ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

OVERVIEW OF CORRUPTION AND ANTI-CORRUPTION IN KENYA

QUERY

What is that state of overview of corruption and anti-corruption in Kenya? We are particularly interested in its public financial management.

PURPOSE

This will inform our programmes and activities in the country.

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NOTE

This paper is an update of a 2012 U4 Helpdesk answer: Kenya: overview of corruption and anti-corruption.

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SUMMARY

Since independence, Kenya has suffered from widespread corruption that is evidenced in most sectors of public life and has led to an apparent culture of impunity. Although the former president, Mwai Kibaki, was elected on an anti-corruption platform in 2002, his regime was itself engulfed in several corruption scandals.

Petty bribery, embezzlement, and electoral irregularities are some of the main corruption challenges Kenya faces today. In 2007, Kibaki's announced victory amidst widespread allegations of electoral manipulation provoked violent turmoil causing the deaths of more than 1000 people. While the 2013 presidential elections were relatively peaceful, there were further allegations of vote-rigging. The elected president, Uhuru Kenyatta, also faces charges of crimes against humanity by the International Criminal Court in connection with the 2007 election violence.

Together with a seeming lack of political will, the government has had a poor record in convicting high-level officials. The previous and current government have carried out a series of anti-corruption reforms, including successfully voting in a new constitution in 2010 as well as tightening its anti-money laundering regime. Nevertheless, many have reportedly observed a watering down of anti-corruption legislation and a lack of implementation.

1 OVERVIEW OF CORRUPTION IN KENYA

Background

After independence from Britain in 1963, founding President Jomo Kenyatta and his successor Daniel Arap Moi established and sustained an increasingly corrupt one-party authoritarian rule under the Kenya African National Union (KANU) (Freedom House 2012). The regimes were characterised by widespread corruption, systematic looting of state assets, economic mismanagement and authoritarian rule and lack of respect for civil liberties and civil rights (Freedom House 2012). Reports have alleged that more than £1 billion (US$1.6 billion) of government money was stolen during President Moi's 24-year rule (The Independent 2007).

In the 1990s, Kenya transitioned gradually towards a multi-party democracy. In 2002 the opposition party, the National Rainbow Coalition (NARC), managed to win the elections against Moi and nominated Mwai Kibaki, as president. Kibaki was elected on an anti-corruption platform, raising tremendous hope in the country about an end to corruption and impunity in Kenya. However, within two years of coming to power, President Kibaki's government became engulfed in several corruption scandals, some which led to donors suspending aid.

For many years, Kenya was considered one of the most stable states in Africa. However, in the 2007 presidential elections, the proclamation of Kibaki's victory amid widespread evidence of vote-rigging exploded into violent turmoil and ethnic violence in which at least 1,000 people were killed and hundreds of thousands displaced. The African Union mediated the establishment of a power-sharing arrangement in 2008 that retained Kibaki as president and created the post of prime minister for the leader of the opposition Orange Democratic Movement (ODM), Raila Odinga.

The first elections following the 2007 elections took place in 2013 and were relatively peaceful. However, they suffered from serious problems with voter registration, vote tabulation and confusion over the number and definition of rejected ballots (Freedom House 2014). Uhuru Kenyatta, the son of Jomo Kenyatta, was declared the winner following a controversial Supreme Court ruling that upheld his victory (Freedom House 2014).

Both Kenyatta and his deputy president, William Ruto, are facing International Criminal Court (ICC) charges of crimes against humanity in connection with the 2007 election violence (The Guardian 2014). After numerous delays, in October 2014, Kenyatta became the first sitting president to appear before the ICC (The Guardian 2014). However, the case against Kenyatta has polarised the views of Kenyans on the ICC process (Human Rights Watch 2013). Moreover, in September 2013, Kenya's parliament voted to back a call for the government to pull out of the ICC.

Despite a revised constitution that promotes principles of transparency, integrity and accountability, there has been significant delay in its implementation. Some of legislative acts aimed at operationalising the constitution's provisions have been diluted (Bertelsmann Foundation 2014) and anti-corruption efforts still meet political resistance (Freedom House 2012).

In terms of human development, Kenya continues to lag behind, despite some improvements over the last few decades (UNDP 2013). Kenya's Human Development Index value for 2013 is 0.535, which positions Kenya in the low human development category at 147 out of 187 assessed countries and territories (UNDP 2013). Nevertheless, life expectancy at birth has improved from 57.8 years in 1980 to 61.7 years in 2013, and gross national income per capita increased from US$1,822 in 1980 to US$2,158 in 2013 (UNDP 2013).

Extent of corruption

Corruption continues to be a serious problem in Kenya, as reflected by major governance indicators.

The country consistently performs poorly in Transparency International's Corruption Perceptions Index, ranking at the bottom of the index among the countries perceived as most affected by public sector corruption. In 2013, the country ranked 136 out of the 177 assessed countries (Transparency International 2013a). Kenya's performance on the World Bank's Worldwide Governance Indicators has consistently been in the lower percentiles. Under the control of corruption category, Kenya has fluctuated in a percentile rank of between 10 and 20 per cent since

1996 (World Bank 2012). Under rule of law, it has been steady at a percentile rank of 20 per cent since 2000, under government effectiveness it has been steady at a percentile rank of 30 to 35 per cent since 1998 (World Bank 2012).

In the Mo Ibrahim Foundation's Index of African Governance, Kenya ranks 21 out of 52 assessed countries. Its score has been relatively steady since 2000. Accountability was Kenya's worst category where it received 36.7 per cent, ranking 34th out of 52 countries. Its highest score was in public management (which includes public financial management in this index) in which it received 61.1 per cent, placing it 13th out of 52 countries.

Kenyan citizens also confirm a widespread perception of corruption. In fact, there has been a stark increase of respondents who perceive the current state of corruption in Kenya as high in 2013 (64 per cent) compared to 2012 (41 per cent) (Transparency International Kenya 2013). Moreover, 29 per cent of respondents said they thought the current state of corruption had increased over the past year. Predictions for the future are also bleak, with 25 per cent of respondents saying they think instances of corruption will increase over the next year.

Kenya scores poorly on the Heritage Foundation's Index of Economic Freedom (Heritage Foundation 2013). While it has an overall score of 57.1 per cent, which ranks it 17th out of 46 assessed African countries, its freedom from corruption score has dropped to 21 per cent, which is well below the world average of 40 per cent. The index notes that some business registration processes are very costly and cumbersome. For example, completing licensing requirements takes more than 100 days and costs about twice the level of average annual income.

The World Economic Forum's Global Competitiveness Report 2013/2014, which surveyed companies, found that 21.1 per cent of respondents believed corruption was by far the most problematic factor for doing business (World Economic Forum 2013). Kenya scored poorly in many of surveyed categories, such as in ethical standards of politicians where it received a score of 2.7 on a scale of 1 (extremely low) to 7 (extremely high). On government favouritism to well-connected firms and individuals when deciding upon policies and contracts, Kenya scored 2.8 on a scale of 1 (always) to 7 (never). On transparency of government policymaking, it received a rating of 3.9 on a scale of 1 (extremely difficult) to 7 (extremely easy).

Forms of corruption

Petty and bureaucratic corruption

Petty and bureaucratic corruption is pervasive in Kenya and affects both citizens and companies alike.

An overwhelming 70 per cent of respondents to Transparency International's Global Corruption Barometer (GCB) 2013 indicated that they had paid a bribe to at least one of eight public services in the 12 months preceding the survey (Transparency International 2013b). Both the GCB and the East African Bribery Index 2013 reveal that the police, judiciary and registry and permit services are the sectors in which bribery is most common. According to the East African Bribery Index 2013, the largest bribes are paid in the land services and the judiciary, averaging between 8,390 Kenyan shillings (US$94) and 8,949 Kenyan shillings (US$100).

Although some progress has been made by government in the past in attracting foreign investments, inefficient and complex government regulations continue to provide both incentives and opportunities for corruption vis-à-vis the private sector. According to the World Bank and International Finance Corporation (IFC) 2013 Enterprise Survey, approximately 28 per cent of surveyed firms reported being expected to give gifts to secure a government contract, which is slightly above the continental average of 26 per cent. Approximately 33 per cent of firms expected to give gifts to get a construction permit, which is well above the continental average of 25 per cent. Similarly, in the category of how common it is for firms to make undocumented extra payments or bribes, companies surveyed for the Global Competitiveness Report 2013/2014 gave Kenya a score of 3.2 on a scale of 1 (very common) to 7 (never occurs), placing it at 112th out of 148 assessed countries (World Economic Forum 2013).

The government is reported to have streamlined and simplified regulatory procedures to attract foreign investment, however, business executives continue to perceive government administration requirements as burdensome in terms of permits, regulation and reporting (World Economic Forum 2013).

Grand forms of corruption

Although Kibaki won his presidential mandate on an anti-corruption agenda, raising hopes of an end to grand corruption and impunity, his government and public officials were engulfed in major corruption scandals over the years that undermined its credibility. Among the scandals that rocked the early years of Kibaki's rule were the Anglo-Leasing procurement scandal (which exposed the corrupt awarding of contracts for a new passport printing system) and the Goldenberg Affair (often referred to as Kenya's biggest corruption scandal, costing the country more than 10 per cent of its GDP) (Martini 2012).

Kibaki's later term was also characterised by corruption scandals. Below is a list of some of the corruption scandals that hit the headlines in Kenya (as summarised in Mbugua and Wangong'u 2014):

- Minister of Water Charity Ngilu was investigated in 2011 for corruption allegations directed at her ministry, including forgery, and double payments for goods and services, tax evasion, irregular awards of tenders and nepotism. Also implicated in the scandal were her son-in-law and the husband of the assistant minister for tourism but charges were dropped in October 2014 (In2EastAfrica 2014).

- Also in 2011, the Attorney General permitted the Kenyan Ethics and Anti-Corruption Commission (EACC) to charge cabinet minister Henry Kosgey with abuse of office. He is charged with illegally granting exemptions allowing importation of vehicles that are more than eight years old.

- The chairperson of the board of trustees of the Kenya Railways Staff Retirement Benefits Scheme, Beryl Okumu Odinga, is set to appear in court to answer charges of unlawful acquisition of public property. Odinga, who is former prime minister Odinga's sister, is accused of unlawfully acquiring 1.5 million Kenyan shillings (US$16,700) from the Kenyan Railways pension fund between 2009 and 2011.

- Chris Okemo, a member of parliament and former minister of energy, and Samuel Gichuru, the former managing director of Kenya Power and Lighting Company, are wanted by authorities in Jersey on charges of laundering up to 900 million Kenyan shillings (US$10 million). The two face allegations of having received bribes amounting to US$20 million from Alcatel, an American company, which Alcatel allegedly paid to secure a contract to support Ken-Cell, a mobile network operator in Kenya, to roll out its network. It is alleged that this money was channelled to Jersey. However, both went to court to challenge the legality of their extradition and the validity of the charges. While the company has paid a US$92 million penalty for US FCPA violations (IBA 2013), the case is still pending in the local courts.

Political corruption

Since independence, political parties have been institutionally weak and ineffective, largely based on ethnic loyalty and patronage networks rather than ideology, with the opposition lacking a sense of cohesion and an electorate divided along ethnic lines (Juma 2012). 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 2013 GCB, 53 per cent of respondents perceived political parties as corrupt or extremely corrupt. Political parties scored 3.5 on a scale of 1 (clean) to 5 (extremely corrupt).

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 electoral campaign in the 1990s were raised through the Goldenberg scam (Mwangi 2008). 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 arrange substantial election funds for the NARC 2007 elections (Mwangi 2008). Both KANU and NARC were suspected in the past of postponing the adoption of stricter laws on political party financing they allegedly relied on illegal and secret sources of funding (Mwangi 2008).

The framework for the 2013 elections was guided by the requirements set forth in the new constitution, but some aspects, such as campaign finance reform, were not implemented. As such, there was allegedly pervasive use of “unverified sums of money” during campaigns, due to the absence of an adequate campaign finance law, and evidence of direct vote-buying by candidates of both parties (Freedom House 2014).

Kenya’s election processes have been marked with irregularities and allegations of vote-rigging. In the contested 2007 presidential elections, the flawed election process and allegations of rigging triggered widespread public anger that disintegrated into post-election violence, causing more than 1,000 deaths and lasting well into 2008 (DFID 2009). There were reports about manipulations and fraudulent counts by the Electoral Commission of Kenya. The Independent Review Commission found that electoral fraud was rampant at all stages of the tallying process. Following the report, the Electoral Commission of Kenya was disbanded and replaced by the Independent Electoral and Boundaries Commission (IEBC).

The 2013 elections also experienced some irregularities. Four electoral commissioners of the Independent Electoral Boundaries Commission were arrested and charged with corruption (Mbugua and Wangong’u 2014). The commissioners were charged with failing to comply with the procurement rules and abusing their office in corruptly granting the tender for supply of the electronic voter identification devices that were used in the 2013 general election. On 30 March 2013 the Supreme Court ruled the elections free, fair and in compliance with the constitution but did not make any mention to alleged evidence of errors made by the commission (Think Africa Press 2013).

Sectors affected by corruption

Corruption permeates all sectors of public life in Kenya, as reflected in the 2013 GCB results in which eight of the 12 public sector institutions were perceived to be corrupt or extremely corrupt by at least 40 per cent of respondents (Transparency International 2013b). The institution seen as the most corrupt is the police, which an overwhelming 95 per cent of respondents perceive as corrupt or extremely corrupt. Public officials and parliament are also seen as corrupt with 68 per cent and 59 per cent of respondents respectively perceiving them as corrupt or extremely corrupt. This is followed by the judiciary (58 per cent), political parties (53 per cent), military and medical and health services (both 43 per cent) and the education sector (37 per cent).

Public financial management

The country scores 49 out of 100 in the 2012 Open Budget Index, which indicates that although the government provides some information to the public, it is insufficient for citizens to fully hold government accountable for its management of public resources (International Budget Partnership 2012). The budget oversights exercised by both parliament and the Supreme Audit Institution are seen as inadequate for various reasons including lack of resources and sufficient time to discuss and approve the budget.

Nevertheless, Kenya’s public hearings on the budget are seen as exemplary (International Budget Partnership 2012). The constitution stipulates that a committee from the National Assembly should seek participation from the public to discuss and review the budget. The Kenyan Parliament Budget Committee held public hearings for the first time in 2011, in which the executive was represented by county level officers, and the meetings were open to the public. To invite the public to the meetings and enhance participation, the committees put paid advertisements in leading newspapers and made announcements on targeted community radio stations.

However, budget misappropriation is not rare in Kenya. In fact, its severity has even caused donors to suspend aid on several occasions. For example, a 2011 audit report of the Ministry of Finance revealed that from 2005 to 2009 4.2 billion Kenyan shillings (US$48 million) intended for the government fund to finance free primary education had been lost through misappropriation (Kimeu 2013). Following these revelations, several donors withdrew their direct support to the programme until proper accountability mechanisms had been instituted. Some donors, including Canada, the UK, Germany, the Netherlands and France, which together had donated close to US$150 million to assist Kenya in achieving universal primary education, even asked for a refund of the amounts that had been misappropriated (Kimeu 2013). By November 2011 the Kenyan treasury had refunded close to $US4 million. However, some civil society groups have cautioned that using public funds to reimburse donors might create a dangerous precedent, by holding taxpayers liable to pay for stolen funds rather than those who committed the crime.

The Kenyan procurement system is also considered a high risk area for investors. 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 (World Economic Forum 2012). There are also allegations of corruption in military procurement, not the least because security related procurement is not subject to regular procurement regulations and lacks transparency. Moreover, legislation for defence and security procurement is apparently often bypassed by orders from senior government officials and formal oversight mechanisms are often side-stepped (Transparency International UK 2012).

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 and without discrimination (Global Integrity 2011). Poor tax collection methods have resulted in billions lost annually in uncollected revenue and tax services remain confronted by major corruption challenges. According the GCB 2013, 28 per cent of respondents have paid a bribe to tax authorities (Transparency International 2013b). There are also numerous reports of tax evasion and high-level government officials allegedly using their positions and influence to obtain tax exemptions for themselves or their relatives (Global Integrity 2011).

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 2012).

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 the Global Integrity scorecard. The new constitution subjects 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).

In practice, however, the civil service still remains largely subject to political interference, particularly with respect to appointments. Despite regulations preventing such practices, there has been a long tradition of nepotism, cronyism and other forms of corruption in public appointments, especially under the old constitution. This is slowly changing with the new constitution which 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 suspended or prohibited from future government employment. 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). Another example is John Mututho who, although facing criminal charges by the EACC, was appointed to head the National Authority for Campaign against Alcohol and Drug Abuse in 2013 (Transparency International Kenya 2013c).

Police and security

Political interference, a lack of proper police oversight and high levels of corruption, combined with technical deficiencies have resulted in major weaknesses in the country's police and security apparatus. This was evidenced in the terrorist attack in September 2013 by the Somali Islamist group Al-Shabaab on the Westgate shopping complex in Nairobi that resulted in the deaths of nearly 70 civilians and security personnel. A parliamentary committee report following the attack argued that corruption among the security agencies is endemic and led to lapses that fuelled the attack (The Wall Street Journal 2013).

The Kenyan police are overwhelmingly seen as being highly corrupt, as evidenced by the results of the GCB 2013 in which 95 per cent of respondents perceive the police as corrupt or extremely corrupt. The high frequency of bribery combined with the fact that no high-ranking police official has been held to account has created a general sense of impunity (Wanjala 2013). As such, many Kenyans have lost confidence in the law enforcement system (Wanjala 2013).

The police are the public institution with the highest prevalence of bribery. A staggering 77 per cent of GCB respondents indicated that they had paid a bribe to the police (Transparency International 2013b). This was also reflected in the East African Bribery Index 2013 in which the police recorded the highest probability (71.8 per cent) of a respondent paying a bribe upon encountering a bribery situation (Transparency International Kenya 2013) and in the East African Bribery Index 2012 in which the police force was the sector with the highest bribery pattern (Transparency International Kenya 2012).

Bribe extortion by traffic police is reportedly common, with arbitrary demands of bribes at roadblocks or transit checkpoints (Business Anti-Corruption Portal 2014). Business executives interviewed within the framework of the 2013-2014 Global Competitiveness Report also perceive the Kenyan police services as unreliable to enforce the law, giving a score of 3.7 on a scale of 1 (cannot be relied upon at all) to 7 (can be completely relied upon), positioning Kenya at 102 out of 148 assessed countries (World Economic Forum 2013).

2 OVERVIEW OF ANTI-CORRUPTION EFFORTS

The government's efforts to tackle corruption have taken various forms over the past years, but many experts say there has been no real effort to break the culture of corruption and impunity and bring perpetrators to trial (Bertelsmann Foundation 2014).

Indeed, the fight against corruption was high on former president Kibaki's political agenda and in the early phase of his presidential mandate several reforms and laws were enacted. An increasing number of government agencies have codes of conduct and reforms are underway to strengthen the public financial 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 corruption scandals continue to fuel impunity and undermine the credibility of both the previous and current government's commitment to fight corruption.

About 46 per cent of respondents in the East African Bribery Index stated that they think the government of Kenya is doing enough to fight corruption in the country, whereas 49 per cent of respondents said it was not (Transparency International Kenya 2013). It appears that the confidence citizens have in their government to fight against corruption has decreased tremendously. While 70 per cent of respondents of the GCB assessed government efforts against corruption as effective in 2011, only 34 per cent of respondents said the same in 2013 (Transparency International 2013b, Transparency International 2011). One possible explanation for this stark decline is the number of corruption scandals involving senior members of the government that emerged in 2011 and 2012. In fact, 49 per cent of GCB 2013 respondents think that corruption has worsened in the two years preceding the survey. Some of reasons given for this dissatisfaction were that the anti-corruption agencies do not have enough powers, that corruption is practiced openly by government officials and that many still have to bribe to get a service (Transparency International Kenya 2013a).

Legal framework

Experts note that there has been an increase in anti-corruption legislation in recent years (Mbugua and Wangong'u 2014). As part of Kibaki's anti-corruption platform, several anti-corruption reform packages were passed. For example, the Anti-Corruption and Economic Crimes Act (ACEC) was enacted to replace the Prevention of Corruption Act, which was deemed inadequate to complement anti-corruption efforts in Kenya (Mbugua and Wangong'u 2014). The anti-corruption legal framework is considered robust as reflected by the country's Global Integrity 2011 score (on a scale of 0 to 100) of 100. Kenya has also ratified the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption and has acceded the United Nations Convention against Transnational Organised Crime.

However, as noted above, the implementation of many of these laws have been lacking. Moreover, many of the acts that were passed to operationalise the areas highlighted in the constitution have been criticised by experts as having been diluted (Bertelsmann Foundation 2014).

Constitution

The 2010 constitution is seen to represent a key milestone in 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 grants the right to access information, but no legal framework to govern the exercise of this right has yet been enacted.

Chapter six of the constitution sets high standards of integrity for office holders. It expressly requires state officers to conduct themselves with integrity and to ensure that decisions are not influenced by improper motives or corrupt practices (Mbugua and Wangong'u 2014). It also limits the involvement of public servants in commercial activities and provides that state officers must behave in a matter that avoids conflict between personal interests and official duties (Mbugua and Wangong'u 2014).

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 and police.

Moreover, the constitution provides that parliament shall enact legislation to provide for the keeping of financial records and auditing of accounts of all governments and other public entities and prescribe measures for securing efficient and transparent fiscal management (Mbugua and Wangong'u 2014). Nevertheless, despite these measures, audit reports by the auditor general in recent years indicate that there are significant sums of unsupported public expenditure, which, according to experts consulted for this Helpdesk answer, officials have not been held accountable for. For example, the 2012-2013 audit report of government ministries and departments reveals that nearly 34 billion Kenyan shillings (US$ 382 million) of public funds were spent without records and documentation.

Anti-Corruption and Economic Crimes Act

The Anti-Corruption and Economic Crimes Act of 2003 criminalises active, passive and attempted corruption as well as foreign bribery, abuse of office, money laundering, extortion, conflict of interest and bid rigging. However, the act does not cover private-to-private corruption.

Whistle-blowers are also protected and no disciplinary action may be taken against private or public employees. However, Global Integrity (2011) notes that it is not clear how effective this protection is in practice as there are no formal means of protecting whistle-blowers. According to experts consulted for this query, a whistle-blower protection bill is at its formative stages and a task force established by the Attorney General is developing an initial draft.

Several amendments have also been made to the act that would facilitate enforcement, including the addition of provisions that permit the EACC to enter into out-of-court settlements as opposed to instituting civil proceedings against suspected offenders (Mbugua and Wangong'u 2014). This has been applied recently in the acquisition of the Grand Regency Hotel (now Laico Regency Hotel). It was alleged that the hotel had been built using money illegally acquired from the public (Mbugua and Wangong'u 2014). The proprietor handed the hotel over to the government in exchange for a pardon on civil proceedings against him.

Public Officers Ethics Act

The Public Officers Ethics Act requires civil servants to declare their assets, offers certain guidance regarding gift and hospitality offered to civil servants and provides that a public officer shall not hold shares or have any other interest in a private body if this results in a conflict of interest. However, there are neither clear provisions on the auditing of financial reports nor records of any action arising out of these declarations of wealth (Global Integrity 2011). Moreover, the guidance on gifts and hospitality seem not to be strictly enforced in practice (Global Integrity 2011).

Public Procurement and Disposal Act

A Public Procurement and Disposal Act was adopted in 2005 and the country scores fairly high in Global Integrity's 2011 assessment (88 out of 100). It prohibits corrupt practice in procurement proceedings. It also establishes the Public Procurement Oversight Authority to oversee all procurement matters and provides for strict operational measures and penalties for breach.

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

However, the procurement act is not seen as effective in regulating violations committed by public officials (Business Anti-Corruption Portal 2014). As such, there continue to be corruption scandals related to government procurement (Business Anti-Corruption Portal 2014).

Public Financial Management Act

In 2012, the Kenyan government passed the Public Financial Management Act. It sets the rules for how the government at national and country levels can raise and spend money in accordance with the new constitution (Lakin 2013). The act also provides opportunities for participation in the budget process, from formulation to implementation to evaluation (Lakin 2013). Citizens can also monitor whether what goes into the budget is actually spent by mandating government to provide information about what it is actual spending and whether it is consistent with the approved budget at specific times during the year (Lakin 2013).

The IMF has since praised Kenya's improved public financial management legislation as it has helped strengthen public financial management (Public Finance International 2013). However it also notes that in order to continue successfully, all the regulations from the Public Financial Management Act must also be implemented (Public Finance International 2013).

Leadership and Integrity Act

The Leadership and Integrity Act was meant to operationalise chapter six of the constitution, which advocates for a leadership that upholds personal integrity, objectivity and impartiality and promotes public interest. Article 80 of the constitution requires the parliament to enact legislation that will give effect to and establish mechanisms for the effective administration of chapter six (East African Centre for Law and Justice 2012).

While the original bill contained various important provisions, such as requirements for asset declaration, disciplinary measures for penalties and the establishment of a forum to promote leadership and integrity principles, major changes were made at cabinet level, which weakened it (East African Centre for Law and Justice 2012). For example, the clause on asset declaration and the provisions on vetting public office holders and political aspirants was removed (East African Centre for Law and Justice 2012). As such, in its current form, it is not seen to be an effective mechanism to bring about accountability and transparency (East African Centre for Law and Justice 2012).

Political finance measures

Kenya scored very poorly in terms of political finance transparency in Global Integrity's 2011 assessment. A revised Political Parties Act came into force in November 2011, and was expected to help restructure the political landscape. This act has provisions for some political parties to get funding from the government and allows political parties to seek additional funding from various other sources (Transparency International Kenya 2014). However, how the parties distribute money to local branches is unclear.

There was no law regulating campaign finance during the 2013 elections and as such small political parties and candidates with limited funds were seen to be at a disadvantage (Transparency International Kenya 2014). A new law, the Election Campaign Financing Act, came into force in January 2014 that allows the IEBC to regulate campaign financing (Transparency International Kenya 2014). Specifically, the IEBC is required to supervise candidates and political parties on their campaign expenses, set spending limits, enforce compliance with such limits and verify sources of political contributions (Kenya Forum

2014). However, members of parliament are reported to have made last minute amendments to the bill that removed the limits of how much members of parliament can spend in an election campaign (Kenya Forum 2014).

Anti-money laundering and financial crime measures

In the past, the Financial Action Task Force (FATF) had noted that Kenya was slow in implementing its action plan on improving its anti-money laundering and combatting the financing of terrorism (AML/CFT) legislation (FATF 2013). In its latest progress update from June 2014, however, the FATF "welcomes Kenya's significant progress in improving its [anti-money laundering and combatting the financing of terrorism] (AML/CFT) regime" and determines that Kenya has "established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in 2010" (FATF 2014). Kenya is therefore no longer subject to FATF's monitoring process of its action plan under its on-going global AML/CFT compliance process (FATF 2014).

Nevertheless, according to the US Department of State's 2014 global money laundering and financial crimes status report, Kenya continues to remain vulnerable to money laundering and financial fraud (US Department of State 2014).

Proceeds of Crime and Money Laundering Act

The Proceeds of Crime and Money Laundering Act was passed in 2009 under international pressure, but critics question the political will to fully implement the provisions of the act and eradicate money laundering (Business Anti-Corruption Portal 2014).

The act provides that any person who acquires property and knows or ought to have known that it forms part of the proceeds of a crime committed by another person, commits an offence. It adopts a broad definition of the proceeds of crime by including any economic advantage derived in connection with an offence (Mbugua and Wangong'u 2014). It also introduces measures for combating the transmission and use of proceeds of crime and provides for the identification, tracing, freezing, seizure and confiscation of the proceeds of crime and for connected purposes (Mbugua and Wangong'u 2014). It also provides for the sharing of information relating to proceeds of crime with institutions such as the Financial Reporting Centre, Kenya's Financial Intelligence Unit.

Finance Act

The Finance Act of 2006 addresses measures to be taken against tax fraud and lays out guidelines on tax administration in the areas of value added tax, customs and excise duties and income tax. The legislation provides sanctions on corrupt practices and expands the tax bracket to capture a wider tax base, thereby reducing opportunities for tax evasion (Business Anti-Corruption Portal 2014).

Banking Act

The Banking Act requires banks and financial institutions to submit to the Central Bank of Kenya, not later than three months after the expiry of the financial year, an audited balance sheet showing assets and liabilities in Kenya and a profit and loss account covering activities in Kenya together with a copy of the auditor's report (Mbugua and Wangong'u 2014). Moreover, Kenyan accountants and auditors subscribe to the use of International Financial Reporting Standards. These require uniformity of reporting methods and proper record keeping.

Institutional framework

Ethics and Anti-Corruption Commission

Kenya has had some difficulty in establishing and maintaining an effective anti-corruption commission, with many changes and adaptations over the years (Wanjala 2012). The EACC was established in 2011 pursuant to Section 79 of the new constitution. It takes over from the Kenyan Anti-Corruption Commission (KACC), which was disbanded by parliament in 2011 to give way to the EACC. It is established by law to investigate corruption and economic crimes. It also has the power to institute and conduct proceedings in court for the purposes of recovering or protecting public property or for the freezing or confiscation of proceeds of corruption or the payment of compensation. It may refer investigated persons for trial in criminal proceedings. However, the EACC has no prosecutorial powers. Although the EACC could be given prosecutorial powers by parliament, it currently forwards cases to the Attorney General (Business Anti-Corruption Portal 2014).

The commission took two years to be fully constituted following its creation in 2011 (Transparency International Kenya 2013). This long process was seen as a setback to the fight against corruption in Kenya (Transparency International Kenya 2013).

The EACC has also had troubles with its leadership, which has undermined its ability to pursue its mandate (Wanjala 2012). The EACC's first appointed chairperson was Mumo Matemu, but this was revoked by the High Court in 2012. The court concluded that neither the legislature nor the executive had properly vetted the candidate (Wanjala 2012). Matemu had a serious corruption case pending against him related to his time in the Agricultural Finance Corporation, which cast doubts on his integrity (Bertelsmann Foundation 2014). However, in 2013, the Court of Appeals ordered the reinstatement of Matemu as chairperson. It found that the High Court's decision usurped the powers of parliament and that the evidence of the fraud case brought against him was insufficient and could not be used to determine his suitability for office (AllAfrica 2013).

Judiciary

The judiciary was one of the first institutions to be reformed under Kibaki's regime. The government introduced new vetting procedures along with the appointment of a new chief justice and the swearing-in of five Supreme Court judges (Business Anti-Corruption Portal 2014). The new Judicial Services Commission handles the vetting and appointment of judges, and has been cited as an early success (Freedom House 2014).

The chief justice is empowered to appoint special magistrates to try corruption and economic crimes and related offences (Mbugua and Wangong'u 2014). In addition, an ethics and governance committee of the judiciary was established to collect information to determine the levels of corruption in the judiciary, report on individual cases and recommend measures (Business Anti-Corruption Portal 2014). As such, local civil society organisations have noted that the judiciary has undergone notable reforms (Transparency International Kenya 2013).

However, the judiciary continues to have weaknesses. Courts are seen as continually understaffed, underfinanced and lacking the capacity to efficiently prosecute corruption cases (Bertelsmann Foundation 2014). Moreover, 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 log management, poor terms of services for judicial and administrative staff and poor infrastructure (Freedom House 2012). This creates a supportive environment for corruption to flourish and, according to GGB 2013 data, 58 per cent of respondents reported paying a bribe to the judiciary in the 12 months preceding the survey.

Until 2012, most of the corruption cases had stalled in courts and the few convictions that did result were only for petty cases with punishments seen as relatively lenient (Wanjala 2012). Although the judiciary is seen to have undergone a fundamental transformation with the new constitution, some experts are still somewhat critical. For example, corruption investigations of politicians are allegedly rarely brought to trial (Bertelsmann Foundation 2014).

While the new constitution is seen as an important step towards constraining political interference,, attempts to interfere with judicial independence remain prevalent (Bertelsmann Foundation 2012). As such, only about 51 per cent of firms surveyed by the World Bank and IFC (2013) recognise the functioning of Kenyan courts as being fair, impartial and uncorrupted.

Auditor General

The Auditor General, previously the Controller and Auditor General, is the supreme audit institution in Kenya. It is 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 guidance of the Kenya National Audit Office and publishes audit reports after they have been presented to parliament. However, according to the International Budget Partnership (2010), while the audit reports are published, they are not comprehensive and do not present audits of extra-budgetary funds. The institution lacks sufficient funding or channels of communication with the public (International Budget Partnership 2010).

Ombudsman

The government established the Public Complaints Standing Committee in 2007 as the office of ombudsman to receive all complaints relating to public officials. Within this framework, the institution was also mandated to look into allegations of abuse of office, corruption, breach of integrity and unethical conduct.

However, according to Global Integrity (2011), the committee did not have adequate staff to cope with the number of complaints from the public and faced staffing and funding issues as well as a changed mandate in the new constitution. In November 2011 parliament passed the Commission on Administrative Justice Act to establish the Commission on Administrative Justice that takes on ombudsman-like responsibilities.

Public Procurement Oversight Authority

The Public Procurement and Disposal Act of 2006 established the Public Procurement Oversight Authority to oversee all procurement matters. Under the Ministry of Finance, it is the agency responsible for 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 found guilty of violations may be debarred at the discretion of the director, but there is no indication of how this has been implemented in practice. Citizens can access public tender outcomes on the appropriate government web site.

Financial Reporting Centre

The Financial Reporting Centre (FRC) is Kenya's financial intelligence unit and was created by Kenya's Anti-Money Laundering Advisory Board in 2012. Its objectives are to investigate suspicious transactions and develop policies in consultation with the advisory board.

According to the US Department of State, since 2012 the FRC has received 97 suspicious transaction reports, which it has forwarded to law enforcement agencies to further investigate and possibly prosecute (US Department of State 2014). However, the FRC continues to have some weaknesses and is not yet fully operational or functioning effectively (FATF 2013). Its work is further complicated by the fact that there is a lack of regulation and supervision of the money and value transfer sector and a lack of reporting from certain reporting entities (US Department of State 2014).

Police oversight bodies

The police force constantly ranks highest in the sectors most permeated by corruption. Therefore in 2012 the Kenyan government initiated a set of police reforms. The government appointed an inspector general of the police, David Kimaiyo. His performance so far has received mixed reactions, with some criticising, for example, a media gag order that would prevent police heads from commenting on matters related to crime in the country (News24 Kenya 2014). In September 2014, as a response to the criticisms regarding continuous cases of corrupt practices of the police force, Kimaiyo ordered an audit on the lifestyle of junior officers to check for any suspicious behaviour that could indicate corrupt activity (Standard 2014).

In addition to the Office of Inspector General, a National Police Service Commission and an Independent Policing Oversight Authority were created. The commission aims at improving efficiency in the recruitment of new members of the police service and management of officers in the service, which have for a long time been susceptible to corrupt practices (Transparency International Kenya 2013). The Independent Policing Oversight Authority was created to check excesses in law enforcement and act on public complaints against the police.

However, implementation of these reforms is still weak. A report by a civil society group in 2014 indicated that only 60 per cent of proposed changes had been implemented (AllAfrica 2014). There have been some disagreements over mandates. For example, in April 2013, the Office of the Inspector General proposed amendments to the constitution that would seek to take over the commission's responsibilities (Sabahi Online 2013). Lack of funding and resources were noted by Kimaiyo to have slowed the implementation process (Bonifance 2013). This slow implementation has also meant that the effects of reform are not yet felt. In fact, the civil society report showed that only 15 per cent of implemented reforms have shown significant impact in communities (AllAfrica 2014).

Other stakeholders

Media

Kenya's new constitution explicitly guarantees freedom of the press and expression and there is a large, independent and active media in Kenya (Freedom House 2014). However, in practice, there are several laws that restrict these rights and in recent years there have been several occasions in which the government has intervened and restricted freedom of speech. Kenya fell by 18 spots between 2013 and 2014 on the Reporters Without Borders' World Press Freedom Index and is now ranked 90th out of 180 countries.

This in particular is due to the government's criticised authoritarian response to the media's coverage of the Westgate Mall terrorist attack as well as a controversial 2013 media law (Reporters Without Borders 2014). Following the terrorist attack, authorities threatened and summoned several reporters who documented looting of the mall by the police and military (Freedom House 2014). In December 2013, parliament passed the Kenya Information and Communication Bill and the Media Council Bill, which provided for wide-ranging government control of the media sector. Among the bills' provisions, a new government-controlled board would have the authority to regulate all forms of journalism, including the power to impose potentially crippling fines on media houses and individual journalists for alleged violations of a code of conduct, which will be drafted by legislators (Freedom House 2014).

During and following the 2013 elections, media outlets are said to have deliberately avoided reporting on shortcomings on the electoral commissions, government corruption or the ICC case against Kenyatta, often under threat of reprisal (Freedom House 2014). In April 2013, a reporter from the Star newspaper was murdered in Mombasa, allegedly for reporting on illegal sales of expired fertiliser (Freedom House 2014).

Civil society

Kenya has a strong and vibrant civil society, although the mobilisation of civil society networks outside Nairobi is relatively limited due to financial and infrastructure constraints. Nevertheless, the new constitution also provides for freedom of association and assembly and these rights are generally respected. However, in the aftermath of 2007, there have been instances where the police interfered with these rights (Bertelsmann Foundation 2012).

Civil society has repeatedly criticised the government and parliament for lack of visible progress in combating corruption, the impunity of senior officials and the undermining of the new constitution through watered-down legislation (Bertelsmann Foundation 2014). Some have also criticised the government's response to the ICC proceedings (Bertelsmann Foundation 2014).

Some NGOs engage constructively with the state. For example, recently, a National Anti-Corruption Campaign was launched to raise public awareness about corruption. It includes a steering committee, situated within the Ministry of Justice and Constitutional Affairs that draws members from among various stakeholders including religious organisations, civil society, think tanks and other interested parties (Transparency International Kenya 2013b).

However, some experts note that political decision makers do not seek dialogue on issues of corruption and human rights and in most cases simply ignore civil society recommendations. Overall, the impact of civil society has arguably decreased over the past decade, and it is now less capable of influencing the political agenda (Bertelsmann Foundation 2014).

There are a number of organisations active against corruption in the country, namely:

- Transparency International Kenya is one of the prime sources for documentation, investigation 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 raises awareness on corruption and makes demands 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) aims 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) is a private organisation promoting the adoption of good practice in corporate governance through training, education, research, advocacy, monitoring and evaluation.

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

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