

The Challenges of Reducing Corruption in a Changing Environment: The Case of Kenya

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Background

- National Rainbow Coalition (NARC) comes to power on anti-corruption platform under Pres. Mwai Kibaki 2003, taking over from kleptocratic regime of Daniel arap Moi (1978-2002)
- Transition facilitated by tenuous last-minute political compromise between opposition parties' coalition and defectors from former ruling party KANU.
- Important role played by external pressure for anti-corruption reform (international community – IMF/WB aid freeze from '93)
- Anti-Corruption placed at top of GoK agenda from 2003



Costs of Corruption?

- May 2004 President reports 3 individuals possess KShs. 78 billion in illicit assets abroad
- December 2003 USD 1 billion discovered in accounts in UK
- Analysis of Controller and Auditor General's Reports for FY1995/1996 and FY 1996/1997: between 1990 – 1997 GoK lost total KShs. 475 billion (USD 60 billion) through corruption, laxity, unaccounted for imprests, etc. etc.
- Goldenberg scam reportedly cost Kenya at least USD 600 million or 10% of our GDP



Some Factors facilitating Corruption in Kenya

- Weak and unaccountable enforcement institutions
- Poor design of oversight and monitoring institutions
- Gaps in procurement integrity
- The need to service patronage networks in politics
- Lack of protection for whistleblowers
- Lack of freedom of access to information
- Weak political commitment to fight against corruption
- Excessive bureaucracy and over-regulation
- Stark disparities in income?
- Scarcity of services




The Seven Critical Pillars of the Government's Anti-Corruption Plan

- Leadership/Political Will
 - Dealing with the Past (Transitional Justice)
 - Institutional Reform
 - Legal Reforms
 - Private sector
 - Civil society
 - International community
- (Department of Governance and Ethics in partnership with Ministry of Justice and Constitutional Affairs)



I. Economic Recovery Strategy (ERS) for Wealth and Employment Creation, June 2003

- Framework which aims at implementing NARC electoral promises and accords priority to restoration of accountability and integrity in management of public resources and administration of justice
- Accelerating Public Sector Reforms: civil service, local authorities; public enterprises; financial planning and budget reform, justice sector reform
- Institutional reform (Ministry of Justice and Constitutional Affairs etc.)




II. Economic Recovery Strategy Reforms (contd.)

- New Legislation starting with key acts, Public Officer Ethics Act (POEA), Anti-Corruption and Economic Crimes Act (ACEC) to be followed by laws relating to accountability in public finance management
- Prosecution of corrupt public officials
- Establishment of task forces to review past abuses
- Continuation and completion of constitutional review process towards early establishment of new Constitution
- Creation of Office of Ombudsman
- Provisions relating to Security and Police Reform



III. Reforms instituted under ERS (contd.)

- Provisions relating to rule of Law and Judicial Reform
 - i. Committee of Inquiry in to Corruption in the Judiciary
 - ii. Judicial Service Commission gazettes Judicial Code of Conduct and Ethics under POEA (wealth declarations)
 - iii. New Chief Justice and senior personnel at office of Attorney General
 - iv. Strengthening of Law Review Commission with new commissioners
 - v. Modernisation of administration of registries, Recruitment of staff, facilitation of alternative dispute resolution mechanisms, facilitation of commercial dispute resolution
- Provisions relating to Prison Services Reform



Governance Justice Law and Order Sector Reform Programme (GJLOS)

- Within framework of Public Sector Reform (PSR), GJLOS seeks to increase resource allocation to the sector under Medium Term Expenditure Framework
- Builds on and aligns with new government's policy series of attempts to introduce reforms in legal sector reaching back to establishment of Law Reform Commission, 1982, and expands reform efforts initiated under MoJCA (strategic plan)
- Seeks to institute a Sector wide approach to problems of legal sector bringing together all key stakeholders in sector, implementing agencies, civil society, private sector, donors



Dealing with Past Abuses

- Goldenberg Commission – drawing to a close
- Task force on Truth Reconciliation and Justice submitted report on 15.10.03
- Task force on Harambees (Kenyan style public collections)–submitted report November 2003
- Task force on “Pending Bills”
- Commission of Inquiry into Illegal and Irregular Allocation of Land
- Assets recovery
- Restitution



Institutional Reform-Effective and Independent Governance Institutions

- Creation of Ministry of Justice and Constitutional Affairs (MoJCA) to lead anti-corruption fight (mandate: legal policy, policy on administration of justice, constitutional matters, law reform, anti-corruption strategies, integrity and ethics)
- Cabinet Committee on Corruption meets fortnightly
- KACC (Kenya Anti-Corruption Commission) anchored in ACEC- not yet fully operative, no substantive director
- Public Complaints Office (MoJCA/G&E) –precursor to Ombudsman expected under new Constitution
- PS for Governance and Ethics (G&E) created in Office of President (mandate to advise and assist President on development, implementation, monitoring and strengthening of policies and strategies in the fight against corruption)



Legal Framework of fight Against Corruption

- Public Officer Ethics Act 17.04.03 (assets and liabilities declarations, limits on gifts, Codes of Ethics, banning of conflict of interest)
- Anti-Corruption and Economic Crimes Act, 17.04.03 (broad definition of corruption, establishment of Kenya Anti-Corruption Commission)
- Legislation to regulate management of Public Finances and Procurement:
 - i. Public Procurement and Disposal of Assets Bill
 - ii. Privatisation Bill
 - iii. Public Finance Management Act, May 2004
 - iv. Public Audit Act



Legislative Reform -Challenges

- Pace of reform hostage to parliamentary calendar (2003 from Jan – Nov. 3 bills enacted POEA, ACEC and the Constituencies Development Fund Act 2003)
- Contentious and inconclusive constitutional reform process acted as block to progress of legislative reform
- Obstructionist tactics of opposition for various reasons (Opposition weak and underdeveloped; role of MP; law projects seen as “donor driven” e.g. Privatisation Bill, self-protection, lack of executive cultivation of parliamentary support etc.)



Judicial Reform

- Judicial reform identified as priority- judiciary key institution in fight against corruption
- Kenyan Judiciary notoriously corrupt, repressive and subservient to Executive (Kwach Report 1998, Advisory Panel of Eminent Commonwealth Judicial Experts Report, May 2002)
- “Radical surgery” of the Judiciary (Ringera Report, September 2003)
- Personnel purge 2003– 23 judges, 82 magistrates, 43 paralegal officers named, shamed and retired
- Shortcomings- unconstitutional involvement of politicians in the appointment of new judges, lack of transparency of criteria used to appoint new judges, concentration on personnel change rather than structural and institutional reform

Some Indicators of Government Performance

- CPI, October 2003 score unchanged (basis: 7 Surveys, 3 published 2003)
- TI-Kenya Opinion poll (September 2003): 80% of Kenyans agreed or completely agreed that GoK was committed to fight against corruption
- TI-Kenya's Bribery Index 2003, 2004- significant improvement in petty corruption
- US Millennium Challenge Account (Kenya fails- base years 2002-2003)
- President Kibaki African winner of the *Financial Times Business Magazine's* Personality of the year award 2004.

- The 2003 survey indicates a very significant decrease in bribery from 2002. The percentage of bribery encounters declined from 65 to 40 percent. A reduction in the average expenditure per bribe along with an increased average size of bribes suggests that there was a significant reduction in petty bribery along with a perception of increased likelihood of being punished if caught, hence officials required bigger inducements to take risks.

AGGREGATE INDEX 2003

Rank	Organization	2003			2002		
		National	Urban	Rural	National	Urban	Rural
1	Kenya Police	57.3	57.6	55.9	69.4	69.7	66.3
2	Department of Defence	37.7	35.2	41.8	46.7	37.8	47.3
3	State Corporations n.e.s	30.1	37.5	10.5	20.7	19.3	20.2
4	Immigration Dept	30.1	31.8	24.9	49.7	50.8	29.6
5	Kenya Revenue Authority	28.8	25.3	28.0	30.3	30.1	25.9
6	Provincial Administration	26.7	23.9	31.8	30.5	30.4	31.0
7	Nairobi City Council	26.2	27.8	16.6	33.8	35.7	29.9
8	Central Government, n.e.s	25.5	22.7	31.1	25.4	23.3	26.7
9	Ministry of Public Works	24.7	26.6	8.3	27.9	24.9	26.8
10	Ministry of Lands	24.5	21.2	31.4	30.3	31.9	28.9
11	Kisumu City Council	24.0	23.8	32.4	29.6	29.2	30.5
12	Judiciary	24.0	24.7	23.6	32.4	31.8	29.3
13	Mombasa City Council	22.6	23.6	18.1	29.2	27.7	34.3
14	Public Hospitals	21.9	24.1	17.3	33.0	31.1	35.8
15	Public Universities	21.6	21.9	16.6	27.8	9.7	24.4



Conclusions from KBI 2004

- Kenyans continue to have negative encounters with key state institutions despite significant reductions in bribery
- Despite significantly improved performance institutions charged with the implementation of law score high on KBI
- The likelihood of being denied services for refusing to bribe (impunity) remains unacceptably high
- Bribery has become more “expensive” with higher risks of enforcement
- Improvements in service delivery may be as important in reducing corruption as anti-corruption measures




Challenges to the fight against corruption

- Proliferation of uncoordinated anti-corruption institutions
- Civil Service Reform contested – downsizing (civil service wage bill 9% of GDP). Reforms can be blocked by bureaucratic inertia.
- Sustainability of reforms still questionable – concentration on punitive as opposed to preventive measures
- “Governance dividend” not apparent
- Changed nature of corruption under Kibaki regime (centralised to decentralised, revived networks, new networks)



Challenges II

- Revival of corrupt networks- corruption fights back and has the means to do so
- Reform champions in minority and novices in government
- Sustaining anti-corruption drive against close political allies – no “sacred cows”?
- Implementing multiple reforms in context of unstable political coalition ruled by ethnic allegiances
- Need for political reform losing urgency as political contest heats up pre- 2007
- Competition for scarce budgetary resources



How are we doing? The Kaufman Test

- Localize know-how and unbundle notions?
- Transparency mechanisms (e-governance, data)?
- Voice and democratic accountability?
- Judicial Independence, Property rights (rule of law)?
- Prevention Incentives (e.g. meritocracy, budget)?
- Political Reform , including Political Finance?
- Private Sector and MNCs: Corporate Responsibility?
- Compete to join world economic clubs?



ends

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