

Efficacy of Anti-Corruption Institutional Structure in Kenya

By Rose Ngugi, Beverly Musili and Paul Lutta

Introduction

Kenya has over time put in place anti-corruption initiatives dating back to independence. This includes defining the scope of corruption activities, setting up anti-corruption institutions including those provided for in the 2010 Constitution, enactment of laws and regulations, and leveraging on technology in provision of public services. Despite these initiatives, the ranking by Transparency International's Corruption Perceptions Index (CPI) and the Ethics and Anti-Corruption Commission corruption perception surveys show evidence of persistently high levels of corruption. Further, the Global Competitiveness Index (GCI) shows corruption as a leading problematic factor in improving the business environment in Kenya. Similarly, various reports

from the Office of the Auditor General reveals loss of public funds. The key question is where are the gaps?

Understanding Corruption

In the Kenya context, the Anti-Corruption and Economic Crimes Act 2003 defines corruption to mean bribery, fraud, embezzlement or misappropriation of public funds, breach of trust; or an offence involving dishonesty in connection with any tax, bid rigging, secret inducements for advice, as abuse of office to improperly confer a benefit on themselves or anyone else. That said, only actions related to money transactions and misuse of office are given attention as corruption (Table 1). Further, if you consider the synonyms of corruption ('Chai', 'Kitu

Table 1: Acts of corruption

	Strongly Disagree	Disagree	Indifferent	Agree	Strongly Agree
Financial improprieties	0%	4%	0%	8%	88%
Buying of votes/voter bribery	0%	0%	8%	4%	88%
Giving or receiving a bribe to facilitate a process.	0%	0%	4%	12%	84%
Nepotism or favouritism (giving a job opportunity to a friend or relative)	4%	0%	4%	8%	84%
Failing to pay taxes/ submission of tax returns	4%	0%	4%	8%	84%
Abuse/misuse of office	0%	0%	4%	16%	80%
Many being paid millions of shillings without delivery of goods and services	0%	0%	4%	16%	80%
Trading in influence (using your position or power of influence to gain/give undue favors)	0%	0%	4%	16%	80%
Receiving and not declaring gifts from customers to appreciate service delivery to them	0%	0%	8%	24%	68%
Delay in opening public offices	0%	4%	12%	24%	60%
Coming to work late	8%	4%	8%	24%	56%
Sneaking out of office to attend to personal matters.	4%	0%	16%	24%	56%
Time wasting at the workplace	4%	4%	20%	20%	52%
Internet misuse at work	8%	0%	16%	24%	52%
Lobbying	0%	8%	20%	20%	52%
Engaging in a project without proper planning		8%	16%	24%	52%
Personal phone calls when at work	4%	20%	12%	32%	32%

Source: KIPPRA survey on efficacy of anti-corruption institutions in Kenya (January-March 2020)

kidogo, *'Maziwa'*, *'Unga'* and *'Salamu'*), none of these words connote corruption as a crime. This implies that there is a gap in the society in understanding the bigger picture on implications of corruption. Persistence of corruption in the country was mainly attributed to 'sabotage by influential individuals' (72%), 'institutional failure' (72%), 'societal moral decay' (68%), 'greed' (68%) and 'politicization of the war against corruption' (68%). A huge number (80%) reported 'The citizens' are also to blame for the corruption culture.

Detection, Deterrence and Prevention of Corruption

The government has developed various legal instruments to help in corruption detection. For instance, the Leadership and Integrity Act (2013) prescribes ways in which public officers should carry out office duties in maintaining public confidence in the integrity of the office. Further, candidates vying for various electoral seats are required to submit to the Independent Electoral and Boundaries Commission a self-declaration form capturing moral and ethical issues to assess a candidate's integrity. The Public Officer Ethics Act (2003) entrenches the requirement for declaration of assets, income, and liabilities by public officers after every two years. In addition, various deterrence measures have been put in place in pursuant to the Proceeds of Crime and Anti-Money

Laundering Amendment Act (2017) while the Bribery Act (2016) prescribes different offences to persons who contravene the Act.

The Public Finance Management Act (2015) provides for effective management of public finances by the National and County governments, and the oversight responsibility of Parliament and County Assemblies. Further, the Public Procurement and Disposal Act (2005) establishes procedures for efficient public procurement and for the disposal of unserviceable, obsolete, or surplus stores, assets, and equipment by public entities. The Government has also established the Integrated Financial Management Information System (IFMIS), which interlinks planning, budgeting, expenditure management and control, accounting, audit, and reporting. To curb electoral related corruption, the Political Parties Act (2011), the Elections Campaign Finance Act (2013) regulates the amount of expenditure for election campaign among candidates and political parties, and the sources of funding to curb electoral-related corruption and to level the playing field. The Election Laws Act (2011) provides a comprehensive electoral code of conduct that is binding to all political parties, candidates, party leaders, members, supporters, and agents. The Electoral Offences Act (2016) describes the general electoral offences and prescribes penalties to be meted to the offenders, this including disqualification, imprisonment and prosecution of persons who

Table 2: Effectiveness of legal instruments for fighting corruption

	Very ineffective	Ineffective	Somewhat effective	Effective	Very effective
The Constitution of Kenya 2010	4%	8%	16%	36%	36%
The United Nations Convention Against Corruption	0%	14%	33%	19%	33%
The Bribery Act	19%	10%	19%	24%	29%
The Mutual Legal Assistance Act	9%	5%	32%	27%	27%
The Leadership and Integrity Act	5%	24%	29%	19%	24%
The Elections Act	24%	14%	24%	14%	24%
The Proceeds of Crime and Anti-Money Laundering Act	5%	5%	23%	45%	23%
The Commission on Administration of Justice Act	9%	9%	22%	39%	22%
The African Union Convention on Preventing and Combating Corruption	0%	25%	40%	15%	20%
The Public Procurement and Asset Disposal Act	4%	16%	16%	44%	20%
The Public Finance Management Act	4%	8%	16%	52%	20%
The Anti-Corruption and Economic Crimes Act	5%	14%	32%	32%	18%
The Ethics and Anti-Corruption Commission Act	13%	9%	30%	30%	17%
The Witness Protection Act 2006	8%	25%	25%	25%	17%
The Fair Administrative Action Act	5%	25%	15%	40%	15%
The Public Officers Ethics Act	0%	29%	13%	46%	13%

Source: KIPPRA survey on efficacy of anti-corruption institutions in Kenya (January-March 2020)

Table 3: Actions on corruption prevention

	Not at All	Less frequent	Somewhat frequently	Frequently	Very frequently
Vetting Public Officers Seeking Public Office	0%	0%	4%	36%	60%
Systems reviews of public institutions	4%	0%	8%	32%	56%
Corruption risk analysis	4%	4%	20%	20%	52%
The establishment of transparent financial management systems and public procurement systems	4%	0%	24%	20%	52%
Awareness campaigns	4%	8%	20%	20%	48%
Public disclosure of detected instances of corruption	4%	0%	8%	40%	48%
Promotion of transparent and open provision of public services	4%	0%	16%	32%	48%
Civic education	8%	4%	12%	32%	44%
Provision of the information about a person seeking or holding office	4%	8%	8%	36%	44%
Allowing public access to government information	8%	4%	8%	40%	40%
Training of staff	8%	4%	16%	36%	36%
Research	12%	8%	16%	32%	32%
Formulating Policy documents	20%	8%	12%	32%	28%
Spiritual nourishment	8%	8%	40%	20%	24%
Recruitment of more staff in the anti-corruption institutions	12%	16%	32%	24%	16%

Source: KIPPRA survey on efficacy of anti-corruption institutions in Kenya (January-March 2020)

interferes with the electoral process. Examples of the offences the Act outlaws is voter bribery.

That said, most of the legislative frameworks were viewed as ineffective as reported in Table 2 which demonstrates a major gap. Further, to prevent corruption, majority (>50%) identified actions that should be done 'very frequently' to include: 'Vetting Public Officers Seeking Public Office' (60%), 'Systems reviews of public institutions' (56%), 'Corruption risk analysis' (52%), 'Establishment of transparent financial management systems and public procurement systems' (52%) (Table 3).

Reporting, Investigation, and Prosecution

Corruption reporting has been identified as one way to mitigate it. There are several avenues for corruption reporting adopted by various organizations, including corruption reporting boxes, corruption reporting desks and toll free lines. Institutions such as Financial Reporting Centre (FRC) receive, assess, and interpret information on suspicious transactions and other reports provided by reporting institutions. The intelligence is shared with the appropriate law enforcement authorities. Further, the National Anti-Corruption Campaign Steering Committee (NACCSC) shares these reports with the Ethics and Anti-Corruption Commission (EACC) for further

Table 4: Preference in Reporting Corruption Issues

	Most Likely	Least Likely	Not at All	Not sure
Ethics and Anti-Corruption commission	80%	8%	8%	4%
Directorate of Criminal Investigations	76%	20%	4%	0%
Office of the Directorate of Public Prosecution	64%	28%	4%	4%
Media	52%	24%	24%	0%
Commission on Administrative Justice	52%	16%	24%	8%
Police	40%	40%	20%	0%
Anti-Counterfeit Agency	40%	32%	24%	4%
Judicial Service Commission	36%	28%	24%	12%
Financial Reporting Centre	36%	28%	32%	4%
Office of the Attorney General	32%	40%	20%	8%
Transparency International Kenya's	8%	4%	16%	36%
Advocacy and Legal Advisory Centers	32%	36%	24%	8%
Civil Society Organizations	24%	24%	40%	12%
Competition Authority	20%	36%	32%	12%

Source: KIPPRA survey on efficacy of anti-corruption institutions in Kenya (January-March 2020)

action, any information garnered from its campaigns that reveal the occurrence of corruption-related offenses. The Commission on Administrative Justice (CAJ) addresses complaints of maladministration in the public sector, including corruption. The Judiciary through the Judicial Service Commission receives and addresses complaints against registrars, magistrates, other judicial officers, and other staff of the Judiciary. The Independent Policing Oversight Authority (IPOA) receives and handles complaints related to police misconduct. The Office of the Controller of Budget (OCOB) submits annual and periodic reports on budget implementation to the Executive, Parliament, and the County Assemblies. From the survey, majority are likely to report to EACC (Table 4). At institutional level, when corruption complaints are reported, it was noted that in most cases, the reports are investigated and action taken on the recommendations provided. However, very few cases are forwarded to EACC and DPP.

Investigation and apprehension

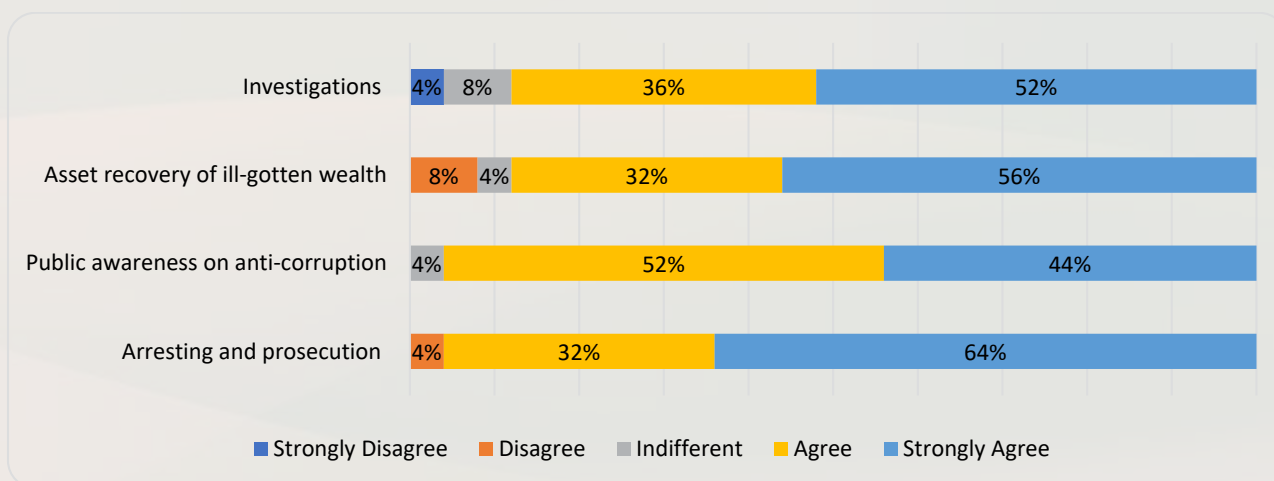
The EACC is the main body charged with corruption investigations. It does this with support from other investigative agents such as the Police and the Department of Criminal Investigation (DCI). EACC then recommends cases to the Director of Public Prosecutions for prosecution of any acts of corruption or violation of codes of ethics. Additionally, the Ombudsman, which is an independent Constitutional Commission, has responsibility to investigate the

actions of public authorities. Under the Mutual Legal Assistance (MLA), the government can delegate powers to other entities outside its jurisdiction to initiate and prosecute extradition proceedings (Article 157 (9) of the 2010 Constitution of Kenya) while maintaining a supervisory role in respect to this category of prosecutions. The Multi-Agency Task Team (MATT) is concerned with enhancing coordination and cooperation among the key actors in Kenya’s Criminal Justice System to enhance the investigation and prosecution of corruption and economic crime in Kenya. Generally, from the survey, a vast majority (92%) consider ‘Joint investigations as an effective way of fighting corruption’. That said, a key gap noted was that anti-corruption investigations take long to be completed, some even more than 2 years. Majority of respondents believed investigations should last for a period of less than 3 months (35%) or at most 6 months (less than 6 months) (50%).

Prosecution and Legal Proceedings

Several laws are in place to support legal proceedings of corruption-related cases. After the conclusion of investigations by the DCI, reports are handed to the Director of Public Prosecutions to build a strong case for prosecution. The judiciary is concerned with the administration and dispensation of justice; dispute resolution (Judicial Service Act, 2011) and presides over corruption-related cases. To support prosecution, there is the Witness Protection Agency

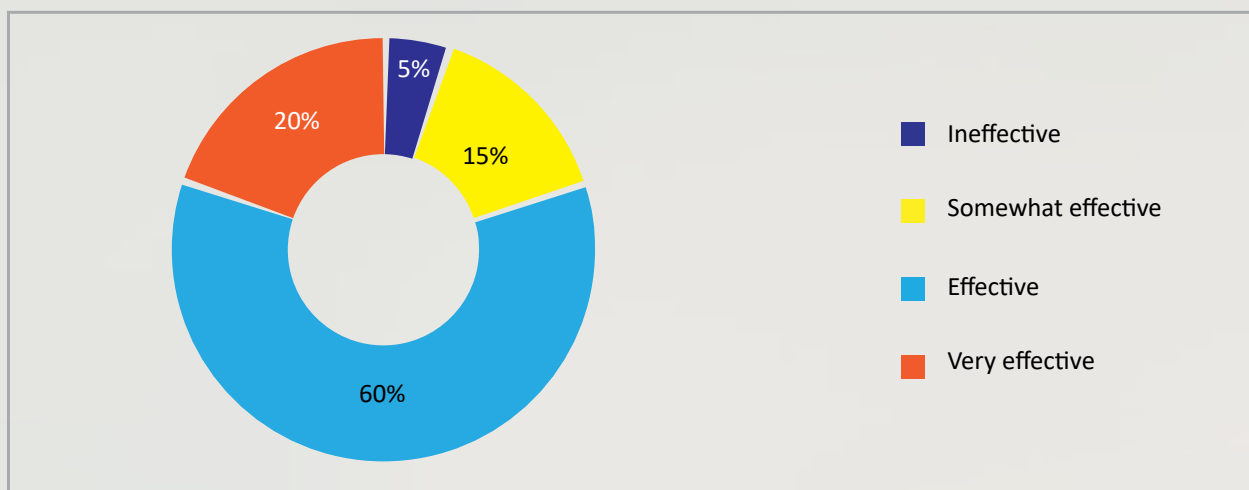
Figure 1: Effective ways in dealing with corruption



(WPA) anchored in the Witness Protection Act, CAP 79; the Witness Protection Act, 2006 (Principal Act); and Witness Protection (Amendment) Act, 2010. The agency provides a framework and procedures for giving special State protection to informants who face potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies. The Agency is also tasked with facilitating the integration of protected persons into the host societies; and with advising the Government or any other relevant persons on the adoption of strategies and measures on witness protection. Further, the Assets and Recovery Agency

conducts investigations for the purposes of tracing assets and proceeds of crime; freezing suspected proceeds from further use; confiscating proceeds of all crime; realizing properties; and valuing confiscated properties. Notably, many agreed that arresting and prosecution (96%), public awareness on anti-corruption (96%), asset recovery of ill-gotten wealth (88%) and investigations (88%) are some of measures that are effective in dealing with corruption (Figure 1). However, it was noted that such measures are rarely enforced as corrupt public servants continue to work and sometimes are transferred to other departments.

Figure 2: Effectiveness of civic education in the fight against corruption



Civic Education and Capacity Building

Civic education on corruption has been identified as one way of corruption prevention. The National Anti-Corruption Campaign Steering Committee (NACCSC) was created by the Government of Kenya to coordinate a country-wide anti-corruption public awareness programme. NACCSC seeks to change cultural attitudes towards corruption in favour of the exercise of transparency and accountability in the management of public affairs by undertaking mass public education, sensitization and awareness creation campaigns to impart a deeper understanding of corruption.

The Kenya School of Government provides capacity building to public servants by inculcating values of ethics, honesty, transparency, and accountability and generally on financial management through a variety of programmes offered. In addition,

various professional association bodies in the country promote ethical professionalism among its members as one way to prevent unethical practices that amount to corruption. Overall, from the survey, most respondents (95%) reported civic education being 'effective' in the fight against corruption (Figure 2). The findings are indicative of the extent to which respondents perceive the importance of civic education hence the need for relevant institutions to incorporate it in the fight against corruption.

Policy Recommendations

Based on the findings, the study recommends the following to win the war against corruption:

- a) To enhance better understanding of corruption, there is need for creating public awareness on corruption in its various forms among public servants and all Kenyans.

- b) Publicizing of information on corruption activities should be encouraged to draw much attention from the public and other stakeholders in the war against corruption.
- c) There is need for a strong political will to support the fight against corruption. This may be in the areas of enforcement of the penalties more so among influential persons in the government.
- d) There is need for effective implementation of legal instruments that were considered ineffective. These include: 'The Bribery Act' and 'The Leadership and Integrity Act', among others.
- e) Upscaling and enforcing asset recovery and investigations should be undertaken to change the frequency and prevalence of corruption in the country.
- f) There is need for the government to enforce and create awareness on wealth declaration to curb embezzlement of public resources by corrupt individuals.
- g) There is need to upscale public sector reforms, which have proven successful in the fight against corruption to every county and department, including Huduma Kenya Integrated service delivery, E-Government, and integrated Financial Management System (IFMIS).
- h) Organizations and institutions should be compelled to generate corruption-related reports on daily basis. This will enable the prosecution to have sufficient time to prepare for arrest and prosecution of individuals, hence improving the fight against corruption.
- i) There is need to leverage on technology in reporting and complaints handling. This can be enhanced through developing an 'application', which the public can use to record, take photographs, and capture GPS coordinates of places where corruption activities have been witnessed. This will enable real-time reporting and handling.
- j) There is need for adequate funding to institutions supporting witness protection to provide for maximum protection to whistle blower.
- k) Strong enforcing corruption deterrence measures is necessary to discourage corruption-related activities.

About KIPPRA Policy Briefs

KIPPRA Policy Briefs are aimed at a wide dissemination of the Institute's policy research findings. The findings are expected to stimulate discussion and also build capacity in the public policy making process in Kenya.

KIPPRA acknowledges generous support from the Government of Kenya and the Think Tank Initiative of IDRC, who have continued to support the Institute's activities over the years.

For More Information Contact:

Kenya Institute for Public Policy Research and Analysis
Bishops Road, Bishops Garden Towers
P.O. Box 56445-00200, Nairobi
Tel: 2719933/4, Cell: 0736712724, 0724256078
Email: admin@kippra.or.ke
Website: <http://www.kippra.org>
Twitter: [@kippra.kenya](https://twitter.com/kippra.kenya)