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Can Building Bridges Break the Cycles of Corruption and Political Violence in Kenya?

Kenya is one of the first countries to include in the mandate of a truth commission the task of investigating systematic and large-scale corruption committed by past governments and naming those who should be held accountable. In its report, the Kenya Truth, Justice and Reconciliation Commission (TJRC) concluded that “corruption is endemic in Kenya” and that “there is a direct link between corruption and gross violation of human rights.”¹ The TJRC found that corruption “has a disproportionate impact on vulnerable groups such as the poor, minorities and indigenous people, women, children, persons with disabilities, people living with HIV/AIDS, refugees and internally displaced persons, and prisoners.”² One-third of Kenya’s state budget, or about US\$6 billion, is lost to corruption annually.³ In turn, the inequality and poverty caused or exacerbated by the scale of corruption in Kenya drive political violence. “Individuals have been killed, tortured and subjected to other violations of human rights,” the TJRC reported, “because of their efforts to combat corruption.”⁴ Between 1997 and September 2013, Kenya has seen more than 3,500 recorded instances of political violence.⁵

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Impunity for large-scale corruption in Kenya has another consequence: It has distorted the values of Kenyans, particularly youth (individuals between the ages of 18 and 35), who compose 80 percent of the Kenyan population.⁶ In a 2016 survey conducted by the Aga Khan University in Kenya, 47 percent of the young Kenyans interviewed said they admired people who amassed wealth through theft of public resources, while another 35 percent said that they would readily give or take a bribe. Half of the respondents said they “would have no problem evading taxes or taking a bribe as long as they do not end up in jail.”⁷

1 TJRC Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume 4” (2013), p. 56. Website: http://knchr.org/Portals/o/Reports/TJRC_Volume_4.pdf.

2 Ibid.

3 Duncan Miriri, “Third of Kenyan Budget Lost to Corruption: Anti-graft Chief,” Reuters, March 10, 2016. Website: www.reuters.com/article/us-kenya-corruption/third-of-kenyan-budget-lost-to-corruption-anti-graft-chief-idUSKCN0WC1H8.

4 TJRC Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume 4” (2013), p. 56. Website: http://knchr.org/Portals/o/Reports/TJRC_Volume_4.pdf.

5 Brigitte Rohwerder, *Conflict Analysis of Kenya* (Birmingham, UK: GSDRC, University of Birmingham, 2015). p. 3. Website: www.gsdrc.org/wp-content/uploads/2015/12/KenyaConflictAnalysis.pdf.

6 Alex O. Awiti and Bruce Scott, the Aga Khan University, “The Kenya Youth Survey Report” (2016). p. 1. Website: www.aku.edu/eai/Documents/kenya-youth-survey-report-executive-summary-2016.pdf.

7 Ibid.

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In 2018, President Uhuru Kenyatta and former prime minister and political opposition leader (now a political ally) Raila Odinga jointly launched an initiative called the Building Bridges to a New Kenyan Nation Initiative, now commonly referred to as “the hand-shake.” According to the document drawn up by the two parties, the initiative is meant to draw “a path to dignity, prosperity and security.”⁸ The document highlighted nine issues that the initiative is to tackle to create a united nation for present and future Kenyans. One of those issues is corruption, which was described as “an existential threat to Kenya.”⁹

But while the government has taken steps to address corruption, including through the Building Bridges Initiative, these measures have been largely rhetorical and have done little to change the perception that corruption remains entrenched in Kenyan society. This paper therefore considers the extent of impunity for corruption in Kenya, how corruption fuels and facilitates political violence and land injustices, and how Kenya can learn from other countries' experiences to go beyond building bridges among the elite and meaningfully protect the rights of its citizens.

Impunity and Kenya's Elite

The Building Bridges Initiative (BBI) is not the first time that Kenya's political elite, whether one faction or several combined factions, has promised to curb corruption. These elite-led anti-corruption efforts have had one outcome in common: They left intact the system of patronage and ethnic identity pandering that kept leaders in power, ensured those leaders' impunity at the highest levels, and thus allowed them to engage in or benefit from rent-seeking activities (e.g., bribery and lobbying), plunder public resources including land, and protect ill-gotten assets. The Kenyan elite came to power and maintained the British colonialism legacies of corruption and repression. As explained by one Kenyan historian:

Colonialism had its own share in the country's inequality and poverty as it promoted rural-urban, regional and class differences in development. As a consequence, the contradictions that characterized colonial Kenya have been accentuated. These include contradictions in the social relations of production between the international and domestic bourgeoisie, between the peasants and the bourgeoisie, and between capital and labour. Like the colonial state, the post-colonial state has had to cope with these series of contradictions. The local bourgeoisie habitually resort to high-level corruption to accumulate wealth and power. They also invoke racial and ethnic sentiments to stay in power.¹⁰

Even former President Mwai Kibaki's government, which brought Kenya out of one-party authoritarian rule and was elected on a platform of zero tolerance for corruption, ended up saddled with large-scale corruption scandals. During the Kibaki era, levels of corruption skyrocketed; the Anglo-Leasing scandal,¹¹ in particular, plagued the country

⁸ “Building Bridges to a New Kenyan Nation,” March 9, 2018, p. 1. Website: www.president.go.ke/2018/03/09/building-bridges-to-a-new-kenyan-nation/.

⁹ *Ibid.*, p. 6.

¹⁰ Peter O. Ndege, “Colonialism and Its Legacies in Kenya,” lecture delivered during Fulbright-Hays Group Project-Abroad Program, July 5-August 6, 2009, Moi University, Eldoret, Kenya. Website: <https://africanphilanthropy.issuelab.org/resources/19699/19699.pdf>.

¹¹ The Anglo-Leasing scandal involved the awarding of over 20 government contracts at inflated costs during the Moi presidency. Several overseas companies, including Anglo Leasing Finance, were implicated. See “Kenyan Taxpayers Robbed of \$1 Billion in ‘Anglo-Leasing’ Scandal,” *The Great Rip Off*, <https://greatripoffmap.globalwitness.org/#!/case/51>.

even as the Goldenberg scandal,¹² which implicated the same elite who worked with Moi, Kibaki's authoritarian predecessor, remained unresolved. To quote the Commission of Inquiry's report on the Goldenberg scandal: "One can think of no other matter which has engaged the time of all organs of Government; the Executive, the Legislature and the Judiciary, as much as the Goldenberg affair. Nothing in the public perception has come to epitomize corruption as the Goldenberg affair. The evils of corruption and the devastating negative effects on the society are well known."¹³

The persistence of large-scale corruption, even after the initial transition from Moi to Kibaki, shows that a shift from authoritarian rule to democratic governance will not, by itself, make corruption and the political violence that it fuels less likely. In fact, one can argue that the opposite happened in Kenya: Now that its corrupt elite could freely challenge each other for political power, more serious political violence ensued.

Despite never-ending anti-corruption campaigns, new legislation, and a revamped anti-corruption commission, corruption persists in Kenya on a scale that is not much different from the past. The current regime has been bogged down by its own numerous corruption scandals.¹⁴ In January 2019, President Kenyatta and former Prime Minister Odinga jointly led a National Anti-Corruption Conference convened by the Multi-Sectoral Forum, an initiative against corruption. The conference sought to reflect and engage with Kenyans on how to tackle corruption. Attendees included national leaders, academics, clerics, and industry executives, as well as women's groups, media, youth groups, and professional bodies. The display of goodwill between both leaders on the issue has been lauded, and the increased funding given to anti-corruption investigations by the state has been recognized. But neither the words of the leaders nor the anti-corruption efforts, including the development of the BBI itself, has dampened the skepticism held by most Kenyans who see these efforts as political gimmicks that politicize the war on graft while fanning ethnic violence.¹⁵

This history of corruption, its roots, and its persistence due to a lack of any serious effort at accountability are why Michela Wrong, in a book that is both famous and controversial in Kenya, concluded, "In Kenya, corruption doesn't go away with reform, it just migrates ... [and] under all the layers, at the base of the giant mound, lies the same solid bedrock: Kenyans' dislocated notion of themselves. The various forms of graft cannot be separated from the people's vision of existence as a merciless contest, in which only ethnic preference offers hope of survival."¹⁶

12 The transactions in the Goldenberg scandal happened from 1990 through 1993 and implicated Moi in a scheme where precious metals from third world countries went through Kenya and were reexported by a company called Goldenberg, which then received subsidies from the state. See Jeevan Vasagar, "Former Kenyan Leader Should Face Corruption Inquiry, Says Report," *Guardian*, February 4, 2016. Website: www.theguardian.com/world/2016/feb/04/kenya.jeevanvasagar.

13 "Report of the Judicial Commission of Inquiry into the Goldenberg Affair" (October 2005), p. 308. Website: <http://kenyalaw.org/kl/fileadmin/CommissionReports/Report-of-the-Judicial-Commission-of-Inquiry-into-the-Goldenberg-Affair.pdf>.

14 Jacob Onyango, "15 Mega-Corruption Scandals in Kenya Which Have Never Been Resolved," *Tuko*, 2018. Website: www.tuko.co.ke/274539-15-mega-corruption-scandals-kenya-resolved.html#274539.

15 Macharia Gaithe, "Politicizing War on Corruption Akin to Fanning Ethnic Violence," *Daily Nation*, December 11, 2018. Website: www.nation.co.ke/oped/opinion/Politicising-war-on-graft-akin-to-fanning-ethnic-violence/440808-4889638-ldm7je/index.html.

16 Michela Wrong, *It's Our Turn to Eat: The Story of a Kenyan Whistle-Blower* (London: HarperCollins, 2009), pp. 41-42.

How Corruption Continues to Fuel Political Violence

Former TJRC commissioner Ronald Slye pointed out that “there is no question that grand corruption and large land grabs were linked to, and in some cases were direct causes of, gross violations of human rights in Kenya.”¹⁷ How does this cycle of corruption and human rights violations, including those committed during periods of political violence, continue? According to Kenya’s Electoral Commission, politicians often distribute cash as bribes not only in exchange for votes but also to transfer voters to areas where they can sway an election’s outcome.¹⁸ Illegal voter transfer remains a key concern because it has been used to remove challengers and to intimidate rival voters, especially those considered “outsiders,” thus intensifying ethnic divisions further and increasingly fanning election-related or political violence.

Political violence has increasingly become normalized during elections in Kenya. The phenomenon emerged with the return of multiparty politics in 1991, according to the Akiwumi Commission.¹⁹ In its recommendations, the commission called for the investigation and possible prosecution of top politicians and government officials for the role they played in fomenting tribal clashes in 1992 and 1997. The commission also found that young Kenyans in various parts of the country received military training to attack “outsiders.” The planning, financing, and coordination of these trainings were carried out by politicians who also used the police and the then-Provincial Administration apparatus to commit violence against their political opponents.

The eruption of large-scale and systematic post-election violence in 2007 and 2008 was thus neither unprecedented nor unforeseeable. It shows how theretofore sporadic election-related clashes could turn into more massive and lethal coordinated acts of political violence, no longer targeting just political partisans or factions, but citizens seen as belonging to a particular identity group.²⁰ While the general election in 2013 did not witness political violence, due to what is believed to have been deterrence created by the then-ongoing International Criminal Court (ICC) cases,²¹ the subsequent withdrawal of the relevant investigations by the ICC prosecutor and the failure to obtain accountability at the domestic level for what happened in 2007 and 2008 could explain why the 2017 general election led to a resurgence of violence.

For many Kenyans, devolution has become a way of addressing the marginalization and historical inequality in the distribution of state resources. In fact, the 2010 Constitution of Kenya required devolution as a means of redressing systemic marginalization and the

17 Ronald Slye, *The Kenyan TJRC: An Outsider’s View from the Inside* (Cambridge: Cambridge University Press, 2018), p. 65.

18 F. Daniel Hidalgo and Simeon Nichter, “[Voter-Buying: Shaping the Electorate through Clientelism](#),” *American Journal of Political Science* (version of record online August 6, 2015). Website: www.mit.edu/~dhidalgo/papers/Voter_Buying.pdf.

19 “Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya” (1999), p. 57.

20 Michael Kniss, “Walking Kenya Back from the Brink: A Micro-Level Study of Horizontal Inequity and Civil Conflict Prevention,” CISSM working paper (2010).

21 In March 2010, the prosecutor of the ICC opened an investigation involving crimes against humanity that took place during the 2007–2008 post-election violence in Kenya. Six Kenyans were subject to the investigation: now-president Uhuru Kenyatta, now–deputy president William Ruto Mohammed, Hussein Ali, Henry Kosgey, Francis Muthaura, and Joshua Sang. In 2011, charges were withdrawn involving Kenyatta and were not confirmed with respect to Muthaura and Ali, due to insufficient evidence. See the ICC’s fact sheet here: www.icc-cpi.int/kenya/kenyatta. With respect to Ruto and Sang (and Kosgey implicated with them), the ICC terminated the case in 2016 after the charges were vacated. See the ICC’s fact sheet here: www.icc-cpi.int/kenya/rutosang. For ICTJ’s view on what should happen with the termination of these cases, see Christopher Gitari, “After Collapse of ICC’s Ruto and Sang Case, Kenya Must Prioritize Reparations and National Prosecutions” (2016). Website: www.ictj.org/news/icc-ruto-sang-kenya-reparations-victims.

“winner takes all” political system in Kenya. But this step has also ended up creating more elective positions in the government and has thus increased possibilities for violent political competition. As pointed out by the National Cohesion and Integration Commission (NCIC),²² since devolution there has been a rise in “levels of political radicalization and re-emergence of organized criminal gangs wreaking havoc in different parts of the country before, during and after the electioneering period.”²³

Incumbents seeking reelection have in the past largely ignited political violence, while accelerating the theft of public money in the period before the election to finance the buying of voters and related reelection demands. Now, however, opposition groups are increasingly turning to violence in pursuit of ejecting the incumbent from power. Recruiting, training, and maintaining gangs requires copious amounts of money, which is largely unavailable for challengers except when they have access to, and loot, public resources.

The lack of employment for youth, whose population keeps growing, has been flagged as a factor that can undermine social cohesion and political stability.²⁴ The political elite are often inclined to mobilize jobless youth to whip up resentments and provoke violence. Borrowing from the African Union summit held in Addis Ababa, Ethiopia, in January 2009 that declared 2009 to 2018 the “African Youth Decade,” Kenya revived the National Youth Service (NYS) with empowerment programs meant to equip graduates with requisite skills to earn a livelihood.²⁵ Unfortunately, the funding for NYS projects—which should greatly contribute to harnessing the high energy, creativity, and talents of youth as a key to future prosperity—has itself ended up largely being siphoned through graft. What was meant as a solution to corruption and corruption-driven political violence might instead become a source of further corruption and political violence.

Perpetuating Land Injustices Through Corruption

Successive postcolonial governments neither dismantled the repressive state created by Kenya’s colonizers nor took decisive steps to resolve the inequalities that colonialism created, particularly the inequality in access to land among Kenyan ethnic communities and within society more generally. As stated in testimony during the TJRC’s hearing focused on the roots of economic marginalization in Kenya:

There was the structure of the colonial state itself and the mechanisms that it put in place to prefer certain groups over others. However, with the end of the colonial period, issues of inequality did not just go with colonialism. Unfortunately, the first government that came into power continued some of those policy choices in the post- independence era that not only enhanced it but, in many instances, even deepened the inequality.²⁶

22 The NCIC was created through the National Cohesion and Integration Act No. 12 of 2008. According to its website, “the establishment of NCIC recognized the need for a national institution to promote national identity and values, mitigate ethno-political competition and ethnically motivated violence, eliminate discrimination on ethnic, racial and religious basis and promote national reconciliation and healing.” Website: www.cohesion.or.ke/index.php/about-us/ncic-at-a-glance.

23 National Cohesion and Integration Commission Kenya, “NCIC Launches a Report on Organized Gangs” (March 2018). Website: www.cohesion.or.ke/index.php/media-center/latest-news/227-ncic-launches-a-report-on-organized-gangs.

24 “High unemployment, particularly youth unemployment, appears to increase the risk of violence”: World Bank, World Development Report 2011: Conflict, Security, and Development (Washington, DC: World Bank, 2011), Pg. 78 Website: http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf.

25 African Union Commission, “African Youth Decade, 2009–2018 Plan of Action: Accelerating Youth Empowerment for Sustainable Development” (May 2011).

26 TJRC Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume IIB” (2013), Pg. 20.

The forced displacement of indigenous communities during the colonial period rendered many of these communities landless and impoverished; this large-scale exclusion from and unequal distribution of land carried on after independence, with African elites in post-colonial Kenya replacing their white colonizers.²⁷ In its report, the TJRC noted the link between land-related injustices, on the one hand, and the cycles of election-related violence in Kenya, on the other.²⁸ It also reported that over 50 percent of the statements and memoranda they received from the public touched on land disputes. A decade before the TJRC, in 2004, the Ndung'u Land Commission was created as a "commission of inquiry into illegal/irregular allocation of public land."²⁹ According to the Ndung'u Commission, "more than 200,000 illegal or irregular title deeds were created and registered between 1963 and 2002."³⁰

Kenyans had high hopes and expectations that with independence, these land injustices would cease. Among other benefits, "...independence meant the return to lands from which they had been forcibly evicted and of which they had been dispossessed in order to pave the way for British settlers."³¹ Today, however, not only does a small population of Kenya's political and economic elite own most of the land in both rural and urban areas, but the continued corrupt land-grabbing by political leaders and senior government officials means the issue of land will continue to drive political violence.³² The creation of the National Land Commission in 2012 was a step in the right direction, but the political will and commitment to genuinely support the commission and provide the necessary resources for it to fulfill its mandate must be cultivated. Policy initiatives have more often than not skirted around the need to address the root causes of land-related grievances and disputes. Various pieces of legislation meant to implement provisions of the constitution have instead watered down the constitutional intent to address both historical and contemporary land injustices. The National Land Policy is yet to be enacted.

Corruption in Kenya is, of course, one direct way to acquire land unlawfully, whether by grabbing public or private land or by privatizing or otherwise acquiring government-owned land at little to no cost. As found by the TJRC, "individuals who are corrupt are capable of using their ill-gotten wealth and authority to steal even more public property such as playgrounds, schools, hospitals, government houses, court premises and land, thereby denying the public access to and use of public utilities."³³ What was said at the TJRC's thematic public hearing on land injustices remains true today: "For those without access to political power, politically driven exclusion from owning land has bred deep resentment, especially where the political patrons and administrators who control access to land are perceived to favor members of their own ethnic communities."³⁴

27 Matunda Nyanchama, "Kenya: Roots of Conflict and Hope for the Future," speech made March 6, 2008, at Brock University, Ontario, Canada. Dr. Nyanchama is a respected leader of Kenya's diaspora.

28 TJRC Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 2B" (2013), 341. Website: <https://digitalcommons.law.seattleu.edu/tjrc-core/>.

29 The commission's full report is available at http://kenyalaw.org/kl/fileadmin/CommissionReports/A_Report_of_the_Land_Commission_of_Inquiry_into_the_Illegal_or_Irregular_Allocation_of_Land_2004.pdf.

30 Zoe Flood, "Land Holds Key to Kenyan Rivalries," *Al-Jazeera*, March 4, 2013. Website: www.aljazeera.com/indepth/features/2013/03/201334132716223258.html.

31 TJRC Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 1" (2013), p. ix. Website: <https://digitalcommons.law.seattleu.edu/tjrc-core/>

32 Luke M. Obala and Michael Mattingly, "Ethnicity, Corruption and Violence in Urban Land Conflict in Kenya," *Urban Studies* 51:13 (2014): 2735-2751.

33 TJRC Kenya, "Report of the Truth, Justice and Reconciliation Commission, Volume 2B," p. 369.

34 Ibid.

Learning from Comparative Experiences

In Colombia and in the Philippines, transitional justice processes have examined economic and social marginalization as well as land-related injustices that have sustained decades of political violence and armed conflict. Unlike Kenya, however, Colombia enacted a Victims' Reparations and Land Restitution Law in 2011, which it has been implementing, despite the technical complexity and political uncertainties involved and even prior to the creation of its own truth commission.³⁵ In the Philippines, the Truth, Justice and Reconciliation Commission was created to examine the root causes of marginalization and human rights violations—including the taking of ancestral land and displacement of indigenous communities—in the long secessionist war waged by separatist groups in the southern part of the country. The commission's recommendations will now be taken up and implemented, among other ways, through a law creating an autonomous regional government and a separate framework to monitor transitional justice measures.³⁶

Similarly, countries such as the Philippines, post-Arab Spring Tunisia, and Guatemala have shown that transitional justice measures and hybrid investigative mechanisms can be used to pursue accountability for corruption, to recover assets that can be used for reparations, and to then use those assets to benefit victims and marginalized regions. While Kenya has carried out a truth-seeking process that addressed corruption, among other violations, its leaders, including those involved in the BBI, have only addressed corruption rhetorically or selectively, through what is perceived as prosecution of individuals who are not in favor of the current leadership. As these other countries have demonstrated, however, Kenya could consider creating a specialized and even internationally assisted investigative asset recovery and prosecutorial mechanism to deal with corruption. Kenya should tackle land-related injustices and marginalization beyond rhetoric by offering the marginalized and landless Kenyans real and sustainable access to livelihoods, land, and resources that fulfill their social and economic rights.

Going Beyond Building Bridges

The choice by Kenya's main political factions to confront corruption as a major issue through the BBI initiative, accompanied by the relatively vigorous efforts of Kenya's Directorate of Public Prosecutions and Criminal Investigation agencies to investigate and prosecute high-level officials for corruption,³⁷ should have significantly improved the public's perception of Kenya's commitment to curbing corruption. Every year, Transparency International issues a Corruption Perceptions Index (CPI) that ranks countries according to "their perceived levels of public sector corruption," based on perceptions among experts and businesspeople. The CPI uses a scale of 0 to 100, where 0 is "highly corrupt" and 100

35 See Cristián Correa, International Center for Transitional Justice, "From Principles to Practice Challenges of Implementing Reparations for Massive Violations in Colombia" (2015). Website: www.ictj.org/sites/default/files/ICTJ_Report_ColombiaReparationsChallenges_2015.pdf

36 Antonio L. Colina IV, "Bangsamoro Law Seen to Heal Political, Historical Wounds," *Mindanews*, November 19, 2018. Website: www.mindanews.com/top-stories/2018/11/bangsamoro-law-seen-to-heal-political-historical-wounds/.

37 Paul Ogemba, "DPP Seeks to Bank on Expunged Evidence in Kidero Graft Case," *The Standard*, September 24, 2019. Website: www.standardmedia.co.ke/article/2001343073/dpp-seeks-to-bank-on-expunged-evidence-in-kidero-graft-case; Faith Karanja, "EACC Found Huge Amounts of Cash in Nairobi Governor Evans Kidero's Account Suspicious," *The Standard*, March 16, 2016. Website: www.standardmedia.co.ke/article/2000195080/eacc-found-huge-amounts-of-cash-in-nairobi-governor-evans-kidero-s-account-suspicious; Macharia Githo, "Politicising War on Corruption Akin to Fanning Ethnic Violence," *Daily Nation*, December 11, 2018. Website: www.nation.co.ke/oped/opinion/Politicising-war-on-graft-akin-to-fanning-ethnic-violence/440808-4889638-ld-mzje/index.html; Gloria Aradi, "DPP: High Profile Graft Suspects Are Harassing Our Officers," *The Standard*, May 30, 2019. Website: www.standardmedia.co.ke/article/2001327741/.

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is “very clean,” with countries ranked according to the perception of being the “least” (1) to the “most” corrupt (180).³⁸ In 2018, the year of BBI’s launch, Kenya scored 27 out of 100, ranking 144th out of 180 countries and falling one step from the previous year.

What are the reasons for this continued and worsened perception among Kenyans, and will President Kenyatta and Rt. Hon. Odinga’s “handshake” have any impact on both corruption and the perception of its persistence? That the development of the BBI and the inclusion of corruption among its priorities are fairly recent steps is certainly one of the obvious explanations. But another explanation is the deep cynicism over what is perceived as yet another elite bargain that sidesteps the root causes of political violence in Kenya by outrightly failing to undertake concrete action to implement state-commissioned recommendations, such as those of the TJRC, calling for individuals and institutions to be held accountable for corruption, land injustices, and human rights violations. This does not mean that Kenyans cannot make the BBI project the basis on which to advocate for accountability for corruption and justice for victims of political violence. But in doing so, Kenyans must not be satisfied with official pronouncements and grand gestures meant to placate demands for justice. They can and should have learned from what has—or has not—happened with the government’s proposed Restorative Justice Fund (RJF): After President Kenyatta announced the creation of the KES 10 billion fund in 2015, no significant action has been undertaken to implement reparations measures as envisioned by the TJRC in its findings and recommendations.³⁹

Though President Kenyatta and Raila Odinga have continued condemning corruption, Kenyans have yet to see successful convictions against high-profile cases that would serve as a deterrent and curb impunity. This gives the impression that these people are protected. Judicial officers, investigators, and prosecutors must therefore play their role to ensure that those guilty of stealing funds are brought to book, and the monies that have been stolen are recovered. Furthermore, the practice of keeping registered companies a secret should be abandoned, as it has been abused to establish shell companies that are thereafter used to steal public funds and to secure overpriced public contracts that do not yield real public benefits, with the stolen money stashed without a trace in other countries.

While the focus on the war against corruption has been on public servants and private-sector leaders, it needs to be widened and deepened. Ordinary citizens suffer the most when funds meant for the development and provision of critical services like food production, housing, education, and health care are stolen due to corruption. Involving the public, and especially youth and women who feel the sting of corruption more sharply, would bolster the fight. The tenth edition of the Global Corruption Barometer-Africa reveals that while most people in Africa feel that corruption has increased in their country, a majority of people are also confident that they can make a difference in the fight against it—thus the need to involve them.

It is necessary, for example, to strengthen whistleblower protection and create more mechanisms that will encourage citizens to report corruption without fear of retribution. A worrying trend within the judiciary that should be condemned is to punish whistle-

³⁸ Transparency International, *Corruption Perceptions Index 2018*. Website: www.transparency.org/cpi2018.

³⁹ To their credit, the Kenya attorney general’s office has been drafting regulations to govern the RJF’s implementation. ICTJ has provided input in this drafting process. These drafts, however, have not been approved as of the writing of this paper.

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blowers who have been sued for defamation by powerful elites implicated in corruption.⁴⁰ In addition, the media and civil society should not be intimidated for calling out the government and holding it accountable for economic crimes and other excesses that only entrench impunity.

The political will to fight and curb corruption is needed to enforce existing legislation and support institutions that address land injustices, stolen assets, and political violence in the country. The government can genuinely address land-related injustices by implementing the recommendations of the 2013 TJRC report as well as the 2004 Ndung'u Land Commission report, among other reports of past commissions of inquiry. Given where Kenya now stands in the fight against corruption and preventing political violence, let alone in providing reparations for victims and redressing related grievances over land and marginalization, it is obvious that building bridges between Kenya's elites is not enough.

40 Jacob Ng'etich, "Ruling on Githongo Pushes the Bar on Whistleblowing," *The Standard*, May 21, 2019. Website: www.standardmedia.co.ke/article/2001326509/ruling-on-githongo-pushes-the-bar-on-whistleblowing.

