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Reducing risks of reporting corruption:

Lessons from an online complaints system in Kenya

Kenya's Anti-Corruption Commission has adapted an online tool to improve the quality and quantity of reports it receives about corruption, providing anonymous communication with the informants. While clearly an important channel for leads on grand corruption cases especially, the implementation experience illustrates how optimal use of technical solutions depends on a host of human, political, and institutional factors. These include leadership, capacity, and effective integration into an organisation's existing work flow.

Tipping the authorities about corruption in Kenya – as in many places – is a high-risk endeavour. People have been fired, harassed, driven from their homes and even murdered for daring to speak out about bribery and other abuses of power. At the same time, owing to corruption’s inherently covert nature, effective enforcement depends heavily on reports from the public. To overcome the challenge of information collection, the Kenya Anti-Corruption Commission (KACC) has installed an online tool¹ to improve the quality and quantity of reports it receives, which enables the KACC to communicate with informants anonymously.

Background

The KACC has a mandate to combat and prevent corruption through law enforcement, prevention, public education, and technical and policy advice. Since opening its doors in 2004, the KACC has encouraged public reporting of corruption through a range of channels: complaint boxes at the KACC and government ministries, telephone and fax lines, e-mail, in-person visits and regular post. Information received is assessed first by the Reports and Data Centre, which passes potential cases to investigators.

The traditional channels employed by KACC, and indeed most anti-corruption authorities, have certain constraints. First, if the informant wants to stay anonymous these channels do not permit follow-up by KACC staff. For example, if someone sends an unsigned letter or fax, the KACC employee has no opportunity to request additional information that may be needed to build up a case. It is also difficult and time-consuming to filter out irrelevant or malicious leads. In the case of the prominently-placed complaint boxes, anyone with real anonymity concerns will be reluctant to use them. At the KACC, complaint boxes are located in the

parking lot and just next to the reception: two of the most highly-trafficked areas in and around the building.

In addition, the lack of effective whistleblower protection in Kenya means that anyone using insecure channels to make a report to the KACC – particularly about grand corruption – takes substantial risks. Phones can be tapped, letters traced and movements monitored. The Witness Protection Act, passed in 2009, covers people who give evidence in a court of law, but not whistleblowers as such. Even if the term ‘witness’ is broadly interpreted; the implementation of this act is hampered by a lack of sanctions for those who retaliate.² A Whistleblower Protection Bill has so far languished in a political limbo.

The idea of an anonymous, web-based reporting mechanism was conceived to address the challenges outlined above: it would guarantee security of reporting, allow two-way communication between the informant and KACC to improve the quality of data received, and facilitate case management by allowing KACC to filter and sort information.

Description of the online reporting process

The decision to introduce an online reporting tool emerged from discussions between the KACC’s Assistant Director for Preventive Services and the Head of the GTZ Good Governance Support Project about enhancing the commission’s prevention and enforcement capacities. BKMS®, developed by the German company Business Keeper AG (BKAG) and adopted by several public agencies and companies,³ was identified as a fast and compara-

² Although the Anti-Corruption and Economic Crimes Act (ACECA) protects any person providing information to the KACC from any retaliatory action (Article 65), this provision also lacks teeth in the absence of a real threat of sanctions.

³ Among other institutions, BKMS® is used at the State Office of Criminal Investigation Lower Saxony (Lan-

¹ The Business Keeper Monitoring System (BKMS®)

tively easy solution to concerns regarding the quality and anonymity of reports received by KACC. BKMS® operates from a secure server in Germany and uses advanced encryption techniques to prevent third party access. In August 2006, BKAG representatives came to Kenya to customise the system together with KACC officers.

Officially launched in October 2006, the reporting system is accessed through the KACC website www.kacc.go.ke. Key information requested includes the kind of corruption offence committed, a description of that offence, the estimated monetary value, details of the people or organisation involved, and provision of supporting documents. Reports are filtered according to categories within KACC's mandate: bribery, fraud, embezzlement, land grabbing, procurement irregularities, tax evasion and other economic crimes. Those deemed relevant by staff of the Reports and Data Centre are passed on to investigators, who are charged with building the case. Investigators, in turn, send recommendations for criminal prosecution to the Attorney General's office. Unfortunately, no statistics are available regarding how many of the cases eventually recommended for prosecution originate from the online reporting system, compared with other sources.⁴

deskriminalamt Niedersachsen) and several private companies.

⁴ According to KACC's annual report 2009, 498 cases so far have been forward by the KACC to the office of the Attorney General for prosecution. These include 8 ministers, 3 sitting MPs, 11 former and current Permanent Secretaries, 65 CEOs, and 96 senior level management officers in public institutions. Still, the KACC is widely criticised for its inability to rein in the 'big fish', and the institution is frequently trading blame with the Attorney General's office over lack of progress in combating corruption (Transparency International – Kenya 2010: 2).

Types and number of cases received through the online reports system as of June 2009⁵

Abuse of office (93)
Breach of trust (3)
Bribery (266)
Conflict of interest (17)
Embezzlement/misappropriation of public funds (80)
Fraud (22)
Fraudulent acquisition and disposal of public property (42)
Other offences (civil, labour, criminal, administrative, etc.) (734)
Public procurement irregularities (71)
Tax evasion (60)
Unexplained wealth (16)
Total 1404

The web-based reporting system is primarily targeted at civil servants, as well as individuals in the private sector (and from the Kenyan diaspora) with information about high-level corruption. That is why the tool is initially only offered in English and no sustained public campaigns were undertaken. After its launch in October 2006, Public Relations Officers as well as the 'Integrity Assurance Officers' stationed in governmental agencies received BKMS® training. Most ministries put up posters advertising its existence, and two ministry websites link directly to the system.⁶ A BKMS® flyer was

⁵ Source: Business Keepers Monitoring System Evaluation Report, October 2009.

⁶ www.tourism.go.ke and www.publicworks.go.ke.

circulated through the two major newspapers to approximately 400,000 readers.

Legal and policy framework

The idea of developing an online reporting tool was conceived partly in response to the inadequate legal and practical protection for whistleblowers in Kenya. It is also aligned with current government policy related to governance reform and information technology. One of the stated objectives of the National Information and Communications Technology policy, for example, is to use e-government as a tool to improve internal efficiency and quality of public service delivery and to help in the fight against corruption. In real terms, this requires the government to increase computer access for civil servants – making it easier for them to use an online reporting tool. The Kenya Information and Communication Technology Act (2008) established that electronic records are admissible on an equal basis as paper documents as evidence in a court of law. Still, however, data received from online sources cannot be used on its own without an informant willing to witness.⁷

The existence of an anonymous whistleblower reporting channel is consistent with Kenya's obligations as a party to the UN Convention against Corruption (UNCAC). Article 8 of the UNCAC requires States Parties to consider “establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.” Article 33 addresses the need to protect any person “who reports in good faith and on reasonable grounds to the competent authorities any facts concerning (corruption) offences.”

⁷ It is important to note that the KACC has the power to apply for the production of the original documents that may have been attached by an informant through BKMS®. Therefore, it would be possible for a court to compel not the informant but the author of the original document to give evidence about the document (e-mail, Kenyan judicial expert, February 2010).

Impact and lessons learned

According to KACC, the average quality of online-generated reports is better than those from other channels.⁸ The commission's statistics show that 37.8% of online reports are classified as relevant by investigators – compared to 21% of reports received in-person.⁹ As of September 2009, a total of 1532 reports were received through the system, constituting about 10% of all reports received by KACC, and over 50% of all electronically received reports (including telephone, e-mail and fax). According to BKAG, two-thirds of informants using BKMS® take advantage of the anonymous postbox feature to communicate with KACC. What is not clear is the degree to which multiple communications occur between KACC staff and the whistleblower through the postbox. This information, which is technically possible to collect, would provide a better picture of how this feature is exploited for the benefit of KACC.

Reports from BKMS® not only provide important information needed to open an investigation, but they also serve an important preventive purpose for KACC. As bribery is the most common subject of tips, KACC can sometimes intercept the transaction as it occurs.¹⁰ In addition, information from online reports contributes to KACC's intelligence-led corruption investigations and its more general prevention activities.

However, there are many factors, both external to and internal to KACC, which limit optimal use of the tool.

Access

A primary challenge, of course, is the lack of reliable internet access throughout much of

⁸ Interview, Research and Data Centre, October 28, 2009.

⁹ Internal KACC report provided to author on October 28, 2009.

¹⁰ According to an e-mail from the KACC Reports and Data Centre dated 31 October 2009, bribery accounts for 18% of all crimes reported through BKMS®.

Kenya. Although there are currently an estimated 3 million internet users in Kenya, poor connections and slow servers plague even those sitting at their computers in Nairobi. Even now, despite Kenya's e-government policy and improving networks, staff at some agencies – including the Kenya Police and the Ministry of Lands – lack basic office equipment, including computers.¹¹ A Ministry of Lands employee, for example, would have to surreptitiously take a title deed that indicated corruption from the office, scan it, and e-mail it from another location to take advantage of the online reporting tool.

As noted above, increasing access by providing a link from other governmental ministry websites has proven problematic. Despite awareness-raising sessions for Public Relations Officers across the public sector, so far only two ministries, the Ministry of Tourism and the Ministry of Public Works, have connected their sites to KACC. The media and some members of KACC suspect that high-level officials in some of the ministries have sabotaged efforts to promote the system. In the absence of a clear political directive, there are no incentives for wary ministers to facilitate access, which they might perceive to threaten their control of information regarding any staff wrongdoing.

Weak culture of reporting

According to those interviewed, there is still a widespread discomfort attached to exposing corruption at the workplace. The legacy of the Official Secrets Act, which prohibits disclosure of information received in an official capacity, is that a culture of secrecy pervades the public sector in Kenya. The pending Freedom of Information Bill (2008) would legalise reports of wrongdoing as long as they are justified by the public interest.

¹¹ The Kenya Police and Ministry of Lands were ranked number 1 and 13, respectively, in the East African Bribery Index published by Transparency International (2009).

Institutional constraints

There are also structural issues within KACC that prevent the online reporting tool from being used to its full potential. The reporting department staff is the main interface with the whistleblower. Reports that are considered relevant and promising are forwarded to the investigators who officially open investigation. However, investigators themselves do not have access to the system. That is, those best-suited to assess evidence needs for a particular case cannot directly communicate with the whistleblower to clarify facts or request more information, but have to go back through the reporting department to contact the whistleblower. In addition, because there is no automated link to KACC's case management system, analysts from the Reports and Data Centre must manually re-enter information from BKMS® - a task they find cumbersome.¹²

According to the KACC, there are intellectual property concerns that preclude linking the two systems. BKAG, however, states that creating an interface is entirely possible, but that developing the necessary programme does have minor costs attached (a few thousand Euro). Other KACC constraints, according to former and current employees, include staff discomfort with new technology as well as high turnover. Not only are some employees unaccustomed to using the computer in their daily work, they also may be resistant to technical solutions that enable better assessments of staff productivity. Induction training for new officers on the online reporting system has tended to be ad hoc, meaning that many newer KACC colleagues have not been systematically briefed.

Legal restrictions on the use of anonymous data

Kenya's Evidence Act requires that documentation produced as evidence must be provided by a witness – otherwise, it is hearsay and thus

¹² In addition, anonymity risks were highlighted during an interview with BKAG, October 2009.

inadmissible.¹³ Although a significant percentage of people who use the anonymous postbox shed their anonymity during interactions with KACC, most of them are unwilling in the absence of protection to stand witness in a trial.¹⁴ Therefore, while information provided through online reports may have investigative value, it is typically not sufficient as evidence in court. That said, as noted above, the KACC can apply for the production in court of original documents attached to online reports. The court could, theoretically at least, compel the original author to testify.

Limited publicity

Despite the limited access many Kenyans have to the internet, an online reporting mechanism could have a larger impact on corruption if its existence was communicated more broadly to the public. This would encourage reports on moderate-sized corruption cases which happen every day, and whose cumulative effects on the Kenyan economy are critical. Of course, it is important to ensure that KACC has the capacity to follow-up such cases. If incoming reports are not investigated, potential whistleblowers will lose trust in the system.

How long BKMS® will be used as the KACC's web-based reporting channel remains unclear. Concerns have been expressed within KACC regarding the system's Euro 2200 plus VAT per month cost and compatibility with the case management system. The KACC is likely to explore local sourcing for a similar system. However, given Kenya's recent history of gross cor-

ruption scandals, and the extreme measures taken to suppress them, it is questionable whether the Kenyan public can be convinced that a locally-based server is completely secure from government interference

Conclusion

The KACC's experience with an online reports system illustrates how information technology can improve the quality of anti-corruption efforts as well as compensate, at least in part, for the gaps in laws and policy that hinder enforcement.

However, the legal, cultural, economic and institutional factors that impact the effectiveness of online reporting should not be underestimated. As with any IT intervention, the usefulness of the system depends on access, interest, and buy-in from all relevant actors: the staff on the receiving end of reports as well as potential informants. Lobbying may be required to seal legislative loopholes that constrain use of electronic evidence. Finally, as the reluctance of other departments to link with the KACC's online reports system illustrates, political interests can undermine even modest interventions to increase public sector integrity.

¹³ Section 65 of the Evidence Act allows admittance of microfilms, fax copies and computer print outs for use in trial. However, the general principle 'he who alleges must prove (a document's authenticity)', applies to electronic as well as other forms of electronic evidence. See National Council for Law Reporting 2009. The Evidence Act. Available at [http://www.kenyalawreports.or.ke/Downloads/GreyBook/Evidence Act \(cap 80\).pdf](http://www.kenyalawreports.or.ke/Downloads/GreyBook/Evidence Act (cap 80).pdf) [accessed on 4 March 2010].

¹⁴ It is difficult to collect accurate data about the percentage of users who open anonymous mailboxes. The Research and Data Centre says 21% of the users do so, while BKAG puts the number at 67% (E-mails from KACC and BKAG, respectively, on file with the authors).

Introducing the KPK Online Monitoring System in Indonesia

BKMS[®] has also been adapted by Indonesia's anti-corruption body as the 'KPK Online Monitoring System' in response to information challenges similar to those faced by its Kenyan counterpart. As in Kenya, there was perceived need – in the absence of effective witness protection – for a channel for making complaints anonymously in order to obtain quality reports from civil servants, business people and the public. Following visits to the KACC and to the BKAG server in Germany, KPK officials decided to adopt the same system, with some changes. The interface is provided in both Bahasa Indonesian as well as English, and it includes all categories of corruption covered by national law. Furthermore, it provides opportunities to report positive actions taken by public officials – for example refusal of a bribe.

The system was installed in July 2009 and launched by KPK, GTZ and Transparency International-Indonesia (TI) in August. The system is already accessible through TI's website, and efforts are underway to connect with other ministry sites including the Ministry of Administrative Reform. According to observers in the process, the biggest challenge so far has been securing support from the police, who are responsible for investigating cases considered too minor to fall under KPK's restricted mandate. A planned link to the police department's homepage was dropped due to strained relations between the two agencies. It is hoped that the complaints system will help KPK monitor police response to cases it forwards – for the moment, of course, the main challenge will be to process the potentially large new flow of reports it receives.

Source: GTZ technical advisor in Jakarta, October 2009.

References and other resources

Advantech Consulting Ltd 2009. Business Keepers Monitoring System (BKMS) Evaluation Report (unpublished).

Transparency International – Kenya 2010. To give or not to give prosecution powers to KACC: Some arguments against. Adili Newsletter 114 [accessed on 4 March 2010]

<http://www.tikenya.org/viewdocument.asp?ID=349>.

U4 Expert Answer 2009. Good Practice in Whistleblowing Protection Legislation (WPL)

<http://www.u4.no/helpdesk/helpdesk/query.cfm?id=207>

Whitton, H 2008. Making Whistleblower Protection Work: Elements of an Effective Approach. Bergen: Chr. Michelsen Institute (U4 Brief 2008:24).

<http://www.u4.no/document/publication.cfm?3197=making-whistleblower-protection-work>

