, bid rigging<sup>35</sup>, misappropriation of public property or revenue<sup>36</sup>, abuse of office<sup>37</sup>, handling suspect property<sup>38</sup> and attempts or conspiracies to commit crimes involving corruption<sup>39</sup>. The act also provides for the evidentiary rules to be observed in court proceeding regarding corruption and economic offences from section 57 to section 61. This act serves as the primary statute in the anti-corruption effort in Kenya. It is also worth mentioning that there is an amendment bill currently at the National Assembly, though it has not yet been passed.

#### 2.1.2) The Ethics and Anti-Corruption Commission Act (2011).

This Act was passed in 2011 to establish the Ethics and Anti-Corruption Commission that replaced the Kenya Anti-Corruption Commission and Advisory Board. The purpose of this act is to establish the EACC as required by Article 79 of the Constitution<sup>40</sup>, to provide for the functioning and powers of the commission, to provide for its procedures and for all other connected purposes. Further discussion about the EACC shall be done when discussing its role as one of the enforcement organisations.

#### 2.1.3) The Public Finance Management Act (2012).

This was an act of parliament passed in 2012 to provide for the effective management of public finances by national and county governments, providing parliament and county assemblies with

---

<sup>31</sup> Section 40, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>32</sup>Section 41, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>33</sup>Section 42, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>34</sup> Section 43, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>35</sup> Section 44, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>36</sup> Section 45, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>37</sup> Section 46, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>38</sup> Section 47, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>39</sup> Section 47A, *Anti-Corruption and Economic Crimes Act* (No. 3 of 2003).

<sup>40</sup> Article 79 *Constitution of Kenya* (2010).

oversight powers and defining the responsibilities of government entities with regards to public funds. Section 3<sup>41</sup> of this act states that the object of the statute is to;

1. Ensure public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution
2. Ensure that public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

This act aims to ensure that public officers remain answerable to the people through their elected representatives in the national assembly or at the county assemblies.

#### 2.1.4) The Leadership and Integrity Act (2012).

This act can be best described as a code of conduct to be observed by all public officials. It was passed in order to give life to the provisions of chapter six of the constitution, which is concerned with leadership and integrity. This act provides for the guiding values, principles and requirements that all public officials must abide by, while also making sure that they conduct themselves within the clearly defined constitutional limits<sup>42</sup>. This act also makes reference to the various provision of the constitution such as Article 10, Article 73 and Article 75.

#### 2.1.5) The Bribery Act (2016).

This is a specialised act of parliament designed to provide for the prevention, investigation and punishment of bribery. It provides for the penalties that those found guilty of the offence of bribery under section 18<sup>43</sup>, which is an imprisonment for a term not exceeding ten years or a fine not exceeding five million shillings or both. Moreover, it also places a duty upon state officers to report any instances of bribery to the EACC within a period of twenty-four hours<sup>44</sup>. This act also provides for the protection of whistle-blowers and witnesses under section 21 by the Witness Protection Agency<sup>45</sup>.

---

<sup>41</sup> Section 3, *Public Finance Act* (2012).

<sup>42</sup> Section 3, *Leadership and Integrity Act* (2012).

<sup>43</sup> Section 18, *Bribery Act* (2016).

<sup>44</sup> Section 14, *Bribery Act* (2016).

<sup>45</sup> Section 21, *Bribery Act* (2012).

### 2.1.6) Other Supporting Statutes.

The fight against corruption in Kenya is also supported by many other pieces of legislation that make up the legal frame work such as; the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) of 2009, the Penal Code, the Public Procurement and Disposals Act of 2015, the Access to Information Act of 2016 and the Public Commissions Act of 2017.

Furthermore, Kenya has ratified several conventions that are a part of its legal framework such as the United Nations Convention against Corruption, the International Code of Conduct for Public Officials and the African Union Convention on Preventing and Combating Corruption<sup>46</sup>.

All of these pieces of legislation comprise the legal framework for anti-corruption efforts in Kenya. This framework represents the commitment that Kenyans have in combating the vice that has held back the nation for decades and breathes life into the aspiration of creating a Kenya based on the ideals of democracy and the rule of law.

## **2.2) The Institutional Framework.**

This is mostly made up of several enforcement agencies. The institutions within this framework are the Ethics and Anti-Corruption Commission, the Office of the Director of Public Prosecutions (ODPP), the Directorate of Criminal Investigations (DCI), the Asset Recovery Agency (ARA) and the Judiciary.

### 2.2.1) The Ethics and Anti-Corruption Commission.

The Ethics and Anti-Corruption Commission was established in the year 2011 by the Ethics and Anti-Corruption Commission Act passed in the same year. This was to breathe life into Article 79 of the Constitution that required the National Assembly to enact legislation to establish an independent ethics and anti-corruption commission for the enforcement of leadership and integrity principles and standards set out in chapter seventeen of the constitution<sup>47</sup>. The commission consists of a chairperson and four other members. They are tasked with the detection and prevention of corruption<sup>48</sup>. They gather information on corruption related offences occurring in public offices

---

<sup>46</sup> < <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/kenya/>> on 27<sup>th</sup> September 2024.

<sup>47</sup> Article 79, *Constitution of Kenya* (2010).

<sup>48</sup> <<https://eacc.go.ke/en/default/about-us/>> on 27<sup>th</sup> September 2024.

and investigate them. The Commission works closely with other agencies such as the DCI, the Judiciary and the ODPP in its mandate of fighting and preventing corruption.

#### 2.2.2) The Office of the Director of Public Prosecutions.

This office is established by Article 157 of the Constitution<sup>49</sup>. It is the office charged with instituting and undertaking criminal proceedings against any person before any court except the Court Martial with respect of any alleged to have been committed. Prior to 2011, this office was a department in the Attorney General's office and tasked with criminal jurisdiction for the Republic on behalf of the Attorney General<sup>50</sup>. Every offence of a criminal nature, including corruption related offences fall under its mandate.

#### 2.2.3) The Directorate of Criminal Investigations.

This office is established by Section 28 of the National Police Service Act of 2011<sup>51</sup>. It is the primary office concerned with the investigation of crimes within the Republic, including corruption and economic crimes. They have numerous powers such as summoning suspects and witnesses to assist in their investigations.

#### 2.2.4) The Judiciary.

The Anti-Corruption and Economic Crimes Act gives the Chief Justice the power to appoint special magistrates to try corruption, bribery and economic crimes<sup>52</sup>. These special magistrates can only try matters falling under this act<sup>53</sup>.

The statutory order comprising of the EACC act and other similar statutes, coupled with enforcement and investigation agencies such as the ODPP and the EACC, all operating under the 2010 Constitution, serve to create a system in which corruption is prevented, investigated and punished.

---

<sup>49</sup> Article 157, *Constitution of Kenya* (2010).

<sup>50</sup> < <https://odpp.go.ke/who-we-are/>> on 27<sup>th</sup> September 2024.

<sup>51</sup> Section 28, *National Police Service Act* (2011).

<sup>52</sup> Section 3, *Anti-Corruption and Economic Crimes Act* (2003).

<sup>53</sup> Section 4, *Anti-Corruption and Economic Crimes Act* (2003).

## **CHAPTER THREE**

This chapter shall focus on evaluating the performance of the institutional and legal framework described in the previous chapter. In order to do so, we must first gain an understanding of the phenomenon it was tasked with dealing with. It is by doing this that we are able to pin point why and how the institutions that were built to respond to corruption in Kenya have failed. And it is from that that we will be able to chart a path for the fight against corruption.

### **3.1) Understanding corruption in Kenya.**

A good starting point in understanding the origins of corruption in Kenya is by revisiting Alexia Van Rij's article "Corruption in Kenya: Understanding a Multifaceted Phenomenon", that was touched upon in the literature review. She pin-points the origin of corruption in the colonial legacy of the British occupation, where 'material incentives' were used by the colonial authorities to obtain the cooperation of African leaders<sup>54</sup>. According to her this system mutated into the neo-patrimonial system that has defined Kenya's political landscape for the past six decades. This was the system where power was used by a patron (usually the president of the day) to ensure political support from his clients (usually government officers and elected officials from their ethnic background) usually through rewards and at the expense of the public interest. At the centre of this system was land, which was often used as a bargaining chip in the realm of politics.

Van Rij goes further and states that this political system's foundations were laid down by Kenya's first two administrations<sup>55</sup>. She says that both administrations engaged in high level corruption that put the needs of the ruling elites above those of the public.

Furthermore, she makes the claim that corruption has become even more complex in the modern day, especially with the introduction of devolution that came with the 2010 Constitution<sup>56</sup>. She supports her claim by stating that devolution led to increased opportunities for corruption to occur.

---

<sup>54</sup> Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon', 10.

<sup>55</sup> Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon', 11.

<sup>56</sup> Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon', 13.

This is true as corruption at the county level seems to get worse, with instances like the Finland Scholarships scandal in Uasin Gishu county, where funds to the tune of one billion shillings meant for a scholarship fund for students seeking higher education in Finland disappeared under the authority of the then Governor<sup>57</sup>. It is through devolution that the neo-patrimonial virus spread from the national government, all the way to the county level, giving corruption forty-seven faces. Furthermore, Van Rij also makes reference to the public complicity in this vice. The system of neo-patrimonialism also gave corruption an ethnic dimension. This came from the historical injustices that arose from land politics in the Jomo Kenyatta and Moi administrations<sup>58</sup>. The general public seems to have adopted a complacent attitude towards corruption, many of whom term it as an inevitability. Moreover, the general public has seen that inroads to power through their kin was a road to riches for the community. It is perhaps embodied best in the figure of speech “it is our turn to eat” which comes up during every election cycle. This is the logic that informs voting patterns and also leads to tribal tensions in the nation. According to Van Rij, this logic leads to the public tolerating the misconduct of the political class as long as they are their kinsmen and derive some sort of benefit from it<sup>59</sup>. In her conclusion, she states that even though the public may occasionally protest against the politico-administrative corruption, the political class will buy their goodwill for re-election by playing upon their tribal sensibilities<sup>60</sup>.

Corruption in Kenya can also be understood as being related to a status quo in which the institutions that form the basis for the rule of law and good governance have been undermined to the point that they are ineffective, as put forward by Kempe Ronald Hope, Sr<sup>61</sup>. He offers the perspective that Kenya’s institutions outside the executive have been deliberately undermined in order to create a highly centralised presidency, one that was at its height during the Moi

---

<sup>57</sup> Nyambura M, ‘Finland scholarship scandal: Victims tell court how they were duped into paying millions’ Citizen Digital, September 25 2024 -<<https://citizen.digital/news/finland-scholarship-scandal-victims-tell-court-how-they-were-duped-into-paying-millions-n350205>> on 20 October 2024.

<sup>58</sup> Van Rij A, ‘Corruption in Kenya, Understanding a Multifaceted Phenomenon’, 17.

<sup>59</sup> Van Rij A, ‘Corruption in Kenya, Understanding a Multifaceted Phenomenon’, 17.

<sup>60</sup> Van Rij A, ‘Corruption in Kenya, Understanding a Multifaceted Phenomenon’, 28.

<sup>61</sup> Sr. Ronald Hope K ' Kenya's Corruption problem; Causes and Consequences’, 494.

administration. This centralised presidency resulted in the unfettered and unchallenged exercise of power that emphasized the state over the public, resulting in a 'predatory' form of neo-patrimonialism with its tentacles around the economic and political arenas. Weak institutions have long been cited as one of the Kenyan government's biggest failures. "The Political Economy of Kenya's Crisis" by Susanne Mueller is one of the most cited pieces of literature with regards to this. In this paper, she uses political economy analysis to discuss the factors that led to the violence that was witnessed across Kenya after the highly contested general election of 2007. She identified one of these factors as deliberately weak institutions<sup>62</sup>. She makes reference to a paper by Douglass North, who argues that governments operate according to 'rules of the game' that determine its functioning<sup>63</sup>. He defines formal rules as those laid down in statutory laws and constitutions and informal rules as those unwritten norms that are regulated by material incentives. In formal rules therefore, could be thought of as the unspoken conventions within an organisational space, often with a transactional dimension. Informal rules are argued to uphold the needs of those they are in service of. Susanne the argues that the formal rules in Kenya's system have gradually evolved to establish a powerful executive branch. Furthermore, the informal rules have been used to undermine by undermining the independence of other branches such as the judiciary in order to consolidate the executive's power<sup>64</sup>. As previously mentioned, this personalized/highly centralized presidency was at its peak during the Moi presidency. This resulted in high levels of corruption that thrived within the administration<sup>65</sup>. Billions were looted as the rule of law was abandoned, along with the undermining of institutions like parliament, it being describe as a hostage of the executive. This, coupled with divisive ethnic politics and other factors such as the ethnically-driven winner takes all view of politics that led to the violence witnessed after the 2007 elections. To conclude this section, corruption is a phenomenon dating as far back as the colonial administration. This was characterised by the practice of offering African leaders material incentives such as land in order to buy their cooperation. This practice found its way into the independent Kenyan republic in a system of neo-patrimony that prioritized the needs of the

---

<sup>62</sup> Mueller S, 'The Political Economy of Kenya's Crisis' 2 *Journal of East African Studies* 2, 2008, 194.

<sup>63</sup> North D, 'Economic Performance Through Time' 84 *The American Economic Review* 3, 1994, 360.

<sup>64</sup> Mueller S, 'The Political Economy of Kenya's Crisis', 195.

<sup>65</sup> Mueller S, 'The Political Economy of Kenya's Crisis', 197.

political elite above others. Political office was used to enrich oneself, often through embezzlement or the grabbing and redistribution of land to one's ethnic kinsmen, in order to buy political support. Political offices and government contracts were in themselves offered as rewards in the goal of furthering one's influence in politics. Devolution came and transported this system to the county level, further compounding the complexity of this issue. The system is then excused by the general public as either a way of life or even actively participating in it. They remain complicit as long as they gain some benefit from it. The political elite are aware of this and use this to their advantage by appealing to tribal sensibilities during elections. The political elite remain in power and the cycle continues. Furthermore, the nature of politics and governance, stained by informal conventions and sustained by the undermining of institutions has led to the persistent presence of corruption in governments in successive administrations since independence and even a change in constitutions.

### **3.2) The Legal and Institutional Framework: Is it sufficient enough to deal with this system?**

Now that we have understood how corruption began and how it is allowed to thrive, we can now discuss whether the legal and institutional framework is indeed sufficient enough to deal with such a complex issue. The first point of examination in this discussion would be the constitution itself.

#### **3.2.1) The Constitution and Corruption.**

As the supreme law of the land, this would be the most logical starting point. As previously mentioned, the 2010 Constitution was meant to transform Kenya's legal landscape in order to occasion widespread change for the better and for the benefit of the people. As a transformative constitution, it made a promise of a new Kenya, one different from what people had been used to up until 2010. It contained a wider bill of rights that incorporated socio-economic rights, provisions for the principles and values of leadership and directed the legislature to pass legislation on the same. Furthermore, it empowered the Judiciary to be independent of the other branches of government in order to hold public officials accountable through its powers of constitutional interpretation.

The question that now remains is whether the 2010 Constitution did indeed keep its promise for a new Kenya. Although the National Assembly passed legislation such as the Leadership and

Integrity Act, the Public Finance Management Act and the Public Procurement and Disposals Act, it seems that the governments of the day only did so as a matter of formality and not out their duty to the people. Furthermore, in the years since the promulgation of the 2010 Constitution, the instances of corruption at the highest level of government have continued to persist. A large proportion of the public perceives the corruption level to high in Kenya<sup>66</sup> with the number standing at 57.3% according to the National Ethics and Corruption Survey of 2023. This number will undoubtedly rise in 2024 as the country was recently caught in the throes of deadly anti-government demonstrations in which demonstrators decried the high levels of corruption in the country. Instances like the previously mentioned Finland scholarships scandal and more recently, the Adani affair in which the government is alleged to have entered into deals with an Indian multinational, allowing them to take over the Jomo Kenyatta International Airport and the Kenya Electricity Transmission Company<sup>67</sup>, the circumstances of which are unclear and only came to light due to the actions of a whistle-blower. It is clear that the promise has been broken, and it has drawn the citizen's ire.

### 3.2.2) Politics and its Interference in the Fight Against Corruption.

Despite all the advancements made in the fight against corruption, neo-patrimonial politics continues to present a challenge. The Kenya Human Rights Commission and Transparency Kenya recently raised concerns about the Office of the Director of Public Prosecutions dropping cases involving influential political figures<sup>68</sup>. This was in response to an instance where the ODPP attempted to withdraw charges against three high ranking public officials from the Geothermal Development Company. The ODPP butted heads with the EACC, which opposed the move, stating that this would allow the legal system to be abused. KHRC and Transparency Kenya stated that this was proof of the lack of harmony between the EACC and the ODPP in the prosecution of corruption cases. This example calls into question the independence of the ODPP, as it has

---

<sup>66</sup> Ethics and Anti-Corruption Commission, *National Ethics and Corruption Survey*, 15 December 2023, 51.

<sup>67</sup> Nyarangi E, 'Adani and his Kenyan deals uncovered' *The Standard*, 21 September 2024 -< <https://www.standardmedia.co.ke/national/article/2001502567/adani-and-his-kenyan-deals-uncovered>> on 19 October 2024.

<sup>68</sup> Kinyanjui M, 'Transparency International, KHRC raise alarm over withdrawal of graft cases' *The Star*, 25 February 2024 -< <https://www.the-star.co.ke/news/2024-02-25-transparency-international-khrc-raise-alarm-over-withdrawal-of-graft-cases>> on 19 October 2024.

exhibited a pattern of dropping corruption cases against high profile individuals with deep political ties, often citing the lack of evidence, in what can only be termed as wilful incompetence.

Political interference is also seen in legislation. An example of this would The Anti-Corruption and Economic Crimes Amendment Bill of 2023. This amendment bill<sup>69</sup> seeks to repeal Section 64<sup>70</sup> of the Anti-Corruption and Economic Crimes Act that disqualifies persons accused of offences under the act from election or appointment as a public official for ten years. This is a brazen attempt at helping accused persons evade accountability. It is an example of the neo-patrimonial machine working to protect its clients. Politico-Administrative corruption would continue to thrive as parties would be afforded the opportunity to abuse the powers of their offices for their own interests. The amendment bill is an example of the system seeking to defend itself and preserve its existence.

### **3.3) Conclusion.**

The neo-patrimonial machine has proven a difficult opponent to slay for the current legal and institutional framework. Political interference, weak institutions such as the ODPP and the blatant disregard for the Constitution, resulting in the broken promise of a transformed Kenya, have all served to cripple the framework in its anti-corruption objectives

---

<sup>69</sup> The Anti-Corruption and Economic Crimes Amendment Bill, 2023.

<sup>70</sup> Section 64, *Anti-Corruption and Economic Crimes Act* (No.3 of 2003).

## **CHAPTER FOUR.**

The discussion in this chapter shall be centred around finding solutions to the problem elaborated upon in the previous chapter. This chapter shall be making use of case studies from similar jurisdictions in order to gain lesson on how to deal with corruption.

### **4.1) Hong-Kong: Lessons to be Learnt.**

Up until forty years ago, the semi-autonomous region of Hong Kong was perceived as one of the most corrupt jurisdictions on the globe<sup>71</sup>. However, they managed to successfully combat corruption, setting an example that all countries can follow. According to Transparency International, the territory of Hong Kong has a Corruption Perceptions Index of 75 /100, placing it at the 14th position out of 180 countries in the index<sup>72</sup>, making it among the most corruption free jurisdictions.

Their success can be attributed to actions taken in three areas; in education, enforcement and institutional design.

#### 4.1.1) Enforcement.

Hong Kong responded to the rising threat of corruption by founding the Independent Commission Against Corruption, which would be an agency independent of the police force and civils service and only answerable to the governor<sup>73</sup>. One of the top priorities for this department in the mid 1970's was the enforcement of the law with regards to corruption<sup>74</sup>. Hong Kong's citizens had lost faith in the authorities, and so an early success in enforcement was key to maintaining anti-corruption momentum as it was required to change the public's pre-conception that widespread corruption was a fact of life.

The ICAC's enforcement activities were with regards to three laws, the Corrupt and Illegal Practices Ordinance of 1955, the Prevention of Bribery Ordinance of 1971 and the Independent Commission Against Corruption Ordinance of 1974. The ICAC has special powers of investigation such as examining bank accounts and questioning people under oath. In many ways,

---

<sup>71</sup> Laje D, 'What China can learn from Hong Kong in its fight against corruption' CNN, 15 October 2013 -< <https://edition.cnn.com/2013/10/15/world/asia/china-hong-kong-corruption/index.html>> on 15 November 2024.

<sup>72</sup> < <https://www.transparency.org/en/cpi/2023/index/hkg>> on 15 November 2024.

<sup>73</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 4 *China Review* 2, 2004, 83.

<sup>74</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 84.

the ICAC was similar to our very own EACC. With regards to enforcement, the ICAC had one of their greatest successes in taking down a corrupt police syndicate in 1975<sup>75</sup>. The ICAC, through their investigative powers, were able to find weak links within this chain and offered reduced sentences in exchange for valuable trial evidence against larger players within the entire scheme. By 1977, the ICAC commissioner happily reported that the corruption syndicate within the police force had been dismantled.

#### 4.1.2) Education.

Hong Kong also had great success in its education programs against corruption. Education was seen as a means by the ICAC to enlist and foster support from the public<sup>76</sup>. This campaign involved four responsibilities. The first one was focused on publicizing the ICAC and its reliability. This was needed to garner goodwill from the community that they were trying to serve. Furthermore, public trust had to be earned in order to restore faith in government institutions. The second responsibility was educating ordinary citizens about the legal notion of corruption. This was meant to empower the public with the tools that they needed to prevent, recognise and report corruption should they see it. The third responsibility was mobilizing the community and public officials to report corruption. This one was highly dependent on the success of the previous two. The ICAC was highly dependent on reports from citizens, especially in its early years. But perhaps the most important aspect of anti-corruption education in Hong Kong was the internalization of social costs and the social disapproval of corrupt activities<sup>77</sup>. This responsibility involved moral education within the territory in order to change societal views and values regarding corruption. The ICAC developed a programme, working together with schools and curriculum developers in order to embed anti-corruption messaging in education.

#### 4.1.3) Institutional Design.

Another triumph that Hong Kong had in its fight against corruption was in the field of institutional design<sup>78</sup>. Hong Kong's institutions had numerous institutional design flaws that afforded

---

<sup>75</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 85.

<sup>76</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 86.

<sup>77</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 87.

<sup>78</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 87

perpetrators opportunities for corruption. Furthermore, the working environment within many government spaces encouraged the morally compromised to engage in corrupt practices.

It was as a result of this situation that the ICAC developed a system to counteract these occurrences<sup>79</sup>. The ICAC would conduct studies of design flaws within an organization and prepare reports detailing the flaws within an organisation that opened up opportunities for corruption. They would recommend remedies and discuss them with the organization that was under study. When an agreement was reached, the organisation would implement the recommendations of the ICAC and analysts would periodically monitor implementation and progress. Furthermore, these analysts would ensure that the changes being made were working as intended and did not generate fresh opportunities for corruption. This exercise was far reaching and robust in nature, as one thousand such studies were done by 1985<sup>80</sup>.

These actions did not cease there. Analysts from the ICAC would also offer corruption prevention training in government departments<sup>81</sup>. They did so at all levels of management, teaching higher levels supervisory accountability and teaching the junior levels to recognize corruption and the actions they should take when faced with it. The ICAC also conducted consultation with regards to corruption prevention. This consultation was done during the formulation of policy or legislation, with the ICAC's analysts giving insights grounded in anti-corruption objectives, especially with regards to enforcement. These analysts work to aid in the design of procedure, policy and legislation to pre-empt the creation of avenues for corruption, all resulting in the intended outcome of transforming institutions by inoculating them from the virus of corruption.

#### **4.2) Lessons from Rwanda's Anti-Corruption Efforts.**

In this section we shall be discussing how Rwanda has been fighting corruption and the various lessons that can be learnt for our own fight here in Kenya. Rwanda has had numerous successes especially in dealing with administrative corruption. Their victories are even more impressive given the cards they had been dealt after the civil war that ended up in genocide left the state in ruins. Now they are ranked 49<sup>th</sup> in the world out of 180 states by Transparency Global<sup>82</sup>.

---

<sup>79</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 87.

<sup>80</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 88.

<sup>81</sup> Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 88.

<sup>82</sup> < <https://www.transparency.org/en/cpi/2023/index/rwa> > on 19 November 2024.

Anti-Corruption reform in Rwanda was dependent on two pillars, the foundation of which was the transformation of societal norms regarding corruption and the expectations of public officials<sup>83</sup>. It is from this foundation that the two pillars supporting this fight came from: preventions and sanctions.

#### 4.2.1) Transforming social norms about Corruption.

In a similar fashion to Hong Kong, the Rwandan authorities embarked on a campaign to make corruption socially and officially unacceptable<sup>84</sup>. In this they tried to create a relationship of trust between the citizens and the state.

The first thing that Rwanda did was signal its zero-tolerance policy towards corruption. This showed the people that they were ready and committed to fighting corruption within the government. This was in the form of anti-corruption pushes at key moments. First, they created fresh institutions such as the Office of the Ombudsman, the Office of the Auditor General and the National Tender Board. These fresh institutions hit the ground running by firing ministers suspected of corruption and indicting members of parliament. Moreover, they also publicized high profile arrests in order to send a strong message to all.

The government also had to shift citizen's expectations of the state. This was achieved by organizing civic education initiatives for civil societies. Moreover, a 'naming and shaming' policy was adopted by the government in order to ensure the community is aware of the corrupt deeds committed by those found guilty. Information published was published on the Ombudsman web page and in newspapers, detailing the individuals name, profession and residential address.

#### 4.2.2) Pillar 1: Prevention.

According to the World Bank, prevention efforts in Rwanda took a three-pronged approach<sup>85</sup>. It consisted of pursuing reform in the market, strengthening state institutions against corruption and educating the general public on issues regarding corruption

Pursuing market reforms involved the privatisation of the state's ventures in the financial sector. This would limit the state's presence in the greater economy and create an environment in which

---

<sup>83</sup> World Bank, *Rwanda's Anti-Corruption Experience*, June 2020, 13.

<sup>84</sup> World Bank, *Rwanda's Anti-Corruption Experience*, June 2020, 14.

<sup>85</sup> World Bank, *Rwanda's Anti-Corruption Experience*, June 2020, 19.

the private sector could invest. Furthermore, the government embarked on a campaign to fortify the foundation of Rwanda's market economy and better the conditions for engaging in business. For example, one of the actions taken with regards to this was the liberalizing of the rules of trade and exchange that reduced the material incentive for engaging in corrupt activities.

Procedures were also put in place to detect and counteract institutional weaknesses in the state and capacity building efforts toward rectifying them. This task fell towards the Ombudsman, which was created to fight injustice that arose from a deeply corrupt state. This office mostly carries out the function of analysing and reducing corruption costs in the government.

The Rwandan government also carried out campaigns to sensitize people about the issues of corruption. Institutions such as the Ombudsman deliver targeted messages to various demographics such as students, via anti-corruption clubs in their schools.

#### 4.2.3) Pillar 2: Sanctions.

This pillar concerns the sanctioning of individuals found engaging in corrupt activities<sup>86</sup>. This involves developments in the detection of corruption and the investigation and sanctioning that arises from it. Rwanda has created a robust detection network comprising of the RIB (Rwandan Investigation Bureau) and the Ombudsman. This vast network is also supported by official's asset declaration, which is a constitutional duty for all public officials. Since a majority of reports come from everyday citizens and whistle blowers, a comprehensive system to protect them from reprisals was also developed. Investigation and sentencing were also improved. Investigative bodies such as the Ombudsman were give sole responsibility in choosing the cases they pursued. This was to ensure their independence was safeguarded.

#### **4.3) Relevance and Application in Kenya.**

The initiatives that Hong Kong and Rwanda implemented in their own fights against corruption offer valuable lessons and insights that can be of help here in Kenya. This section aims to discuss the relevance and application of the lessons learnt from the case studies done in the previous section.

---

<sup>86</sup> World Bank, *Rwanda's Anti-Corruption Experience*, June 2020, 25.

#### 4.3.1) Social Transformation.

Societal transformation should be the foundation of all anti-corruption activity. It all starts with the people. It would involve changing the societies notions, expectations and attitudes towards corruption. As previously mentioned, corruption in Kenya is often viewed with apathy, with Kenyans believing that it is an unavoidable part of our society. Some even excuse it when they can derive some benefit from it. They tolerate it in their leaders when they do it, especially if they are from the same ethnic group. It is these attitudes towards corruption that have stalled anti-corruption efforts in Kenya.

In following Hong Kong and Rwanda's example, education to enact social transformation can be a useful tool in the fight against corruption. Specifically, the moral education with regards to issues surrounding corruption is what will be most helpful. The general population can have the social costs of corruption internalized. Helping the society understand that corruption does not just result in the loss of public funds, but in much more far-reaching consequences that cascade into every part of life in this country. The negative externalities of corruption need to be made painfully clear to all Kenyans. Anti-corruption messaging needs to be everywhere in public life, whether it be in classrooms, places of worship and even public transport. This will make corruption socially unacceptable and even empower citizens to report corruption to the authorities.

#### 4.3.2) Institutional redesign.

Another lesson to be applied in Kenya from Rwanda and Hong Kong's anti-corruption efforts would be in the field of institutional design. Both of these jurisdictions carried out efforts to identify and plug any gaps in their institutions that would allow corruption to thrive. Hong Kong, in particular, does this at a much deeper level, as previously discussed. Such an effort would be timely in Kenya, with institutions that are beholden to informal rules and political interference. Furthermore, analysis could be done continuously to ensure that no new avenues for corruption are being inadvertently created. In a similar fashion to the Hong Kong instance, these analysts would also be consulted with regards to any policy making with the view of contemplating any consequences they might have with regards to corruption and coming up with measures to counteract any negative outcomes. This work could fall under the mandate of the EACC. These efforts would create a system in which corruption could be detected, cut off at the source and

prevented from happening, which would make Kenya's institutions more resilient against corruption.

## **CHAPTER FIVE.**

### **5.1) Conclusions Drawn.**

Despite numerous initiatives undertaken to end corruption in Kenya, it has persisted well into the modern age, surviving numerous administrations and even a change in constitutions. This is because of its nature as politico-administrative corruption, characterised by neo-patrimonialism and mixed in with tribal politics, as seen in the previous chapters. Furthermore, due to the tribal nature of Kenya's politics, a large majority of citizens tolerate it as long as they benefit from it. All this has kept in corruption in Kenya thriving since independence. This problem is further compounded by political interference that preys on institutions such as the ODPP.

### **5.2) A Way Forward.**

In June 2024, Kenya was rocked by anti-government protests decrying the now defunct Finance Bill of 2024. In these protests, young people also decried the high cost of living and government corruption. The government's crackdown on these protests were brutal, resulting in the deaths of many.

It is clear that the young people of Kenya want change, and this is a timely opportunity for the measures discussed in the previous chapter to be implemented. Just like in Hong Kong and Rwanda, victories need to be consolidated quick to build the trust between Kenyans and institutions such as the EACC and the ODPP. These victories also need to be publicized to signal a change. This trust has been broken for a long time, and doing so would rebuild it. Trust between the people and the institutions is key in this fight. Moreover, the independence of these institutions must be safeguarded to prevent the politicization of the fight against corruption. This can be done by conducting the institutional design seen in Hong Kong. This initiative would have to be continuously done in order to build institutional resilience. This has proven to be another challenge as appointments in these institutions fall under the executive. Furthermore, the anti-corruption framework has been used to go after political opponents and also has been used to settle scores, as seen in the recent impeachment proceedings at the legislature. If institutional independence is upheld and the people's trust won, these measures will prove effective against corruption.

### **5.3) Conclusion.**

Corruption in Kenya has been a long standing issue since independence, with its origins in colonial divide-and-rule tactics. It has since taken the form of neo-patrimonial, politico-administrative corruption, perpetrated by Kenya's political class in order to ensure the loyalty of others and keep the establishment in power. Furthermore, this kind of corruption is marked by ethnic politics, which creates a 'winner takes all' system of politics and governance. This kind of political game leads to the toleration of corruption by the people as they are able to derive benefit from it. This has led to the deep entrenchment of corruption in Kenya's institutions for six decades, operating virtually unchallenged and resulting in the theft of public funds, leading to other far reaching consequences such as poverty and ethnic strife.

Despite having a broad and comprehensive legal and institutional framework, political interference has allowed corruption to thrive. Kenya's institutions are beholden to informal rules and norms that gives corruption avenues to continue. It is by confronting the origins of corruption, understanding its functioning and accepting our roles in the problem that we can find solutions. In following the example of successful anti-corruption initiatives in jurisdictions such as Hong Kong and Rwanda, that Kenya can be able to deal with the problem. The first measure would be social transformation through education, followed by institutional redesign in order to enhance Kenya's institutional resilience against corruption. It will take some time and a lot of will on everyone involved, but it has to be done and it can be done. Patience will be of utmost importance.

## **Bibliography.**

### **Books.**

Unger R, *The Critical Legal Studies Movement*, Harvard University Press, Cambridge, 1986.

### **Journal Articles.**

Klare K, 'Legal Culture and Transformative Constitutionalism' 14 *South African Journal on Human Rights* 1, 1998.

Manion M, 'Lessons for Mainland China from Anti-corruption reform in Hong Kong' 4 *China Review* 2, 2004.

Mueller S, 'The Political Economy of Kenya's Crisis' 2 *Journal of East African Studies* 2, 2008.

North D, 'Economic Performance Through Time' 84 *The American Economic Review* 3, 1994.

Sr. Ronald Hope K 'Kenya's Corruption problem; Causes and Consequences' 52 *Commonwealth and Comparative Politics* 4, 2014.

### **Newspapers.**

Kinyanjui M, 'Transparency International, KHRC raise alarm over withdrawal of graft cases' *The Star*, 25 February 2024 -< <https://www.the-star.co.ke/news/2024-02-25-transparency-international-khrc-raise-alarm-over-withdrawal-of-graft-cases>>

Laje D, 'What China can learn from Hong Kong in its fight against corruption' *CNN*, 15 October 2013 -< <https://edition.cnn.com/2013/10/15/world/asia/china-hong-kong-corruption/index.html>>

Wasuna B, 'Kemsa in eye of a fresh storm in Sh3.7bn mosquito nets deal' *Daily Nation*, 10 May 2023-<<https://nation.africa/kenya/news/kemsa-in-eye-of-a-fresh-storm-in-sh3-7bn-mosquito-nets-deal-4229192>>.

Nyambura M, 'Finland scholarship scandal: Victims tell court how they were duped into paying millions' *Citizen Digital*, September 25 2024 -<<https://citizen.digital/news/finland-scholarship-scandal-victims-tell-court-how-they-were-duped-into-paying-millions-n350205>>

Nyarangi E, 'Adani and his Kenyan deals uncovered' The Standard, 21 September 2024 -<  
<https://www.standardmedia.co.ke/national/article/2001502567/adani-and-his-kenyan-deals-uncovered>>

Nation Team, 'Fishy money trail in Sh10bn Ruto fertiliser deal triggers probe' Daily Nation, 14 April 2023-<<https://nation.africa/kenya/news/fishy-money-trail-in-sh10bn-ruto-fertiliser-deal-triggers-probe-4198256>>.

Obuya B, Ondieki E, 'How Ruto's first Cabinet meeting birthed questionable edible oil deal' Daily Nation 19 June 2023-<<https://nation.africa/kenya/news/how-ruto-s-first-cabinet-meeting-birthed-questionable-edible-oil-deal-4274150>>

### **Online Sources.**

<<https://eacc.go.ke/en/default/about-us/>>

<<https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/kenya/>>

<<https://www.imf.org/en/Topics/governance-and-anti-corruption>>

< <https://odpp.go.ke/who-we-are/>>

<<https://www.reuters.com/article/us-kenya-corruption-idUSKCN0WC1H8/>>

< <https://www.transparency.org/en/cpi/2023/index/hkg>>

< <https://www.transparency.org/en/cpi/2023/index/rwa>>

<<https://www.unodc.org/e4j/en/anti-corruption/module-4/key-issues/theories-that-explain-corruption.html>>

### **Reports.**

World Bank, *Rwanda's Anti-Corruption Experience*, June 2020.

Ethics and Anti-Corruption Commission, *National Ethics and Corruption Survey*, 15 December 2023.

### **Self-Published Articles.**

Van Rij A, 'Corruption in Kenya, Understanding a Multifaceted Phenomenon' French Institute of International Relations, 2021.

Khalid H, Thompson T, 'Conflict Prevention in Kenya: Combating Corruption through Nonviolent Action' US Institute of Peace, 2019.