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Kenya: overview of corruption and anti-corruption

Query

Can you give an overview of corruption trends and anti-corruption measures in Kenya. Which sectors and institutions seem to have the highest prevalence of corruption. What legal or institutional strengthens or weakness limit or provide opportunities for addressing corruption. Identify the main direct country level measures on prevention, detection and sanctions. Provide some assessment of the effectiveness of these and there relevance to the trends identified.

Purpose

The information will be used as an input into Input into the country level component of our anti-corruption strategy for Kenya.

Content

Summary

The election of President Kibaki on an anti-corruption platform in 2002 was perceived as a radical shift from the increasingly corrupt one-party rule that had been established after independence and raised tremendous hopes among Kenyan citizens of ending corruption and impunity. The new regime inherited challenges of endemic corruption permeating all sectors of society, grand-scale economic and political corruption, which it primarily addressed through a series of legal and institutional measures. However, within two years of coming to power, the new administration became engulfed in several corruption scandals leading to donors periodically suspending aid. The credibility of the government political will to fight corruption have been challenged by such scandals as well as by the government' poor record in convicting high level officials.

In spite of these drawbacks, Kenya is currently experiencing major institutional and political changes which give reasons for hope. The new constitution adopted through a free and fair referendum in 2010 represents a key milestone for the fight against corruption. It seeks, among other things, to strengthen political rights and civil liberties, to constrain executive

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powers, to strengthen legislative oversight, as well as to increase the judiciary's independence.

1. Overview of corruption in Kenya

Background

Since Kenya gained independence from Britain in 1963 and until the political violence that followed the disputed 2007 elections exposed the fragility of the state, the country was considered one of the most stable in Africa (IDASA country profile). After independence, founding President Jomo Kenyatta (1963/1978) and his successor Daniel Arap Moi (1978/2002) established and sustained an increasingly corrupt one-party authoritarian rule under the Kenya African National Union (KANU (Lansner, T, 2012).

Since independence, the regime has been largely characterised by a centralised state with a dominant executive presiding over a patronage network that benefits mostly ethnically defined elites (IDASA country profile). The regime was further characterised by, systematic looting of state's assets, economic mismanagement and authoritarian rule, respecting few civil liberties and civil rights and occasionally violently suppressing opposition (Lansner, T, 2012). A report by international risk consultants Kroll commissioned by the government to investigate claims of corruption carried out by Mr Moi's regime and delivered in April 2004 alleges that more than £1 billion of government money was stolen during his 24-year rule and details assets still allegedly owned by the Moi family in 28 countries[1] (The Independent, 2007).

In the 1990s, Kenya transitioned towards a functional but weak multi-party democracy, but it was not until 2002 that the opposition party, the National Rainbow Coalition (NARC) managed to win the elections against Moi and nominated Mwai Kibaki, a former top KANU leader as President. Mwai Kibaki was elected on an anti-corruption platform and the regime change raised tremendous hope in the country for ending corruption and impunity in Kenya. In January 2003 Kibaki appointed John Githongo, formerly of Transparency International, as his personal advisor on Anti-Corruption and Good Governance.

Within two years of coming to power, President Kibaki's government became engulfed in several corruption scandals leading to donors periodically suspending aid. The Anglo-Leasing scandal was the most prominent blow to the credibility of the new regime's anti-corruption commitment, and failure by the Kenyan government to respond effectively lead to John Githongo's resignation in 2005. He subsequently released a report based on detailed records of scandals he had been investigating that uncovered multi-million pound government contracts that had been awarded to phantom companies. With time, President Kibaki and his predecessor became close political allies and former President Moi officially backed his successor's candidacy to the 2007 presidential elections (The Independent, 2007).

On the country's politics front, the 2002 multi-ethnic grand coalition that led to Kibaki's victory collapsed shortly after the regime change, with the emergence of the opposition party the Orange Democratic Movement (ODM) in 2005 and ethnic and region based parties (Lansner, 2012). In the 2007 Presidential elections, the proclamation of Kibaki's victory amid widespread claims of vote rigging exploded into violent turmoil and ethnic violence in which at least 1000 people were killed and hundreds of thousands displaced. The African Union mediated the establishment of a power sharing arrangement in 2008 that retained Mwai Kibaki as President and created to post of Prime Minister for opposition leader Raila Odinga.

In 2010, a constitutional referendum overwhelmingly approved the radical revision of the Constitution, strengthening systems of checks and balances, significantly constraining executive powers and enhancing the protection of basic rights. The new constitution promotes principles of transparency, integrity and accountability and has raised hopes for inaugurating a new era of democratic rule in the country. However, implementation has been slow, uneven and incomplete, including with regards to anti-corruption efforts that still meet elite resistance (Lansner, 2012).

Extent of corruption

Thus, despite the positive changes, there is a widespread perception that corruption permeates all sectors of public life in Kenya, as reflected by major governance indicators. There has been a slight improvement over the past decade according to both Transparency International's Corruption Perception

[1] The report was never published by the new government which did not acted on its findings either.

Index and the World Bank's Governance Indicators, but still Kenya scores relatively poorly on both these measurements. In 2011, the country was ranked 154 out of the 182 countries assessed by TI. However, it should be appreciated that the World Bank has recorded other governance improvements, including progress in terms of 'government effectiveness' (from a score of 28,3 in 2002 to 36,0 in 2011) and in relation to 'voice and accountability' (from 25,5 in 2002 to 40,4 in 2011).

Kenya also scores poorly (21 out of 100) in terms of freedom of corruption in the Heritage Foundation's Index of Economic Freedom, with pervasive corruption leading to foreign disinvestment and draining resources from education, health and infrastructure.

Kenyan citizens further confirm widespread experience of bribery, with the likelihood of bribery demand estimated at 29.5% by the Eastern Africa Bribery Index 2012. However, when interacting with specific institutions such as the Police, land services, city and local councils and registry and licences services, the probability of citizens being expected or asked to pay a bribe raises to over 40 %. In Transparency International's Global Corruption Barometer (GCB) 2011, 45 % of the respondents reported having paid a bribe to at least one of the nine institutions assessed in the 12 months preceding the survey. In 2004, 36 % of the respondents reported having paid a bribe in the year preceding the survey.

According to Transparency International's Global Corruption Report 2009, the cost of corruption is a serious deterrent to potential investors and a major impediment for existing and new businesses (Global Corruption Report, 2009). Accordingly, business executives continue to perceive corruption as a major obstacle for business operations, with 21% of the companies interviewed within the framework of the World Economic Forum's Global Competitiveness report 2011-2012 naming corruption at the top of the list of obstacles for doing business in the country. This is consistent with findings from the World Bank and IFC Enterprise survey 2007, in which 38% of the companies surveyed reported corruption to be a major constraint to their operations.

Forms of corruption

Corruption manifests itself through various forms, including petty and grand corruption, embezzlement of public funds, and a system of political patronage well entrenched within the fabrics of society.

Petty and bureaucratic corruption

Although some progress has been made by the government in the past to attract foreign investments, inefficient and complex government regulations continue to provide both incentives and opportunities for corruption. According to the World Bank and IFC enterprise survey 2007, close to 80 % of the firms surveyed reported being expected to make informal payment to get things done and circumvent burdensome bureaucratic requirements, making it almost impossible for businesses to operate without facilitation payments. The Global Corruption Barometer 2011 as well as the Eastern Africa Bribery Index 2012 also confirm that citizens have to pay bribes for simple bureaucratic tasks and accessing basic public services.

Grand corruption

Major corruption scandals regularly hit the headlines. President Kibaki won his initial mandate on an anti-corruption agenda, raising hopes to end to grand corruption and impunity and the government set up several commissions of enquiries to investigate corruption scam under the previous regime. Among these, the Goldenberg Affair is often referred to as one of Kenya's biggest corruption scandal, involving several senior Moi-regime officials and is alleged to have cost the country more than 10% of its GDP (Cherotich, L, No date). This involved the exportation of fictitious gold from Kenya by a company called Goldenberg International Limited. However, in December 2003, the new government announced that it would not prosecute former President Moi for his alleged corruption.

The government of 2002 itself has relatively quickly been engulfed in major corruption scandals that watered down the credibility of its commitment to fight corruption and brought donors to suspend aid on several occasions[2]. In 2005, the Anglo-Leasing procurement scandal came to light, which involved the

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[2] U.S. suspends aid to Kenya education ministry, ambassador says: http://articles.cnn.com/2010-01-26/world/kenya.us.aid_1_kenya-corruption-suspends?_s=PM:WORLD

Corruption returns to haunt NARC http://www.newsfromafrica.org/newsfromafrica/articles/art_6507.html;

UK cuts off Kenyan education aid http://www.ft.com/cms/s/0/03b07738-311c-11df-8e6f-00144feabdc0.html abuse of lease finance or supplies credits to finance security related project. In particular, the scandal exposed the corrupt awarding of contracts for a new passport printing system in which state contracts worth hundreds of millions of dollars were awarded to non-existent firms. Several members of the new government were allegedly involved, including four top politicians, among which the vice President. The above mentioned John Githongo's report claimed that President Kibaki himself had knowledge of the affair and revealed that the Anglo Leasing Finance was just one of the many phantom entities used to siphon off government funds into non-existent companies through fictional or overpriced services (Global Integrity, 2006). Please see: Africa Focus for more information on the report.

In 2007, the parliament passed the Statute Law (Miscellaneous Amendments) Bill, restricting investigations by the Kenya Anti-Corruption Commission to offenses committed prior to May 2003, de facto giving perpetrators -including those involved in the Goldenberg and Anglo-Leasing scandals - an amnesty for corruption.

Political corruption

Since independence, political parties have been institutionally weak and ineffective, largely based on ethnic loyalty and patronage networks rather than a sound doctrine or ideology, with the opposition lacking a sense of cohesion and capacity to federate an electorate which is divided along ethnic lines (IDASA country profile). Against this background, corruption is a key feature of Kenyan politics, with political ethnocentrism, institutional weaknesses, lack of resources and patronage making political parties vulnerable to corruption. In the 2011 Global Corruption Barometer (GCB), 63 % of the respondents perceive political parties as corrupt or extremely corrupt. Political parties scored 3,8 on a 1 (clean) to 5 (extremely corrupt) scale, which still represents an improvement compared to the 2004 findings, where political parties scored 4,3.

As reflected by both the Goldenberg affair and the Anglo Leasing Finance scandals, grand corruption is deeply intertwined with the lack of transparent party finance, with corrupt political campaign financing persisting both in past and present regimes. According to some analysts, illegal funds to finance the KANU elections in the 90s were raised through the Goldenberg scam. In the post 2002 era, the Anglo Leasing scheme was allegedly used by senior officials from the Kibaki administration to raise money for political activities and marshall substantial election funds for the NARC 2007 elections (Mwangi, O., 2008). Both KANU and NARC have been suspected in the past of postponing the adoption of stricter laws on political party financing because they rely on illegal and secret sources of funding as well as to prevent an even playing filed for all parties (Mwangi, O., 2008).

In the contested 2007 Presidential elections, the flawed election process and allegation of rigging triggered widespread public anger that degenerated into post-election violence, causing more than a thousand deaths and lasting well into 2008 (DFID, 2009). There were reports about manipulations and fraudulent counts by the Electoral Commission of Kenya (ECK). The Independent Review Commission[2] found that electoral fraud was rampant at all stages of the tallying process, and ruled that "*The integrity of the electoral process, widespread bribery, vote-buying, intimidation and ballot-stuffing, compounded the defective data tabulation, transmission and tallying, impaired the integrity of the process and irretrievably polluted the results* (IRC, 2008). Following the report, the ECK was disbanded and a wide range of electoral reforms have been enacted, but are not yet fully concluded ahead of the next elections to be held in 2013 (Bertelsmann Foundation, 2012).

Sectors most affected by corruption in Kenya

Evidence suggests that corruption pervades many of the country's key sectors and institutions. According to the perceptions of Kenyan citizens, the police is consistently perceived to be the sector most affected by corruption (scoring 4, 6 on a 1 to 5 scale in 2011 compared to 4,3 in 2004) in the 2011 GCB, followed by Political parties (3,8 in 2011 compared to 4,1 in 2004), Parliament (3,8 in 2011 compared to 4,0 in 2004), and the judiciary (3,8 in 2011 and 2004).

Police

In Kenya, the police is perceived by citizens as the most corrupt institution with 90% of the respondents perceiving the police to be corrupt or extremely corrupt and close to 60 % of those who had been in contact with the police in 2010 reporting paying bribes (Transparency International, 2011). These findings are consistent with the Eastern African Bribery Index 2011 where the police reports a 60% probability of being asked for a bribe when interacting with police forces. In particular, bribe extortion by traffic police is reportedly common with arbitrary demands of bribes at road blocks or transit checkpoints (Business Anti-Corruption Portal, 2011). Afrobarometer 2008 data also indicate that 77% of the households believe that most or all police officers are involved in corruption. Business executives interviewed within the framework of the Global Competitiveness Report 2011-2012 also perceive Kenyan police services as unreliable to enforce the law, giving a score of 3, 2 on a 1 (cannot be relied upon at all) to 7 (can always be relied upon) scale.

Land services

Patronage networks and ethnical divides have played an important role in land distribution, resulting in unfair distribution of resources and a wide gap between the ruling elite and the poor majority, especially regarding land ownership (IDASA country profile). There is a long record of favouritism and land allocation to Kikuyu to the detriment of smaller ethnic groups that runs back to colonial times. A Commission of Inquiry into illegal allocation of public land produced a report in 2004, also known as Ndungu report, reporting widespread illegal allocation of land since independence (Lansner, T., 2012).

While, according to the 2011 US Department of State investment climate statement, property rights are generally recognised and enforced, obtaining land is a cumbersome and often non transparent process. The Eastern African Bribery Index 2011 points to land services as the second institution most affected by corruption after the police, with respondents reporting a likelihood of 57 % of being asked for a bribe when interacting with land services. Such forms of corruption mainly involve bureaucratic level- bribery upon transfer requests, cumbersome procedures for acquisition and disposal, illegal allocation of public land and fraudulent double allocation. An independent Land Commission is now mandated by the new constitution in an effort to address such challenges.

Public administration

In spite of progress made, corruption, lack of transparency and accountability and an inefficient public administration continue to undermine the quality of the public services and the state administration's level of functioning is generally low (Bertelsmann Foundation, 2010).

However, some progress has been made in recent years in reforming Kenya's public administration, and the country has improved its score from 49 in 2006 to 60 in 2011 in terms of conflict of interest safeguards and political independence in Global Integrity Scorecard. The new constitution will subject the public administration to a complete overhaul, including values of impartiality and independence for the public service and establishing the Public Service Commission (Global Integrity, 2011). The implementation of a devolved structure is also meant to bring public services closer to the people (Bertelsmann Foundation, 2012).

In practice, the civil service probably still remains subject to political interference, particularly with respect to appointments. In spite of regulations preventing such practices, there has been a long tradition of nepotism, cronyism and other forms of corruption in public appointments. This may be changing with the new Constitution as it provides a framework for merit-based employment and there have been recent cases where the High Court nullified the reappointment of senior officials for failing to adhere to the due process of the law (Global Integrity, 2011).

While provisions exist in the Anti-Corruption and Economic Crimes Act (2003), civil servants convicted of corruption are not consistently prohibited from future government employment and the government has appeared to selectively sanction corrupt officials in this respect. For example, two cabinet ministers who were asked to stand down within the framework of the Anglo Leasing scandal were subsequently reinstated before the cases had been finalised (Global Integrity, 2011). The 2010 constitution now stipulates that anybody convicted of contravening integrity provisions loses the right to hold public office.

Public financial management

Budget processes

The country scores 49 out of 100 in the 2010 Open Budget Index (compared to 57 out of 100 in 2008), which indicates that the government provides some information to the public, but this is insufficient for citizens to fully hold the government accountable for its management of public resources (International Budget Partnership, 2010). The budget oversight exercised by both Parliament and the Supreme Audit Institution is also considered inadequate and there is a reported lack of resources and sufficient time to publically discuss and approve the budget.

Consequently, there are indications of abusive use of state resources by the government. In 2006 for example, Transparency International Kenya and the

Kenya National Commission on Human Rights (KNCHR) published a report claiming that between January 2003 and September 2004, the government spent about $12-million on cars that were mostly for the personal use of senior government officials (IPS, 2006). More recently, in 2010, more than $1 million was missing from the primary school system, which caused the US to temporarily suspend its education aid (Bertelsmann Foundation, 2012).

Public procurement

The Kenyan procurement system is also considered a high risk area for investors, as reflected by the World Bank and IFC 2007 enterprise survey which indicates that 71 % of the companies surveyed expect to give gifts to secure a government contract, with the value of the gift representing 8% of the contract amount. The Global Competitiveness Report 2011-2012 indicates that corruption remains pervasive in procurement processes, with widespread practice of favouritism towards well-connected firms and individuals when deciding upon contracts and policies. There are also allegations of corruption in military procurement, compounded by the fact that security related procurement is not subject to regular procurement regulations and it lacks general transparency.

The government has enacted the Public Procurement and Disposal Act in 2006 in an effort to promote more transparent and unified procurement system and established the Public Procurement Oversight Authority (PPOA) to oversee all procurement processes (see below). Major procurements now require competitive bidding and the legislation stipulates strict operational measures and penalties.

Companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids. There are also regulations addressing conflicts of interest and mandatory training for public procurement officials, as well as a mechanism that monitors the assets, incomes and spending habits of public procurement officials but they are not always enforced evenly (Global Integrity, 2009 and 2011). In practice, it is unclear whether companies that have previously violated regulations are barred from future activities, and the original practice of naming blacklisted companies has been withdrawn from the PPOA Web site.

Revenue administration

While revenue collection has improved in recent years, with a relatively strong legal framework and adequately staffed and resourced national tax collection agency, the Kenya Revenue Authority (KRA),, in practice the law is not enforced uniformly (Global Integrity, 2011). Poor tax collection methods have resulted in substantial funds being lost annually in uncollected tax revenue., and according to Afrobarometer, in 2008 49% of household respondents believed that all or most tax officials are involved in corruption. The Eastern African Bribery Index conducted in 2011 also indicates that citizens have a 30,3 % likelihood of being asked for a bribe when interacting with tax officials. Furthermore, there are regular reports of tax evasion and high-level government officials using their positions and influence to obtain tax exemptions for themselves or their relatives (Global Integrity, 2011).

Judiciary

According to the new chief justice, Willie Mutunga, the Kenyan judiciary is plagued with excessive bureaucracy, backlogs of cases, endemic corruption, inefficient and ineffective case management, poor terms of services for judicial and administrative staff and poor infrastructure (Lansner, 2012). This creates a supportive environment for corruption to flourish and, according to CGB 2011 data, 43 % of the respondents that had contact with the judiciary reported paying a bribe 12 months preceding the survey.

According to Freedom House 2011, courts are understaffed, underfinanced, and lack the capacity to efficiently prosecute corruption cases. While about half a dozen ministers have been suspended over corruption allegations, many of them have been reinstated and no minister of high profile official has been convicted.

The judiciary was not guaranteed independence under the “old” constitution, but the new constitution offers an important step towards constraining executive interference into judicial affairs, even though attempts to interfere with judicial independence remain prevalent (Bertelsmann Foundation, 2012). In January 2011, the President tried to appoint a new chief justice, attorney general, public prosecutor and controller of budget, against the spirit of the new constitution and was rejected by parliament.

Business executives surveyed within the framework of the Global Competitiveness Report 2011-2012 continue to report low levels of independence of the judiciary, scoring 2,9 on a 1 (heavily influenced) to 7 (entirely independent) scale. October 2010, the Judicial Service Commission, which plays an important role in the appointment process of judges, was reconstituted with a broadened mandate and greater administrative support.

Private sector

The private sector plays an important role in Kenya, accounting for over 80 percent of GDP and most government revenues (Kenya Joint Assistance Strategy). However, private sector development remains hampered by Kenya's unattractive business environment. The government has made efforts to address the situation, by eliminating and simplifying business licenses and regulatory procedures as well as streamlining local authority licenses. This is reflected by the country being considered one of the top ten reformers in the World Bank and IFC 2009 'Doing Business' survey However, the 2012 Bertelsmann Foundation country report notes that the state administrative structures remain inefficient and underperforming and business executives interviewed for the Global Competitiveness report 2011-2012 still perceive government administrative requirements burdensome in terms of permits, regulation and reporting. While one of the largest economies in Eastern Africa, Kenya's economy is still characterised by the size of its informal sector, which grows faster than the formal sector, with most enterprise starting off in the informal sector due to the high costs of registering businesses.

2. Anti-corruption efforts in Kenya

The fight against corruption was high on Kibaki's political agenda and in the early phase of his Presidential mandate, several reforms and laws have been enacted, including the Anti-Corruption and Economic Crime Act 2003, the Public Officer Ethics Act 2003, and the Public Procurement and Disposal of Assets Act 2005. The Kenya Anti-Corruption Commission (KACC) has been restored and parliamentarians and civil servants need to prove their source of income (Berltelsmann Foundation, 2012). An increasing number of government agencies have codes of conduct and reforms are underway to strengthen the Public Finance Management system. However, these measures have failed to bring major gains in terms of control of corruption. Major corruption scandals and failure to effectively prosecute senior public officials involved in the Goldenberg, Anglo-Leasing and more recent affairs continue to fuel impunity and undermine the credibility of the government's commitment to fight corruption.

In spite of these draw backs, citizens perceive government efforts to be more effective than in the past. GCB data indicates 48% of the respondents say corruption has decreased in the last 3 years, 39% increased, while 70% assess government efforts against corruption as effective, compared to only 39% in 2006.

The legal framework

The anti-corruption legal framework is considered robust as reflected by the country's Global Integrity 2011's 100 score (on a o to 100 scale). The Anti-Corruption and Economic Act 2003 criminalises active, passive and attempted corruption, as well as foreign bribery, abuse of office, money laundering, extortion, conflict of interest and big rigging. However, the act does not cover private sector corruption.

The Public Officers Ethics Act 2003 has been moved into the new constitution and requires civil servants to declare their assets. However, there are neither clear provisions on the auditing of these reports nor records of any action arising out of these declarations of wealth (Global Integrity, 2011). In addition, the Public Service Commission Act includes a code of regulation for public servants and promotes political independence and requires merit-based recruitment and promotion of public servants but, bribery, nepotism and political patronage remains reportedly widespread.

By law, whistle blowers are protected from recrimination or other negative consequences, and under the Anti-Corruption and Economic Crimes and the Witness Protection Act, no disciplinary action may be taken against private or public employees. However, there are weak internal complaints mechanism through which civil servants can report corruption. In the absence of an operational witness protection law, there are no formal means of protecting whistle blowers.

The Proceeds of Crime and Money Laundering act was passed in 2009 under international pressure, but some observers question the political will to fully implement the provisions of the act and reduce money laundering (Business Anti-Corruption Profile, 2011).

A Public Procurement and Disposal Bill has been adopted in 2005 and the country scores fairly well on this issue according to Global Integrity 2011 (88 out of 100). It establishes a procurement commission to oversee all procurement matters and provides for strict operational measures and penalties for breach. Enacted in 2007, the Supplies Practitioners

Management Act regulates the training, certification, and conduct of procurement officers (US Department of State, 2011).

Kenya scores very poorly in terms of political finance transparency in Global Integrity 2011. A revised Political Parties Act came into force in November 2011, and is expected to help restructure the political landscape.

The new constitution adopted by referendum in 2012 represents a key milestone for the fight against corruption, strengthening the protection of civil and political rights, limiting executive powers, strengthening legislative oversight, increasing the judiciary's independence and devolving central administration to 47 county governments. The constitution also now grants the right to access and communicate information. Chapter 6 of the constitution sets high standards of integrity for office holders and call for an independent ethics and anti-corruption commission, but the success of such institutions will depend on investigatory/prosecutorial powers as well as resources it is granted (Lansner, 2012). The constitution also creates two independent offices, the auditor general and the controller of the budget (see below) as well as 10 commissions dealing with issues such as land, elections, human rights, public service, police, etc.

International cooperation in the prevention and combating of corruption has also been expanded; Kenya already ratified the United Nations Convention Against Corruption in 2003, the African Union Convention on Preventing and Combating Corruption in 2007 and is acceding to the United Nations Convention against Transnational Organized Crime since 2004.

Institutional framework

The Ethics and Anti-Corruption Commission (EACC)

The EACC has been created in 2011, replacing the former Kenya Anti-Corruption Commission with the mandate to investigate corruption and economic crimes as well as awareness raising on the damaging impact of corruption. While the EACC could be given prosecutorial powers by Parliament, it currently transfers cases to the Attorney General. Patrick Lumumba took over the directorship of the commission after the Parliament's rejection of Kibaki's attempt to unilaterally renew the contract of his long-term ally Aaron Ringera at the head of the commission in 2010, which was largely seen as a positive development. Lumumba reopened the Goldenberg and Anglo-Leasing affairs and indicated that he would investigate at least four cabinet ministers, 50 senior officials and parliamentarians. He was abruptly removed from office in August 2011, suggesting a lack of political will of the elite to effectively address high level corruption (Bertelsmann Foundation, 2012). In December 2011, President Mwai Kibaki and Prime Minister Raila Odinga nominated lawyer Mumo Matemu, a lawyer and former official at Kenya's tax authority to replace Patrick Lumumba.

Attorney General

The Attorney general is largely criticised for its lack of success in convicting/prosecuting cases, especially with regards to high level senior officials. Although the former KACC had recommended prosecution of several government officials, according to Freedom House 2012, only 51 people had been convicted since 2003.

The Auditor General

The Auditor General, previously the Controller and Auditor General, is the supreme audit institution, appointed by the President and approved by parliament. The institution is legally protected from political interference, and although appointed by the President, it does not seem to affect its capacity to fulfil its mandate (Global Integrity 2011). It has a dedicated, professional and full-time staff under the aegis of the Kenya National Audit Office (KENAO), and publishes audit reports after they ´have been presented to parliament. However, according to the Open Budget Initiative 2010, while the audit reports are published, they are not comprehensive enough and do not present audits of extra-budgetary funds. In addition, the institution faces challenges of funding and resources.

Ombudsman

The government established the Public Complaints Standing Committee in 2007 to receive all complaints relating to public officials. Within this framework, the institution is also mandated to look into allegations of abuse of office, corruption, breach of integrity and unethical conduct. According to Global Integrity 2011, the PCSC does not have adequate staff to cope with the number of complaints from the public, generally facing staffing and funding issues, in addition to uncertain restructuring or changed mandate in a new Constitution.

Public Procurement Oversight Authority (PPOA)

The PPOA, under the Ministry of Finance, is the institution in charge of policy formulation and implementation as well as monitoring and oversight of public procurement to ensure the procurement processes comply with the requirements of the act. It also provides advice and training. Companies guilty of violations may be debarred at the discretion of the director, but there are no indication of how this has been implemented in practice. Citizens can access public tender outcomes in the appropriate government Web site (http://www.tenders.go.ke/view.contracts.php). However, security-related tenders may be excluded. Kenya is also in the process of automating public procurement.

Other stakeholders

Media

Kenya's new constitution guarantees and further strengthens freedom of the press as well as freedom of expression. An independent Communications Commission Kenya has been established, a new media law is being drafted as well as a new policy for information and communication. However, according to Freedom in the World, in 2012 the government occasionally attempts to restrict these rights,, with several cases in 2011 of government officials bringing libel and defamation cases against journalists or media outlets for reporting on alleged corruption. There were also reports of harassment and threats against media workers by the security forces, allegedly for reporting on issues such as corruption.

Kenya's media is increasingly diverse and generally free from direct censorship and Kenya's independent media continues to grow with some publications such as the *Nairobi Law Monthly* providing in-depth investigative analysis of alleged corruption cases (Lansner, 2012). A number of private television and radio stations operate, though their reach is limited. The state retains control of the largest broadcasting network, the Kenya Broadcasting Corporation, which according to the constitution should be non-partisan. Most Kenyans rely on the radio for news. The government does not restrict access to the internet.

Civil society

The new constitution also provides for freedom of association and assembly and these rights are generally respected, although in the aftermath of 2007, there have been instances where the police interfered with these rights (Bertlesmann Foundation, 2012). Kenya has a relatively strong and vibrant civil society, although the mobilisation of civil society networks outside Nairobi is relatively limited due to financial and infrastructure constraints. . Civil society has repeatedly criticised Kibaki for lack of visible progress in combating corruption and the impunity of senior officials. There are a number of organisations active against corruption in the country (Business Anti-Corruption Portal, 2011), among which:

Transparency International Kenya: TI Kenya is the prime source for documentation, awareness raising, public mobilisation and activism on corruption. In particular, it publishes the Eastern Africa Bribery Index every year, which captures corruption trends in the region.

Mars Group Kenya: The organisation raises awareness on corruption and builds demand for accountability, in particular through its website which offers interactive forums, corruption reports, access to selected government reports. An online corruption hotline system is currently in development.

Centre for Law and Research International Kenya (Clarion Kenya): Clarion Kenya aim to make public institutions more accountable and responsive to citizens' needs and make publications on corruption accessible on its website.

Centre for Corporate Governance (CCG): The CCG is a private organisations promoting the adoption of good practice in corporate governance through training, education, research, advocacy, monitoring and evaluation.

African Parliamentarians Network Against Corruption Kenya (APNAC): APNAC is active in capacity-building of parliamentarians, information campaigns, promotion of anti-corruption legislation and establishing a legal framework for free elections.

International community

International donors have regularly expressed concerns over governance and corruption challenges in Kenya and periodically suspended aid on corruption grounds. For example, shortly after a corruption scandal led to donor freeze of Free Primary Education funding in 2011, Kenya was also facing corruption charges from the World Bank in connection with funds designated to assist with drought relief, leading other donor nations including the European Union to re-assess their aid to Kenya (Daily Nation Reporter, 7 July 2011).

As one of Kenya largest development partner, DFID's choice of aid delivery also takes into account the country's corruption and governance challenge and limits the channelling of UK aid through Government of Kenya systems until there are measurable improvements in the government's management of public finances (DFID, 2012).

More generally, the Kenya Joint Assistance Strategy (KJAS) (2007-2012) which brings together 13 bilateral and four multilateral partners including the World Bank and UN Development Programme (UNDP) takes a similar approach, conditioning the provision of budget support to governance improvements, and envisaging budget support only when " the governance, fiduciary, and monitoring and evaluation systems can offer sufficient assurance that funds are used for their intended purpose" (Kenya Joint Assistance Strategy).

In addition, governance and anti-corruption is at the heart of the joint assistance strategy, with "Improving governance" identified as the third pillar of the KJAS through measures aimed at reducing corruption, improving public financial management, and reforming the public administration. Some KJAS partners are supporting all government-led efforts in the areas of public sector reform, public financial management reform, and of governance, justice, law and order through a basket fund, while others are assisting specific activities of the overall programs.

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