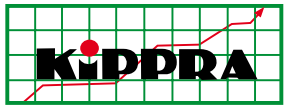
Tracing the Effectiveness of Kenya's Continuum of Anti-Corruption Strategies

Beverly Musili, Paul Lutta and Andrew Olando

Special Paper No. 34/2022

KENYA INSTITUTE FOR PUBLIC POLICY
RESEARCH AND ANALYSIS
(KIPPRA)



Tracing the Effectiveness of Kenya's Continuum of Anti-Corruption Strategies

Kenya Institute for Public Policy Research and Analysis

Beverly Musili, Paul Lutta and Andrew Olando

Special Paper No. 34

2022

KIPPRA in Brief

The Kenya Institute for Public Policy Research and Analysis (KIPPRA) is an autonomous institute whose primary mission is to conduct public policy research leading to policy advice. KIPPRA's mission is to produce consistently high-quality analysis of key issues of public policy and to contribute to the achievement of national long-term development objectives by positively influencing the decision-making process. These goals are met through effective dissemination of recommendations resulting from analysis and by training policy analysts in the public sector. KIPPRA therefore produces a body of well-researched and documented information on public policy, and in the process assists in formulating long-term strategic perspectives. KIPPRA serves as a centralized source from which the Government and the private sector may obtain information and advice on public policy issues.

Published 2022

Bishops Garden Towers, Bishops Road
PO Box 56445-00200 Nairobi, Kenya
tel: +254 20 2719933/4; fax: +254 20 2719951
email: admin@kippra.or.ke
website: http://www.kippra.org

ISBN 978 9966 817 69 3

The KIPPRA Special Reports Series deals with specific issues that are of policy concern. The reports provide in-depth survey results and/or analysis of policy issues. They are meant to help policy analysts in their research work and assist policy makers in evaluating various policy options. Deliberate effort is made to simplify the presentation in the reports so that issues discussed can be easily grasped by a wide audience. KIPPRA appreciates any comments and suggestions arising from this report.

ACKNOWLEDGEMENTS

The Kenya Institute for Public Policy Research and Analysis (KIPPRA) is grateful to the individuals who contributed towards the preparation and finalization of this special policy paper, "Tracing the Effectiveness of Kenya's Continuum of Anti-Corruption Strategies". KIPPRA would like to specifically appreciate the following:

The Executive Director, Dr Rose Ngugi, for providing technical guidance and oversight during the preparation of this paper, and KIPPRA's technical staff – Beverly Musili, Paul Lutta and Andrew Olando – for preparing the report. Other KIPPRA staff who gave valuable comments and insights during the internal weekly seminars held on 22nd May 2019 and 13th January 2021 are most appreciated. This process was part of the peer review and quality control.

Special thanks go to Dr Alfred Ongera, the project consultant, for providing leadership in the institutional study. Finally, KIPPRA wishes to extend its gratitude to the institutions that participated in the survey. KIPPRA is also thankful to other participants for their active participation and for providing invaluable comments at the stakeholder consultative workshop held on 29th May 2019.

EXECUTIVE SUMMARY

Corruption persistently and relentlessly remains a challenge in Kenya with a huge cost to the economy. It is a hindrance to good governance and inflicts substantial economic costs such as misappropriation or loss of public funds and livelihoods. Kenya's rating on the Corruption Perception Index (CPI), for the past 20 years, continues to remain low, ranging from 19 points (lowest) to 28 points (highest), out of the possible 100 points.

In addition, Kenya scores very low on the Worldwide Governance Indicators (WGI), in Sub-Saharan Africa. These governance indicators are the measure of a government's effectiveness in the fight against corruption. These indicators are government effectiveness, political stability, regulatory quality, rule of law, voice and accountability, independence of the judiciary, accountability of the public service, application of credible sanctions, freedom of expression, freedom of the media and satisfaction with poverty reduction.

Anti-corruption initiatives in Kenya date back to the colonial era, when the Kenya Prevention of Corruption Act (Cap 65) was enacted in 1956. The Act prescribed actions and offences that amount to corruption, such as corruption in office (behaviour), corrupt transactions with agents and public servants obtaining advantage without consideration, and prescribed penalties therefor.

The legal anti-corruption efforts continued in the 1990s with a new focus on good governance. The introduction of multi-party democracy and the empowerment of Kenya's civil society generated hope for a more open and transparent society in which corrupt practices would no longer be tolerated. The same period witnessed the establishment of several anti-corruption institutions, such as the Anti-Corruption Police Squad in 1992 and the Kenya Anti-Corruption Authority (KACA) in 1997.

The turn of the millennium saw several far-reaching governance, constitutional, legal, and political reforms aimed at creating a more democratic and accountable Kenyan State. Several laws were enacted, such as Kenya's Anti-Corruption and Economic Crimes Act, 2003; the Public Officer Ethics Act, 2003; the Public Audit Act 2003; the Government Financial Management Act, 2004; the Privatization Act, 2005; and the Public Procurement and Disposal Act, 2005. The purpose of these laws was to collectively help curb the misuse and misappropriation of public funds and entrench a culture of accountability, and good governance.

Furthermore, the government ratified relevant regional and international conventions such as the African Union Convention on Preventing and Combating Corruption, and the United Nations Convention against Corruption (UNCAC). The Anti-Corruption and Economic Crimes Act, 2003 is a domestication of the

UNCAC, which Kenya ratified in 2003. The Act replaced the Kenya Prevention of Corruption Act, 1956, which was still in force.

The enactment of the Constitution of Kenya, 2010 brought substantial reforms to Kenya's regulatory and institutional frameworks. These reforms touched on public finance management, leadership and integrity, values and good governance, independence of the judiciary, and increased oversight and accountability by public bodies and officers. The aim of the reforms was to prevent corruption, and enhance accountability, transparency, good governance, integrity, and financial probity.

From a regulatory perspective, legal instruments such as the Ethics and Anti-Corruption Commission Act, 2011; the Commission on Administration of Justice Act, 2011 (office of the Ombudsman); the Mutual Legal Assistance Act, 2011; the Elections Act, 2011; Leadership and Integrity Act, 2012; the Public Procurement and Asset Disposal Act, 2015; the Fair Administrative Action Act, 2015; and the Bribery Act, 2016, continue to play a critical role in re-shaping the landscape of Kenya's anti-corruption efforts.

Indeed, majority of the anti-corruption strategies in Kenya are drawn from various legislative instruments that prescribe acceptable and unacceptable behaviour, regulate the exercise of power, set standards, and establish enforceable rules. The legal frameworks also provide the over-arching framework and underlying foundation on which various measures are set. On the other hand, institutional frameworks are established to guide implementation of the provisions of the law, and ensure the objectives of the laws are met.

This study established that there exists a comprehensive legal and institutional framework established to support the fight against corruption, with multiple laws enacted to address corruption and its various elements. The legal and institutional framework is the main foundation of the strategies. The chain of anti-corruption strategies (a majority of which are prescribed in law) include measures such as prevention, detection, investigation, prosecution, and adjudication.

The measures to prevent corruption focus on the maintenance of high standards of conduct by public officials. Such include the requirement that public officials regularly declare personal wealth and income, the establishment of transparent financial management systems, and public procurement systems, and the protection of whistleblowers. Other measures include the creation of effective institutions; the creation of procedures for accountability within the government and the external stakeholders, and allowing public access to government information.

Corruption detection and reporting is achieved by auditing and reporting the findings related to public financial expenditure. Financial institutions, designated non-financial businesses and professions, witnesses and informers must also report cases of fraud. Law enforcement and legal processes start with investigating corruption, followed by instituting court proceedings. Such may include civil or criminal prosecution, or trial for asset recovery, adjudication or judgment. If found culpable, the punishment, depending on the magnitude of the offence,

may mean imposition of heavy penalties, serving a sentence in prison, or recovery and forfeiture of assets. In the war against corruption, supportive or facilitative measures include international mutual legal assistance and co-operation such as extradition or repatriation of criminals and proceeds of crime, or travel bans.

This paper is a result of an institutional survey, conducted by KIPPRA, on the efficacy of anti-corruption institutions in Kenya up to 2020. The study sought to analyze the effectiveness of anti-corruption strategies used by institutions along the continuum of corruption from prevention, detection, investigation, prosecution, and adjudication). The study reviewed the effectiveness of several anti-corruption strategies such as establishment of an institutional regulatory framework to oversee implementation of anti-corruption laws, providing a framework to target incidents of economic crimes through protection of public funds, revenue and property, monitoring public officers, scrutinizing how wealth and assets are acquired, regulating known channels used to transfer proceeds of crime, protecting witnesses and whistleblowers, enhancing constitutionalism and good governance, enhancing access to information, creating an enabling framework for extradition, mutual legal assistance and bilateral cooperation, and involving the private sector in anti-corruption and bribery initiatives.

From the findings, 20 per cent of the respondents reported that corruption prevention strategies are effective, while 8 per cent indicated that they were very effective, and 28 per cent indicated they were somewhat effective. However, they are not frequently used in Kenya. While 20 per cent indicated that the prevention strategies were very ineffective, 24 per cent indicated that they were ineffective.

On corruption detection strategies, 20 per cent of the respondents indicated that the strategies were effective, 12 per cent indicated they were very effective and 36 per cent indicated that they were somewhat effective. While 12 per cent of the respondents viewed them as very ineffective, 20 per cent of the respondents indicated that the strategies were ineffective.

On the other hand, 12 per cent of the respondents indicated that the corruption deterrence strategies were effective, while 16 per cent stated they were very effective and 32 per cent indicated they were somewhat effective. This was in comparison to 24 per cent who indicated that the corruption deterrence strategies were very ineffective and 16 per cent indicated that they were ineffective.

The respondents also cited a number of public sector reforms and initiatives that have been supportive in the fight against corruption. Examples of these reforms are: Huduma Kenya Integrated Service Delivery (92%), E-Government (80%), Integrated Financial Management Information System (IFMIS) (68%), E-Procurement (64%), Tax Reforms (64%), ICT (60%), Public Finance Management (60%), Integrated Human Resource Information System (52%) and Devolution (28%).

Majority of the respondents indicated that the following initiatives were effective in corruption deterrence: recovery of illegally acquired assets (76%), confiscation of illegally acquired assets (64%), freezing of accounts of perpetrators (64%),

imprisonment (60%), fines (52%), suspension (44%), sanctions (52%) and training (24%).

Similarly, majority of the respondents opined that the following measures were key in prevention of corruption: sensitization or awareness (44%), asset recovery and confiscation (40%), investigation (40%), laws (32%), system reviews (32%), imposition of fines (32%), establishment of anti-corruption institutions (24%), reporting (24%), imprisonment (16%), and corruption prevention committees (24%).

Additionally, majority of the respondents (50%) were of the view that a number of actions need to be taken frequently to support the strategies on prevention of corruption. Such actions include vetting of candidates seeking public office; reviewing work systems in public institutions; undertaking corruption risk analysis; and establishing transparent financial management systems and public procurement systems.

While Kenya has many anti-corruption laws, the key missing link is the enforcement of these laws by relevant agencies. Several laws exist that touch on various aspects, actions and activities related to corruption. However, the intended effects of the laws are not always achieved. Instead, the laws are often selectively implemented or remain unimplemented. For example, though the Bribery Act, 2016 was enacted to aid eradication of corruption in the private sector, the law is yet to be operationalized. No cases have been instituted under this law.

Similarly, many institutions are involved in the fight against corruption. In addition to the main tripartite organizations that investigate, prosecute, and adjudicate cases of corruption, there are several other complementary institutions. Nonetheless, these institutions have predominantly focused on oversight and investigative activities, not prevention.

The study identified several key challenges that institutions experience in implementing anti-corruption strategies. These include jurisdictional and territorial conflict, overlapping or duplicative mandates, interference and lack of independence, lack of clarity on certain aspects of corruption (such as lobbying), insufficient consultation and collaboration among institutions, under-resourcing, failure to properly anchor some institutions in law, and risk of abolition and politicization of the war against corruption.

Recommendations

There is need for deliberate, intentional, impartial, unbiased enforcement and implementation of anti-corruption laws to all in an equal and unprejudicial manner. Furthermore, there are unethical practices, acts and omissions, not explicitly categorized as corruption, that occur commonly. This study recommends that such acts should be prohibited, controlled or made illegal. Examples include trading in influence or influence peddling, lobbying, racketeering, unethical sports, betting and auctioneering. Furthermore, given the nexus between money laundering and corruption (money laundering is a predicate corruption offence),

the study recommends that in the fight against corruption, anti-corruption agencies should capitalize on existing channels and measures in place against anti-money laundering.

There are several institutions and organizations,with mutual mandates in fighting corruption in Kenya. Therefore, we can harness and optimize these linkages across anti-corruption institutions through a multi-agency taskforce. Furthermore, the focus of institutions along the continuum of points of intervention needs to be more balanced, with more focus on prevention rather than response. These institutions need to be anchored in law to reduce the risk of interference or abolition.

In addition to being established and recognized in law, all anti-corruption institutions should be adequately resourced. Greater support by the private sector is paramount in eradicating corruption. Lastly, to be effective, institutions engaged in anti-corruption efforts, should embrace technology and new innovations at the institutional level.

To strengthen the strategies in the fight against corruption, Kenya should establish effective anti-corruption mechanisms and structures. These include removing limitations on access to information, providing adequate and reliable protection of witnesses and informants, and pursuing the mechanisms of holding public institutions, State agencies, and their officers accountable, in a more concerted and deliberate manner.

This study concluded that corruption is a complex, multi-faceted web of intertwined co-occurring, predicate offences, often comprising several predicate offences. It therefore recommends a multi-agency collaboration in fighting the vice. Consequently, leveraging on complementary institutions established specifically to address such predicate offences is key in supporting the efforts by anti-corruption agencies.

ABBREVIATIONS AND ACRONYMS

ACECA	Anti-Corruption and Economic Crimes Act
AML	Anti-Money Laundering
APSEA	Association of Professional Society of East Africa
ARA	Assets Recovery Agency
CAB	Competition Authority of Botswana
CAJ	Commission on Administrative Justice
CBK	Central Bank of Kenya
DCI	Directorate of Criminal Investigations
DPP	Director of Public Prosecutions
EACC	Ethics and Anti-Corruption Commission
FATF	Financial Action Taskforce
FRC	Financial Reporting Centre
ICPA(K)	Institute of Certified Public Accountants (Kenya)
IEBC	Independent Electoral and Boundaries Commission
IFMIS	Integrated Financial Management and Information System
KACC	Kenya Anti-Corruption Commission
KACA	Kenya Anti-Corruption Authority
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KSG	Kenya School of Government
KYC	Know Your Client
LSK	Law Society of Kenya
MATT	Multi-Agency Task Team
MDAs	Ministries Departments and Agencies
MLACA	Mutual Legal Assistance Central Authority
MLRO	Money Laundering Reporting Officer
NACCSC	National Anti-Corruption Campaign Steering Committee
OCOB	Office of Controller of Budget
ODPP	Office of the Director of Public Prosecutions
PFM	Public Financial Management
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act

PPOA	Public Procurement Oversight Authority
PFM	Public Finance Management
UNCAC	United Nations Convention Against Corruption

TABLE OF CONTENTS

1. INTRODUCTION

Corruption is one of the major challenges confronting Kenya today. It is a hindrance to good governance and inflicts substantial economic costs on the economy (Sarkar and Hasan, 2001; Katumanga and Omosa, 2007). This is despite anti-corruption initiatives in Kenya dating back to the colonial era with the enactment of the Prevention of Corruption Act (Cap 65) in 1956. This legal instrument was intended to curb corruption, which was fast becoming a troubling phenomenon in Kenya. Such anti-corruption efforts spilled over into Kenya's post-colonial period and were apparent in the 1990s. In this period, the new focus was on good governance. The introduction of multi-party democracy and the empowerment of Kenya's civil society generated hope for a more open and transparent society, in which corrupt practices would no longer be tolerated. The same period witnessed the establishment of institutions meant to fight corruption, such as the Anti-Corruption Police Squad in 1992 and the Kenya Anti-Corruption Authority (KACA) in 1997.

The turn of the millennium saw the dissolution of KACA on grounds that it was exercising an unconstitutional prosecutorial mandate. Also apparent during this period were far-reaching governance, constitutional, legal, and political reforms aimed at creating a more democratic and accountable Kenyan State. For instance, in 2003, President Kibaki's administration pushed for the establishment of an anti-corruption legal framework and oversaw numerous reforms in the fight against corruption. These included drastic reforms in the Judiciary and the Civil Service that were implemented in 2003.

Furthermore, new legislations were enacted, such as the Kenya Anti-Corruption and Economic Crimes Act, 2003; Public Officer Ethics Act, 2003; Public Audit Act 2003; Government Financial Management Act, 2004; Privatization Act, 2005; and Public Procurement and Disposal Act, 2005. The collective aim of these laws was to curb financial wastage and leakage in the delivery of public services. Furthermore, the government has ratified international conventions such as the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption (UNCAC).

The enactment of the Constitution of Kenya 2010 brought about substantial reforms in Kenya's regulatory and institutional frameworks. The aim of the reforms was to prevent corruption and enhance accountability, transparency, good governance, integrity, and financial probity.

From a regulatory perspective, legal instruments such as the Ethics and Anti-Corruption Commission Act, 2011; the Commission on Administration of Justice Act, 2011; the Mutual Legal Assistance Act, 2011; the Elections Act, 2011; the Leadership and Integrity Act, 2012; the Public Procurement and Assets Disposal Act, 2015; the Fair Administrative Action Act, 2015; and the Bribery Act, 2016,

continue to play a critical role in re-shaping the landscape of Kenya's anti-corruption efforts.

It is commendable that the Constitution of Kenya 2010 provides for the establishment of the above-mentioned legal instruments. Several institutions have, while implementing the laws, been created with the mandate of fighting corruption. They are either constitutional commissions or independent offices. These institutions include the Commission for the Implementation of the Constitution (CIC), which was tasked with overseeing the implementation of the Constitution. Its mandate expired on 29th December 2015. Other institutions include the Commission on Administrative of Justice–CAJ (Office of the Ombudsman); the Special Magistrates Courts within the Judiciary that adjudicate over cases of corruption and economic crimes; the Office of the Auditor-General; the Office of the Controller of Budget; the Office of the Director of Public Prosecutions (ODPP) and the Ethics and Anti-Corruption Commission (EACC). This precipitated the adoption of new anti-corruption procedures in the public sector, such as vetting candidates for senior posts in government before recruitment. In addition, the e-government system was adopted to simplify provision and access to public services.

The problem of corruption in Kenya appears to have intensified over time despite the apparent myriad of laws, institutions, strategies, standards, and requirements to combat it. Revelations of multi-billion shilling corruption scandals at various government agencies remains rife. In addition, Kenya has registered a decline in its ranking among countries perceived to be most corrupt as per the Transparency International (TI) reports.

Furthermore, corruption in Kenya appears to have gained functional acceptance, implicit in phrases such as '*It's our turn to eat*'. Moreover, by riding the crest of frontier technological innovations such as mobile-money, corruption in Kenya continues to diversify into sectors such as betting and gambling, religious institutions, education, policing, and county governments.

The ramifications of corruption in society are manifested in the undermining of national prosperity, now and in the future. This includes loss and wastage of public resources, distortion in the distribution of economic opportunities and investment (which impair service delivery), retarding of economic growth, and increase in unemployment. Corruption suppresses the provision of basic human needs, individual potential and entrenches poverty. Corruption also curtails democratic rights, negates the achievement national security objectives, erodes trust in public and private governance systems, and ultimately strains the essential moral fabric that binds society.

The question then is, in the context of policy, regulatory, legislative, and institutional frameworks, what can work in the fight against corruption? Where are the gaps? And what needs to be done to win the war against corruption?

This study examines the array of anti-corruption strategies that Kenya has deployed since independence to date. It also looks at their efficacy in realizing the objective of preventing corruption. An effort is made to analyze the *past* and

present, and *preventive* and *reactive* anti-corruption strategies.

Specifically, the objectives of the study were as follows:

(i) To analyze the status of corruption in Kenya

(ii) To carry out an empirical analysis on the factors influencing the levels of corruption in Kenya and Sub-Saharan Africa

(iii) To identify and trace the effectiveness of Kenya's continuum of anti-corruption strategies

(iv) To critically review Kenya's anti-corruption policy and legislative framework

(v) To analyze institutions established in Kenya to fight corruption

The study used distinct methodological approaches to address each of the above-mentioned objectives. The research method used was a comprehensive desk-based literature review. The study capitalized on the abundance literature on anti-corruption that already exists. The sources included anti-corruption laws, institutional reports, and domestic, regional, and global corruption-related indices and their corresponding databases. Consequently, the study adopted a mixed-methods approach; that is, collation and analysis of both qualitative and quantitative secondary data. Additionally, in data analysis, the study drew on a variety of theoretical frameworks, adopted from the domains of political science, legal jurisprudence, and economics.

Apart from desk-review, a survey was conducted to enhance the results. It targeted key institutions that have the mandate to deal with various aspects of corruption. Surveys are efficient ways to capture public perception on corruption and to understand why individuals engage in corrupt behaviour (Richards, 2017). The survey used a structured questionnaire, which was administered face-to-face, thus eliminating response bias and ensuring high response.

The key limitation of this study is the conception about corruption concerns. The global expansive domain of anti-corruption literature and offences cited in legislation continues to evolve. Some researchers might have eschewed it. Nevertheless, the study adequately emphasized understanding the phenomenon of corruption as it manifests itself in Kenya.

2. THE STATUS OF CORRUPTION IN KENYA

2.1 Introduction

To assess the status of corruption in Kenya, this paper analyzed secondary data on perceptions about the level of corruption in Kenya. First, reliance on perception data reflects the challenges of obtaining actual data on corruption incidences. Second, it reflects an acknowledgement that perceived levels of corruption do, in part, also reflect real-world knowledge of corruption in drawing on personal experiences, a shared grasp of social narratives and sensitivity to changing social norms.

This section uses descriptive statistics from four distinct datasets. First, Kenya's national corruption scores are derived from corruption perceptions by Transparency International (TI) between 1998 and 2018. Second, the study analyzed perceived levels of corruption from TI, at institutional level, as captured on the East-African Bribery Index (EABI) reports dating from 2010 to 2017. Third, the study assessed the longitudinal corruption findings from the National Corruption Perception Survey reports produced by Kenya's Ethics and Anti-Corruption Commission (EACC) for the period between 2005 and 2017. Finally, this assessment considered data on corruption derived from the World Economic Forum's Global Competitiveness Report 2017/18.

Collectively, the data was used to analyze corruption levels at national and institutional levels in Kenya. It was also used to assess the corruption score trends over substantial periods. The use of multiple data sources resulted in method triangulation, thereby increasing the validity of the findings.

Another noteworthy factor was the reliance on authoritative reports on corruption from widely recognized institutions such as the TI and the EACC at the domestic level, to enhance the validity of the research and data. In addition, the study conducted an institutional survey, which analyzed 58 institutions. The findings revealed insights into the leading causes of corruption in Kenya, and the general status.

2.2 Scope in Definition of Corruption

The first law in Kenya that prescribed corruption, Prevention of Corruption Act, and its various elements was enacted in 1956. This Act was instrumental in defining the scope of "corruption", acts or omissions amounting to corruption, the persons who were categorized as being perpetrators of acts of corruption, and the attendant penalties. The 1956 Act prescribed actions and offences that amount to corruption and prescribed penalties. The offences included corruption in office, corrupt transactions with agents and public servants, and obtaining advantage.

The Act prescribed penalties and sanctions, where a person was convicted of an offence under the Act (under Section 3 and 4 of the Act). For example, a convicted person was liable to imprisonment for a term not exceeding 14 years. In addition, they were adjudged to be forever incapable of being elected or appointed to any public office. They were banned from public office for 7 years from the date of the conviction. In addition, the convict could not register as a voter or vote in an election of any public body in Kenya. If a convicted person was elected at the time of conviction, the Act prescribed that they vacate the position forthwith. The Act targeted mainly public servants. The Prevention of Corruption Act, 1956, was based on the assumption that corruption was thriving in the public sector. Therefore, the provisions of the Act were in sync with the acts committed by public servants.

The Anti-Corruption and Economic Crimes Act, 2003 defines corruption as *inter alia* bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust; or an offence involving dishonesty in connection with any tax, rate or levy impost under any Act; or under any written law relating to the elections of persons to public office and other offences prescribed under the Act including improper benefits to trustees for appointments, secret inducements for advice, or engaging in a project without prior planning, and bid rigging.

The definition of corruption in the Anti-Corruption and Economic Crimes Act, 2003 is wider than the aspects, elements, categories, and characterizations of corruption under the repealed Prevention of Corruption Act, 1956.

Kenya has partially adopted other instruments that define corruption offences. These include the United Nations Convention Against Corruption (UNCAC), 2003. It was ratified by Kenya on 9th December 2003. Kenya was among the first countries to ratify it. It came into force on 14th December 2005. The Convention applies to the corruption offences established in accordance with it, such as prevention, investigation, prosecution, and the freezing, seizure, confiscation and return of proceeds. It is founded on five pillars: prevention, criminalization and law enforcement, international cooperation, asset recovery and technical assistance, and information exchange. Effective monitoring procedures have also been established. The Convention provides the legal framework for the international war against corruption. However, Kenya is yet to fully realize and incorporate the intended objectives of the UNCAC in its laws. There are various gaps in Kenya's national laws vis-à-vis the provisions of the UNCAC. Therefore, domestication of the provisions of the UNCAC (including mandatory and optional provisions) has not been fulfilled. Therefore, Kenya has not yet fully domesticated all the UNCAC provisions, but has enacted a number of laws to domesticate the UNCAC provisions. These laws include the Public Officer Ethics Act, the Anti-Corruption and Economic Crimes Act, 2003 and the Public Audit Act. These were enacted in 2003 to ensure its operationalization.

From the survey, the respondents cited various euphemisms commonly used when asking for bribes and other corruption cases. These include '*Chai'* tea (80%), '*Kitu kidogo'* something small (76%), *'Hongo'* bribe (68%), and *'Bahasha'* (brown envelope) (64%). Other euphemisms include *Maziwa* (milk), *Unga* (flour), and *Salamu* (greetings). This shows that there is a difference in the understanding or

the concept of corruption. Some view it as an avenue to feed themselves. Findings from the survey also show that it is not just finance-related transactions that form part of corruption. Behaviour at the workplace is also part of corruption.

Majority of the respondents 'strongly agree' that the following are acts of corruption: financial improprieties (88%), buying of votes/voter bribery (88%), giving or receiving a bribe to facilitate a process (84%), nepotism or favouritism/ giving a job to a friend or relative (84%), failing to pay taxes/submission of false tax returns (84%), abuse/misuse of office (80%), being paid without delivering goods or services (80%), and trading in influence/using your position or power of influence to gain/give undue favours (80%). These findings are shown in Table 2.1 below.

Table 2.1: Acts of corruption

	Strongly Disagree (%)	Disagree (%)	Indifferent (%)	Agree (%)	Strongly Agree 9%)
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 to a friend or relative	4	0	4	8	84
Failing to pay taxes/ submission of false tax returns	4	0	4	8	84
Abuse/misuse of office	0	0	4	16	80
Mary being paid without delivering goods or services	0	0	4	16	80
Trading in influence/using your position or power of influence to gain/give undue favours	0	0	4	16	80
Receiving and not declaring gifts from the public to appreciate service delivery to them	0	0	8	24	68
Delay in opening public offices	0	4	12	24	60

Reporting 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
Making personal phone calls when at work	4	20	12	32	32

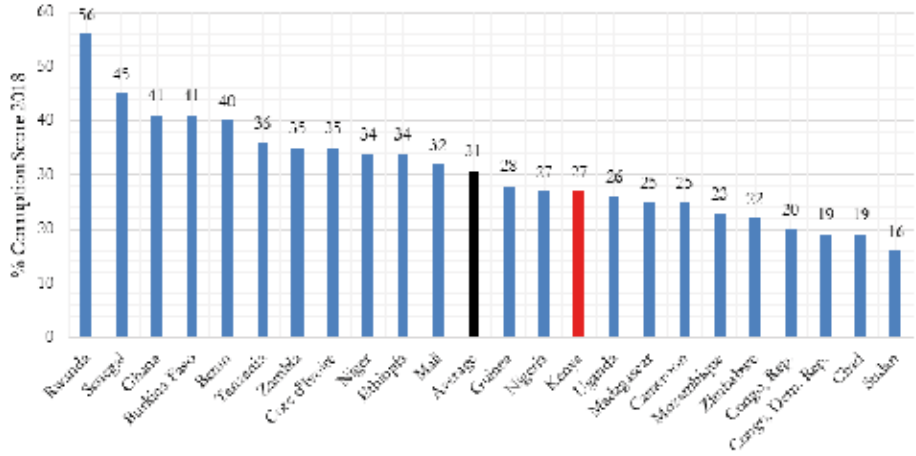
Source: KIPPRA (2020), Survey on efficacy of anti-corruption institutions in Kenya (January-March 2020)

2.3 What do the Statistics Say?

There is a widespread perception that corruption permeates all sectors of the public service in Kenya. This has become evident over time from the findings of various international and local studies, reports and surveys that track the existence of corruption in Kenya. Over the last 20 years, the Corruption Perception Index (CPI) of Transparency International (TI) has been evaluating corruption levels in various countries, scoring them between 1 (most corrupt) and 100 (least corrupt). No country in the world has ever achieved a score of 100, signalling that corruption remains an issue experienced globally, albeit to varying degrees.

An analysis of the 2018 CPI report shows that Kenya scored slightly below the average of countries under the International Monetary Fund's (IMF) 'Low-Income Developing Sub-Saharan Africa (SSA)' classification. Kenya scored 27 out of 100, which is lower than the average of 31. Out of the 23 countries under this, the Low-Income Developing SSA category, Rwanda was perceived as the least corrupt country with a score of 56 out of 100. Sudan was perceived as the most corrupt country with a score of 16 out of 100 (Figure 2.1).

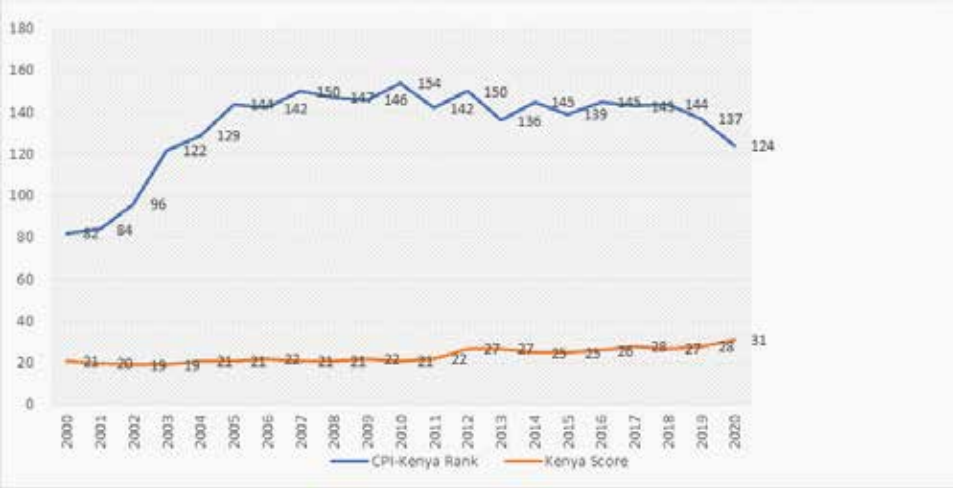
Figure 2.1: A comparative analysis of corruption in Low-Income Developing Sub-Saharan Africa



Source: Transparency International (2018), Corruption Perception Index 2018 Report

According to the CPI 2018 perceptions on corruption, Kenya was worse than 13 countries: Rwanda, Senegal, Ghana, Burkina Faso, Benin, Tanzania, Zambia, Cote d'Ivoire, Niger, Ethiopia, Mali, Guinea and Nigeria. At the same time, however, nine (9) other countries were perceived as more corrupt than Kenya. These were: Uganda, Madagascar, Cameroon, Mozambique, Zimbabwe, Democratic Republic of Congo (DRC), Congo-Brazzaville, Chad and Sudan. The range of Kenya's CPI score over the last 20 years has been between 19 (her lowest score) and 28 (her highest score). With the advent of devolution in Kenya in 2013, Kenya's rating regarding the perceived corruption levels has been improving, with scores falling between 25 and 28. In the CPI report of 2018, Kenya scored 27–1 (one) score lower than the highest score (28) it has ever achieved since the inception of the perception survey (Figure 2.2).

Figure 2.2: TI Corruption Perceptions Index – Kenya's score over the last 20 years



Source: Transparency International (Various), Corruption Perception Index 2000-2020 Reports

Kenya's ranking has been oscillating for the last 20 years. In the CPI report of 2020, Kenya ranked 124 out of 179 countries surveyed, a deteriorating performance in its ranking by 1 position when compared to the preceding year. There has been marginal improvement in scores for Kenya over time, recording an average of 24 scores out of 100 where 0 is lowest and 100 is highest. The lowest scores recorded are 19 in 2002 and 2003, with the highest scores of 31 in 2020. Transparency International's CPI has continued to increase the number of countries under evaluation. Between 1998 and 2020, the number of countries doubled from 85 to 180. Since 2010, 180 countries have been evaluated, during which Kenya's ranking has continued to improve.

2.4 Corruption and the Business Environment in Kenya

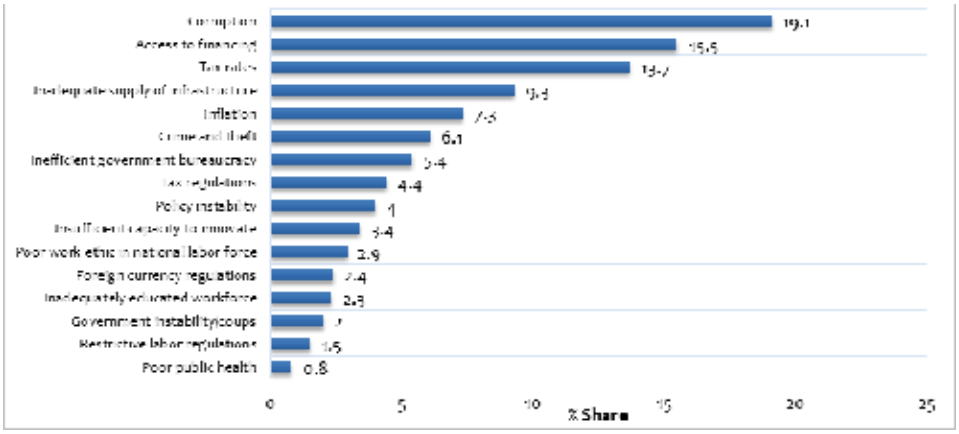
Over the years, corruption has continued to be cited as a challenge to private sector development. Corruption increases the cost of doing business, creates unfair competition, and generally impedes private sector investments. Despite these negative effects, the private sector has not been successful in ridding itself of corruption. Instead, it plays a major role on the supply-side of the corruption continuum. Corruption finances corrupt transactions and creates opportunities for unlawful public procurement activities, the latter of which accounts for 70 per cent of corruption in the public sector.

Corruption is one of the major problems facing Kenya. It has correctly been identified in the Global Competitiveness Index (GCI) of the World Economic Forum as the leading problem in doing business in Kenya. The index measures the competitiveness of 137 economies by assessing institutions, policies and

factors that determine levels of productivity. It also captures and ranks 16 of the 'Most Problematic Factors of Doing Business' in the countries under evaluation. In this opinion survey, respondents are asked to rank the most problematic factors for doing business on a scale of between 1 (most problematic) and 5 (least problematic).

From the index, corruption has been the leading problem in doing business in Kenya, both in score and rank. This observation is based on data that spans over the last 10 years, inclusive of the 2017-2018 report. Between 2017 and 2018, 'corruption' continued to be the most problematic factor of doing business in Kenya, followed by 'access to financing' with a percentage share of 19.1 and 15.1, respectively. According to the 2017 findings, other factors that impede business competitiveness in Kenya are tax rates, inadequate infrastructure, inflation, crime and theft, among others. These factors are shown in Figure 2.3 below.

Figure 2.3: Global Competitive Index (GCI): Most problematic factors of doing business in Kenya



Source: World Economic Forum, The Global Competitiveness Report (2017-2018)

The Global Competitive Report from 2011 to 2018 indicates that Kenya's performance has continued to improve. Kenya was scored 3.82 for the period 2011-2012 and was ranked 102 out of 142 countries. In 2012-2013, Kenya scored 3.75. In 2013-2014, Kenya scored 3.82, and was ranked 96 out of 148 countries. For the 2014-2015 period, Kenya scored 3.9 and was ranked position 90 out of 144 countries. In 2015-2016, Kenya had a score of 3.85 at position 99 out of 140 countries, while in 2016-2017, it scored 3.90, and in 2017-2018 it scored 3.98.

As mentioned earlier, TI also produces an East African Bribery Index (EABI) annually. The index depicts the bribery experiences of citizens in their quest or search for public services (Table 2.2). The survey conducted from 2010 to 2017 indicates that an average of 47 per cent to 53 per cent of Kenyan citizens experienced some form of corruption in their search for public services. The National Kenya Police Service (NPS), the Judiciary and the Department of Lands were perceived as the most corrupt public institutions. The average bribe paid to

the Judiciary was Ksh 9,282, Ksh 8,456 for land-related services, and Ksh 3,918 for police services, respectively (TI-Kenya, 2015; 2018). The NPS is among the top-most institutions perceived as corrupt.

Table 2.2: East African corruption perception survey

Corruption perception levels (%) in five East African countries, 2010-2017					
Years	**Kenya**	**Uganda**	**Tanzania**	**Rwanda**	**Burundi**
2017	83	81	44	81	-
2014	82	82.5	68	16	72
2013	66	86	48	2	62
2012	43	51	48	2	27
2011	47	51	37	2	53
2010	58	48	46	1	54

Source: TI-EABI, Corruption Perception Surveys (2010-2017)

National Ethics and Anti-Corruption: Corruption Perception Survey

Over time, the Kenya Anti-Corruption Commission (KACC) and its successor, the Ethics and Anti-Corruption Commission (EACC) conducted and published national corruption perception surveys annually. The surveys used sample information from households and key informant interviews. These surveys provide evidence that corruption exists in Kenya. From 2007 to 2017, the perception levels have been inconsistent, ranging from 38.9 per cent (the lowest in 2017) to 76.5 per cent (the highest in 2009) (Figure 2.4). The low levels between 2005 and 2008 could be because of the anti-corruption reforms by the National Rainbow Coalition (NARC) Government (2002-2013).

Figure 2.4: EACC national corruption survey, 2005-2018

Source: EACC (Various), National Corruption Perception Surveys

2.5 Corruption in County Governments

The creation of devolved units of government was meant to take services and resources closer to the people. However, these units are also not devoid of corruption. A study by EACC in 2015 revealed that perceived levels of corruption in county governments were as high as 20 per cent. The study also revealed that there were numerous incidences and acts of corruption. The most prevalent were bribery, theft of county revenues, procurement irregularities, nepotism, construction of shoddy roads and bridges, forgery of documents, conflict of interest in awarding of tenders, and recruitment. These acts were outlawed by the Anti-Corruption Economic Crimes Act (ACECA), 2003. The departments of the county governments that were perceived as most corrupt were procurement, finance and economic planning, public service boards, and roads and public works. The report indicated that county employees received various amounts before offering the services in question. The average bribes were as follows: Ksh 150,000 (Department of Roads and Public Works), Ksh 112,275 (Department of Recruitment) and Ksh 107,056 in the Department of Procurement).

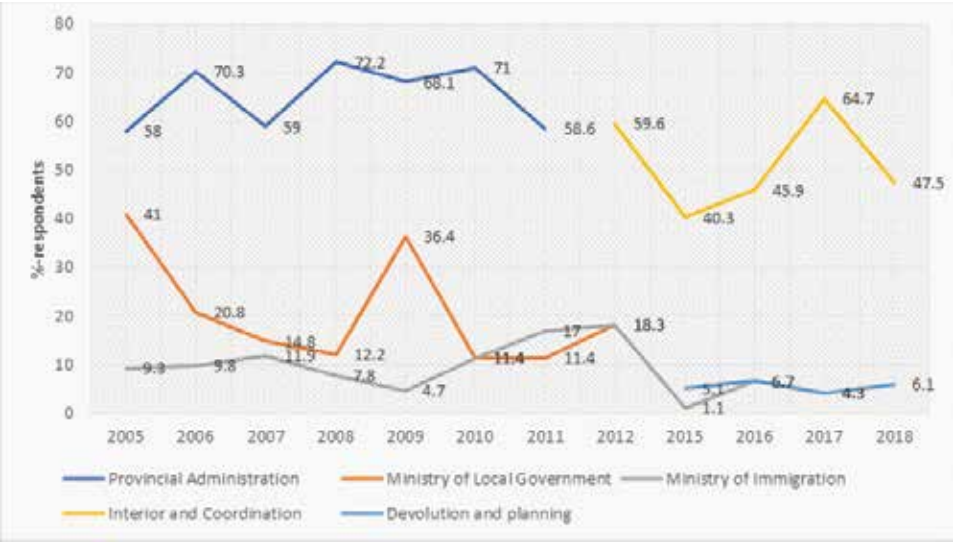
Similarly, the annual reports by the Auditor General always reveal widespread financial anomalies in counties. For example, the reports have documented unsustainable projects started by counties, which have led to loss of colossal funds, mainly through procurement irregularities and exorbitant expenditures. Seating governors and Members of County Assemblies (MCAs) are often implicated. In 2015, EACC reported that counties lost Ksh 3 billion. EACC is investigating 33 cases related to corruption in counties (Njagi, 2016).

2.6 Public Institutions and the Fight Against Corruption

Low levels of transparency and accountability are a characteristic of public institutions in Kenya. This has led to loss of public funds, economic stagnation and it has also had a detrimental effect on service delivery. Various reforms and initiatives have taken place to bring about transparency in public institutions. Examples include vetting candidates aspiring for public office, erecting huge notice boards at institutional entrances declaring that they are "corruption free zones," providing boxes to report corruption cases or complaints, identifying corruption risk-related behaviour and providing training sessions on corruption prevention. In addition, various laws are in place on financial management and the conduct of public officials, which are all geared towards corruption prevention (Appendix II).

The Constitution of Kenya, 2010 has set provisions that aspire to transform the behaviour of civil servants. For example, Article 10 on National Values and Principles and Article 73 on Leadership and Integrity bind all public officers to abide by ethics and integrity. The aim of these laws is to stop corruption. Despite these reforms, corruption levels in Kenya are still high. Studies by the EACC on national corruption perception surveys (2018), TI (2018) and the EABI (2017) show marginal improvement in Kenya's fight against corruption. The NPS (especially traffic police), the Judiciary, the Ministry of Lands, the Ministry of Health and the Ministry of Interior and Coordination of National Government, are perceived as the most corrupt (Figure 2.5).

Figure 2.5: Corruption perceptions among government ministries (%)



Source: EACC National Corruption Perception Survey (2005-2017)

2.7 Corruption Perception Levels Across Government Agencies or Departments

National Police Service

Kenya's law enforcement agent, the National Police Service (NPS), is critical to the functioning of the criminal justice system. Similarly, the integrity of the police service is crucial in ensuring public safety. Since independence in 1963, the police have been accused of being corrupt and serving the interest of the elite, at the expense of ordinary citizens. The political leadership of the day always turns the police into a political tool to suppress political opponents and serving the interests of the political elite.

The Constitution of Kenya, 2010 emphasizes police reforms, stipulating the importance of integrity and quality in service delivery. The police are expected to be efficient and responsive to the needs of the public, support adherence to human rights and respect the rule of law. One of the major reforms in the National Police Service (NPS) was the merging of the Kenya Police and the Administration Police into a single service. The service is now headed by an Inspector-General of Police, who is independent. In addition, the anticipated reforms include the transformation of the police 'force' into a police 'service'. The police are expected to ward off the prolonged culture of impunity, secrecy and brutality. Instead, they are supposed to be friendly, humane, responsive and proactive. Other police reforms include the establishment of the civilian Independent Police Oversight Authority (IPOA), to deal with complaints against the police and ensure accountability, and the vetting of police officers (Government of Kenya, 2009).

Despite the various police reforms, the service still scores low on corruption. The regular and traffic police are still perceived as the most corrupt but, overall, the studies on perception of corruption show that the level of corruption in NPS is declining (EACC, 2018). This decline could be attributed to wider police reforms that were initiated and are being implemented by the National Taskforce on Police Reforms. The factor could be the vetting of police officers. The serving police officers were vetted to determine their suitability and competency. New officers are also vetted before appointment or promoted to senior posts. Other reforms include efforts to enhance the general welfare of the police by providing better housing, comprehensive medical cover, group life insurance and improved remuneration. Also included is the introduction of a new training programme, and a new curriculum that covers corruption prevention and ethics (Ministry of Interior and Coordination of National Government, 2015).

Most of the reforms started taking place in 2009, but the graph (Figure 2.5) shows that the trend started increasing from 2010 (35.1%), 2011 (42.1%) and 2012 (48.1%). The reason could be the low uptake of the anti-corruption corruption reforms. However, from 2015, the trend starts decreasing (31.0%); 2016 (30.2%) and 2017 (23.8%). This can be attributed to high uptake of anti-corruption reforms (EACC, 2018).

Judiciary

The judiciary is the custodian of the rule of law. For a long time, the public had been locked out of engagement with the judiciary because the public perceived the judiciary as partisan or an appendix of the executive. The Judiciary was infamously known for delays in delivering justice, shortage of staff, backlog of cases and corruption. In 2003, a report on the integrity of courts, by the Integrity and Anti-Corruption Committee of Parliament, outlined several elements of corruption in the judiciary. In addition, the report alleged that 105 judicial officers, among them 23 judges and 82 magistrates, were corrupt and should be investigated (Integrity and anti-Corruption Committee, 2003).

The major reforms in the judiciary were because of the Constitution of Kenya, 2010. These reforms were implemented through the Judiciary Transformation Framework from 2012, under the Chief Justice Willy Mutunga. The framework centred on four pillars: "people centred" delivery of justice, improving organizational culture and professionalism, ensuring adequate infrastructure and resources, and making better use of information technology. The framework also provided a mechanism for fighting corruption. The first pillar promised to ensure justice and public engagement by establishing a customer care desk to respond to questions. Other proposed reforms were simplifying court processes, creating a case management system, and strengthening the complaints mechanism. The Judiciary was also supposed to develop and enforce a mechanism for upholding its code of ethics and conduct, and to align with the government procurement and financial management regulations. The proposed solution was to put in place a transparent procurement and financial management rules. The other reforms were for the judiciary to comply with the procurement and financial regulations of development partners. The overall purpose was to ensure that its procurement rules and considerations are aligned to those of development partners. Finally, the Judiciary was supposed to review and revamp its Public Finance Management processes at both national and station level, enhance accountability by conducting staff litigation, and introduce public survey on its performance and identify areas that require improvement.

In the Judiciary, perceptions about levels of corruption started coming down from 2005 up to 2017 (Figure 2.1). Fortunately, for the Judiciary, the scores have remained low, compared to other arms of government. This can be attributed to governance reforms that were established by the NARC Government through its ambitious economic renewal programmes, under the Economic Recovery Strategy (ERS) in 2006. The NARC reforms emphasized policy and institutional reforms to improve service delivery in the public service.

In this period, the Judiciary, through the Integrity and anti-Corruption Committee unearthed several corruption practices. Consequently, several judicial officers, suspected of engaging in acts of corruption, were required to face a disciplinary tribunal to clear their names, or lose their jobs. A total of 76 magistrates were retired in public interest; 12 Judges of the High Court and four Judges of Appeal opted to retire, instead of face the tribunal. Another 13 magistrates and Judges were

suspended pending hearing of their cases by disciplinary tribunals (Government of Kenya, 2009).

The reforms of the Judiciary Transformative Framework (2012-2016) led to improved access to and expeditious delivery of justice, increased number of courts and staff, simplified court procedures and easy access to information about the judiciary. This has, compared to other years, enhanced service delivery in the Judiciary. Court procedures are no longer tedious. Courts are now accessible and incidences of graft among court staffs have reduced. Other key factors that have contributed to reduced levels of corruption in the Judiciary are the Judiciary Strategic Plan (2008-2012), and the Kenya Vision 2030. The Judiciary aspires to provide an independent and accessible forum for dispute resolution to preserve the rule of law and protect individual rights as enshrined in the Constitution. Some of the measures include increasing availability of legal services and access to justice, inculcating the culture of compliance with the law, and decent human behaviour.

Government health institutions

In Kenya, medical services offered by public hospitals are key to most citizens. From the research findings, health care is among the most frequently sort after service. This revelation underscores the government's dedicated efforts in offering high quality and affordable health care. One of the constraints in realizing the high demand for health services is scarcity of resources. Therefore, health care is vulnerable to corruption.

Various national and sectorial policies have been drafted, giving suggestions on how to improve the public health sector. Some of the documents provide a clear framework on the issue. Examples are the Kenya Health Policy Framework (KHPF) formulated (1994), National Health Sector Strategic Plan I (NHSSPI), (1999-2004), National Health Sector Strategic Plan II (NHSSPII), (2005-2008), the Kenya Vision 2030, MTPI (2008-2012), and the Constitution of Kenya, 2010. These policy documents focus on attaining Universal Health Coverage (UHC) through increased health care services and facilities. However, there is little consideration of reducing the cost of accessing and using the health services, due to acts of corruption. Much of the reduced levels of perceived corruption in public hospitals could be attributed to the gains made in the health sector. Some of the reforms date as far as back as 2008.

Though the perceived levels of corruption remain low in public hospitals, this could be a result of failure to detect. Much of the corruption (Figure 2.1) may go on unnoticed because of the nature of corruption in hospitals. Corruption in hospitals does not mainly involve direct soliciting of funds. For example, in 2010, the EACC commissioned a study to survey patients across major hospitals in the country. Asked about attention from medical staff, majority pointed out that the staff often left their duty stations. A significant number of the patients (41.1%) considered absenteeism by medical staff as the most prevalent malpractice, and 14.4 per cent opined that unnecessary referral of patients to private clinics was

common. The findings further revealed that 13.6 per cent had made unofficial or informal payments for services. A total of 9.0 per cent of the patients were of the view that theft of drugs and medical supplies were on the increase. Other acts of corruption mentioned include use of public facilities and equipment for private work, and 3.3 per cent were asked to pay a bribe to access medical services (EACC, 2010).

Government schools

In schools, acts of corruption are mainly in areas such as procurement, promotion of teachers, and recruitment of staff, although much attention has been paid to academic dishonesty where students are given marks, at the correct price or favour, without attending classes. Universities are notorious for this. However, at the primary and secondary school levels, some parents and teachers collude with examination officials so that they can cheat. In the recent past, the move by the Ministry of Education, Science and Technology to have strict supervision of national examinations is meant to curb exam cheating, an aspect of corruption.

Another area of concern is school fees. The Ministry of Education, Science and Technology always sets the minimum and maximum amount of school fees students should pay in public schools. Initially, many school head teachers used to charge more than the recommended fees. Parents and guardians were always surprised to find some hidden charges in the fees charged that were not approved by the Ministry of Education. To prevent such corruption, the government has strengthened the enforcement of procurement laws in schools. Schools are required to post information about tendering processes on their websites. They must disclose by advertising, the amount quoted, and the winners. EACC has also supported and strengthened activities related to integrity, such as forming clubs in schools. Three counties – Trans Nzioa, Kisumu and Kwale – are some of the counties where integrity clubs have been formed. The purpose is to contribute to improved discipline and responsiveness among learners. Consequently, reports about corruption in education have been on the decline, although a sudden sharp increase was recorded in 2017.

Ministry of Lands office and the National Land Commission

For quite a while, the lands office at Ardhi House has been synonymous with corruption. Any attempts to bring about reforms have been thwarted by powerful people in the government vested interests, and business persons who view the reforms as a hindrance to their personal wealth and power.

Land is a factor of production. Therefore, its scarcity makes susceptible to acts of corruption. The glamour for land reforms can be traced back to the National Land Policy and the Constitution of Kenya, 2010, which made raft changes in the management and use of land resources in Kenya. The National Land Commission (NLC) is an independent commission established under the Constitution of Kenya, 2010 to manage public land. NLC draws its mandate from the Constitution

of Kenya, 2010, Chapter 5, and the National Land Commission Act of 2012. The mandate of the NLC is management and administration of land in accordance with the principles of land policy as set out in Article 60 of the Constitution and the national land policy. One of its roles is to investigate into the historical or present land injustices and provide redress.

The NLC has not been spared the scourge of corruption. In August 2018, 17 NLC officers, among them one top official, were charged at a Nairobi anti-corruption court for attempts to defraud the government of Ksh 221.3 million. Other charges were abuse of office, breach of trust and unlawful acquisition of public property (Orinde, 2018). In May 2017, EACC detectives raided a house of senior officials of the NLC and netted Ksh 18 million and other foreign currencies valued at Ksh 16 million. These amounts were suspected to be proceeds of corruption (Cherono, Mukinda and Odunga, 2017). Tremendous efforts have been made in improving service delivery at the lands office and, consequently, perception about corruption in the department has reduced (Figure 2.1). This achievement can be attributed to the new developments in the ministry, such as digitization of land records and the introduction of an online platform for payment for land services. Still, the sudden rise of corruption to 7.3 per cent in 2017 compared to 2.2 per cent in 2016 is a cause of worry.

Provincial Administration and Internal Security (now Ministry of Interior and Coordination of National Government Functions)

Up to 2012, the provincial administration had been part of Kenya since independence. Established by the colonial government, it was meant to represent the authority of the central government and coordinate its activities at the local level (Yogi, 1994). The key functions of the provincial administration were maintenance of law and order, mobilizing resources for community development, interpretation of government policies and promotion of good governance. These functions were achieved through division of the country into several administrative units for easy administration purposes. There were 8 provinces, 42 districts, and several locations and sub-locations. Under the new constitution, the provincial administration system was disbanded and its functions taken by the Ministry of Interior and Coordination of National Government functions. Some of the staff were retained with new titles and functions. For example, the Provincial Commissioners (PCs) are now referred to as Regional Commissioners (RCs). The District Commissioners (DCs) are now called County Commissioners (CCs). The Division Officers are now designed Assistant County Commissioners (ACCs). These officers are in charge of implementing the development agenda of the government and coordinating its functions at their various levels. At the Location and Sub-Location levels of administration, the chiefs and sub-chiefs retained their tittles and functions, respectively.

The county and sub-county commissioners, chiefs and sub-chiefs provide essential National Government services to the people. For example, the issuance of national identification (ID) cards, where chiefs and sub-chiefs have a role, is essential to

the people. Some of them have often been accused of taking bribes in exchange for the services. The NPS works closely with the Ministry of Interior and Coordination of Government functions. Therefore, the police contribute to the perception that the ministry is the most corrupt. As a matter of fact, the regular and traffic police departments are perceived as the most corrupt departments.

Major institutional reforms were introduced under President Kibaki. Under the Economic Recovery Strategy (ERS), *Harambees* were stopped. Public officers were banned from appearing at *Harambees* as guest of honours. Similarly, they were not allowed to solicit money for *Harambees*. Under the Governance, Justice, Laws and Orders Sector (GJLOS) reform initiative, there was the implementation of sector-wide reforms whose aim was to scale up the fight against corruption, improve transparency and accountability in public sector, and access to justice. There was also the prosecution of senior government officials implicated in Goldenberg, Anglo Leasing, and other scandals. In total, 8 Permanent Secretaries, 18 Chief Executive Officers of parastatals, a Member of Parliament (MP), two former Governors of Central Bank, a former Director of Intelligence, a former Cabinet Minister and several senior government officials were charged on various accounts of corruption (Government of Kenya, 2006).

In 2015, Public Service Excellent Awards were introduced to recognize public servants for outstanding and excellent performance. The awards were to honour public officers who propagate the ideals, ethics, and values of integrity in public service. These measures could have also contributed to lower the perception that some departments are corrupt.

Even though the perception that the Ministry of Interior and Coordination of National Government function is corrupt has been on the rise (Figure 2.2), the score was at 40.3% in 2015, 45.9% in 2016 and 64.7% in 2017. This increase could be because of the slow progress in implementation of the suggested institutional reforms.

Local governments

Before 2013, Local Governments (also known as local authorities) played an important role in the governance of Kenya. They were designed to help the central government maintain close ties with citizens at the lower levels through the Local Government Act 25. The role of these authorities was to provide essential services such as water, housing, health, education, road maintenance, drainage, sewerage and sanitation, and garbage collection. There were also provisions in the law that mandated them to collect revenues by imposing levies and issuing licenses. These funds were meant to complement allocations from the central government so that they can provide services to the people.

The allocations from the central government, to support their functions, included the Local Authority Trust Funds (LATF) and the roads maintenance levy. So far, by 2011, there were a total of 175 local authorities Kenya, with one city council, 45 municipal councils, 62 town councils and 67 county councils. Each urban area was headed by a mayor, elected by the councillors, from among themselves. There

were both elected and nominated councillors. In that period, poor governance in local authorities was a major concern. There were several accusations of poor finance management leading to mismanagement of the towns, hence increased perception that the local authorities were corrupt (EACC, 2017).

When these governments were abolished under the 2010 constitutional dispensation, most of their functions were taken up by county governments.

From 2006, significant progress was made in improving accountability in the local authorities. That could be the reason behind the declining perception that the entities are corrupt. Some of the reforms were carrying our regular audits and increased involvement of stakeholders in accounting for the LATF funds (see Figure 2.2) (Government of Kenya, 2006).

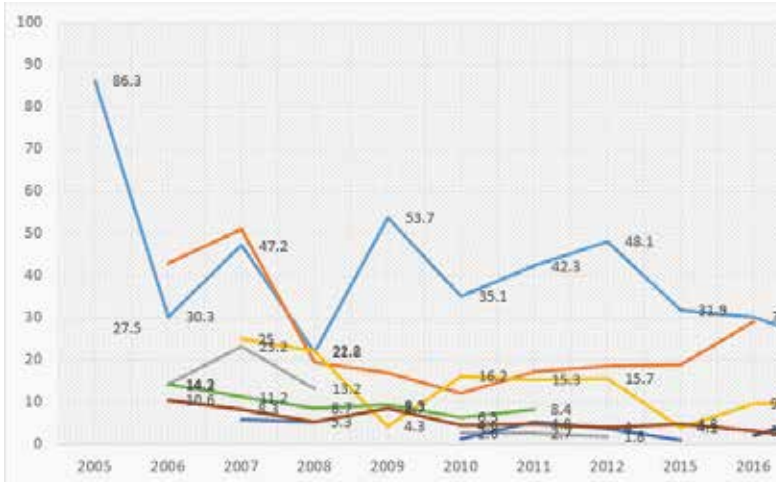
Other measures taken to prevent corruption were training procurement officers on the Public Procurement and Disposal Act (PPDA) 2005, the Public Procurement and Disposal Regulations, PPDR, (2006), and how to address corruption loopholes in the procurement cycle (KACC, 2008).

Department of Immigration and Registrar of Persons

The Department of Immigration is responsible for issuing travel documents to citizens, controlling entry of non-citizens, granting of citizenship, issuing work permits, and registration and monitoring of non-Kenyans within the country.

Persistent reports have indicated the existence of various forms of corruption in the department. These reports emanate from various quarters; members of the public, the media, and studies conducted by the anti-corruption agencies. The most notorious relate to the need to fast-track processing of travel documents and work permits. However, key findings from a national survey about acts of corruption commissioned by the EACC (2018) show that the perceptions about corruption in department are declining (see Figure 2.6).

Figure 2.6: Corruption perception among government agencies or departments (%)



Source EACC National Corruption Perception Survey 2005 -2018

Figure 2.6 shows that perceptions that government ministries and agencies are corrupt are declining. However, the Ministry of Interior recorded an increase in 2016 and 2017 compared to 2015. The decrease in perception can be attributed to efforts made by the government to fight corruption.

The forms of corruption identified vary depending on the sector. For example, absenteeism of staff, unnecessary referral of patients to private hospitals and theft of medicine was a common occurrence in public hospitals. Bribes were cited in the lands department, the police, Judiciary, immigration, provincial administration, and education. In these sectors, the officers asked for or received a bribe to provide a service. Fraud was very common in the lands department, while bribes were most common for one to get procurement services.

Kenya has also witnessed several corruption scandals such as the Anglo-leasing I and Goldenberg scandal (1991), free primary education (2009-2010), Eurobond (2014), Afya House scandal (2016), the Chickengate scandal (2013), National Land Commission and National Youth Service, NYS, (2017 and 2018).

A national survey by EACC on perceptions about corruption established that people who seek services from government offices experience some form of corruption. It can either be direct or indirect. Demands for bribes have been on the increase overtime. At the county level, the reports commissioned by the EACC reveal various acts of corruption related to delivery of service. These include bribery, theft of county revenues, procurement irregularities, nepotism, construction of shoddy roads and bridges, forgery of documents, conflict of interest in awarding of tenders and recruitment.

2.8 Status of Corruption in Kenya: An Institutional Survey

KIPPRA conducted a survey on corruption perception from January to March 2021. The survey targeted institutions charged with preventing acts of corruption in the country. A total of 56 institutions were selected for the study. These institutions were categorized based on their functions, mandates, and jurisdictions. Out of the 56 institutions, 35 institutions were selected for the study. Institutions with duplicate roles and functions were left out. The same applied to those where the functions of the personnel or their core functions were non-existent.

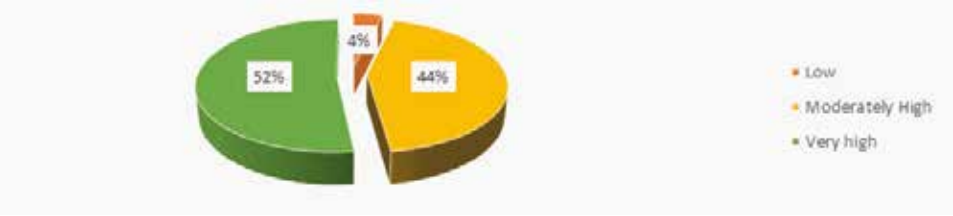
A total of 29 institutions were identified out of the targeted 35 institutions. These represented 83 per cent achievement rate. The persons selected for interview were the heads of the organizations. All of them had acquired vast experience working in the organizations. In addition, they all had many years of training in anti-corruption activities. They were also responsible for managing the feedback and reports of acts of corruption.

The survey collected data under *nine* thematic areas: understanding corruption; detection, deterrence and prevention; policy, legal and institutional framework; compliance and regulatory; sanctions or dismissal (anti-corruption penalties). Others were auditing, monitoring and evaluation; reporting and complaints

handling; investigation and apprehension; prosecution and legal proceedings, and civic education.

From the survey, 52 per cent of the respondents believe that the level of corruption in Kenya is *very high*; while 44 per cent believe it is *moderately high*. Notably, only 4 per cent of the respondents believe corruption is *low* (Figure 2.7). Cumulatively, 96 per cent of the respondents believe corruption is rampant in Kenya. The only notable difference in perceptions is the intensity (level). This result corresponds with the scores on the Corruption Perception Index (CPI).

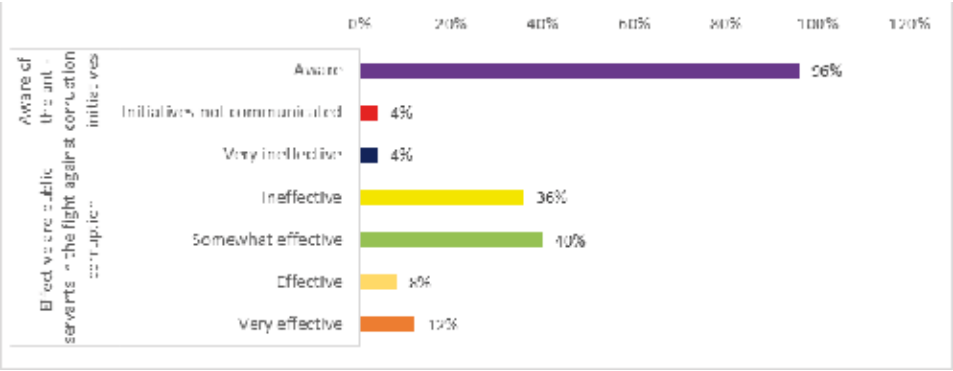
Figure 2.7: Level of corruption in Kenya



Source: A KIPPRA survey on corruption perception in Kenya (Jan-March 2020)

The survey sought to find out the level of awareness about corruption in the public service. The findings show that majority of public servants are aware of corruption in the public sector. However, a significant proportion of them are ineffective in the fight against corruption. All the respondents 'affirmed' that public servants are aware about corruption in the public sector. In addition, majority of them (96%) are aware about the anti-corruption initiatives that are in place by the government and specifically relevant institutions. However, a few of the respondents (4%) indicated that the anti-corruption initiatives are not communicated (Figure 2.8).

Figure 2.8: Awareness about corruption and anti-corruption initiatives



Source: A KIPPRA survey on corruption perception in the country, Jan-March 2020

Results from the survey also show that, apart from financial related transactions, behaviour at the workplace is also part of corruption. Majority of the respondents *strongly agree* that the following are acts of corruption: financial improprieties (88%), buying of votes/voter bribery (88%), giving or receiving a bribe to facilitate a process (84%), nepotism or favouritism/hiring a friend or relative (84%), failing to pay taxes/submission of false tax returns (84%), abuse/misuse of office (80%), being paid without delivering of goods and services (80%), and trading in influence/ using your position or power of influence to gain/give undue favours (80%). These results are shown in the Table 2.3.

Table 2.3: Acts of corruption

	Strongly Disagree	Disa-gree	Indiffer-ent	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 (hiring a friend or relative)	4%	0%	4%	8%	84%
Failing to pay taxes/ submitting false tax returns	4%	0%	4%	8%	84%
Abuse/misuse of public office	0%	0%	4%	16%	80%
Mary being paid without delivering goods or services	0%	0%	4%	16%	80%
Trading in influence/using your position or power of influence to gain/give undue favours	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%
Reporting 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 work place	4%	4%	20%	20%	52%
Misuse internet at work	8%	0%	16%	24%	52%
Lobbying	0%	8%	20%	20%	52%
Engaging in a project without proper planning		8%	16%	24%	52%
Making 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

The survey further sought to know how effective public servants were in the fight against corruption. Majority (60%) of the respondents indicated that public servants were effective (i.e. 12%, *very effective;* 8%, *effective,* and 40%, *somewhat effective*).

In contrast, 40 per cent of the respondents indicated that public servants are ineffective in the fight against corruption (i.e. 4%, *very ineffective*, and 36% *somewhat ineffective*). Ineffectiveness of public servants in the fight against corruption was attributed to obstacles that they face. 'Poor leadership' and 'tribalism, nepotism and favouritism' were cited as the main obstacles by a significant proportion of the respondents (76% and 60%, respectively). Other respondents cited 'poor remuneration' (56%), 'corruption being a norm' (52%) and 'undue influence' (48%).

Below are some of the sentiments or views captured verbatim from the respondents, in respond to the strategies the government has adopted in the fight against corruption:

Respondent 1: *There's need to have principles in everything you do while in office. Follow the laws as required without fear or favour. Leadership in any organization plays a critical role in nurturing the behaviour of individual officers. It is important for the top management to walk the talk. Let them set standards and be good role models.*

Respondent 2: *Corruption bleeds the country, contributes to unemployment, affects the economy, and has been made a norm. The people in power should lead by example – right from the National Government to county governments.*

Respondent 3: *The current institutions and laws are well placed to help in fighting corruption, but what is lacking is enforcement.*

Respondent 4: *Citizens should change and be ethical to enhance the culture of integrity in Kenya. In the fight against corruption, attitude change is very important.*

2.9 Conclusion

This section has provided an overview of corruption in the country using sources such as CPI, EACC, EABI that measure corruption perception. The other source used is the KIPPRA survey, which has given insights on corruption, from an institutional perspective.

There is a general consensus on what constitutes corruption, and that corruption permeates all spheres of life in Kenya. Its effects are felt in every sector of the society. It undermines quality of life and hinders achievement of the government goals. Noble initiatives such as Kenya's "Big Four" agenda, the Kenya Vision 2030 and the Sustainable Development Goals have failed or lag behind because of lack of financial resources.

And where government ministries, departments and officials are involved, it lowers public confidence in the government in its efforts to fight corruption. Leaders abuse power by going against the accountability mechanisms in place. In most instances, their acts go unpunished. The key message for policy makers is that strong political will is required to fight corruption. The use of sanctions against corrupt individuals can deter the vice.

3. EMPIRICAL ANALYSIS OF FACTORS INFLUENCING CORRUPTION LEVELS IN KENYA AND SUB-SAHARAN AFRICA

3.1 Introduction

Several factors influence the effectiveness of government initiatives in the fight against corruption. Below are some of them:

- political will (who owns to the initiative)
- analysis of the programmes
- adequate budget
- keeping the momentum of the fight
- imposing sanctions against culprits.

Good governance is important especially in ensuring accountability and the rule of law, and establishing democratic institutions. In addition, press freedom is essential to promote awareness and accountability. The catalysts of corruption include poor economic development, inequalities in society and low education.

Anti-corruption agencies have become popular, but they are not always effective because of several factors, the first being constrained resources. Corruption is a major hindrance to business, and perceptions about the level of corruption in the public sector differ. Although public servants are aware that corruption exists, they do not know about the initiatives the government is taking to prevent the vice. This affects the effectiveness in implementing the initiatives.

Other factors that influence the perception about corruption are the government's effectiveness. This is measured by gauging the quality of service in the public. Therefore, to succeed, the government must formulate and implement a sound policy, and be committed to it. The other ingredients are the rule of law, voice and accountability, and political stability.

Identifying and evaluating the indicators or measures of anti-corruption effectiveness was a critical component of this overall study. To identify suitable indicators, efforts were made to ensure that the indicators identified would be measurable. This meant a conduct of an extensive review of literature, relating particularly to *measures of corruption*. To achieve this goal, the study surveyed germane databases for keyword-based searches on 'corruption' and 'governance indicators.' These included the following: Freedom House, Google Scholar, World Bank Governance Indicators and the Mo Ibrahim Foundation's Ibrahim Index of African Governance.

This study made attempts to determine the factors that influence and explain levels of corruption in countries. In line with this objective, the study incorporated an empirical analysis of global corruption indices. The objective was to ascertain the effects of particular factors in either lowering or raising the perceptions on

corruption in a country. This was based on the proxy of country-specific corruption (index) score.

In undertaking this empirical analysis, the study used analogous secondary data sets drawn from three global corruption indices, across similar periods in time. These cross-country panel data sets were results from a questionnaire survey conducted to find out perceptions about corruption. The survey had been completed by a global network of respondents and published by various organizations.

Effectiveness can be defined as the extent to which an organization can fulfil its goals. The measurable indicators used can be large, small or medium (ACBF, 2007). Most anti-corruption strategies or initiatives are explained as methods or ways aimed at preventing corruption. The other objectives are educating members of the public to stop the vice, investigating or prosecuting the offenders.

3.2 Factors Determining the Level of Corruption

(a) Importance of political will for effective anti-corruption campaigns

A review of available literature reveals a wealth of examples that cite political will as important in the fight against corruption. The lack or presence of it determines the government's success or failure in its anti-corruption programmes. Political will is not just limited to a government's success or failure in the war against corruption. It is necessary for other government activities to succeed. Examples include economic reforms (Hope, 2000), debt relief (Atkinson, 2000), terrorism (Burite and Grindneff, 2015), environmental protection (Ng, 2000; Rigg and Hmaidan, 2014), health reforms (Binkerhoff, 2015; Moore, 2000; NHS, 2015; Pagliccia and Perez, 2012), and education reforms (Little, 2011; Marrin, 2000).

Quah (2013) correctly points out that strong political will is one of the most important factors that have made the implementation of anti-corruption strategies in Singapore effective. He actually rates Singapore as one of the cleanest countries. Also, evidence analyzed by Ankamah and Khoda (2017) from Singapore and Bangladesh prove that Singapore's effective control of corruption is as a result of a strong political will. That is in contrast to Bangladesh.

In addition, Ian Senior (2006) elaborates on the need for political will for a country's anti-corruption strategy to be successful. He argues that it is the politicians who can change the culture of corruption since they make laws and allocate funds to allow enforcement of laws. If politicians corrupt their way to power, then they will also corrupt their way to remain in power. Similar sentiments are also echoed by Yeboah-Assiamah and Alesu-Dordzi (2016), who recommended a strong political will in the fight against corruption. Schacter (2005) asserts that when there is no firm support and strong leadership from bureaucrats and political elite on matters of accountability and corruption, then the institutions charged with the responsibility of accountability and prevention of corruption will be ineffective.

Different scholars have different conceptions of what entails *political will*. Post et al. (2010) define political will as "...the extend of committed support on key

decision makers for a particular policy solution to a particular problem." In this case, the key decision is on anti-corruption programmes and policies.

Others see political will as situations demonstrated by political actors as a credible intention for the common good (Kpundeh and Dininio, 2006; Stapenhurst, Johnston and Pellizo, 2006; UNDP 2008). Brinkerhoff (2000) sees political will as the commitment of political actors or leaders to undertake actions to achieve a certain objective, and to sustain the cost of those actions over time (in this case anti-corruption policies and programmes); and to sustain the cost of these programmes over time (see also Malena, 2009).

Brinkerhoff (2010) cites four indicators of political will by senior public officials: *speeches, declarations*, passage of national *legislations* and *ratifications*. The aim of the legislations should be to reduce levels of corruption. The ratification of international treaties must be accompanied by actions. If not, such should be considered negative political will.

Brinkerhoff (2010) further highlights *seven* manifestations of political will which can form the basis of indicators. These are; (1) origin of government anti-corruption initiatives (2) rigorous analysis of the initiatives and their anticipated results (3) mobilization for support by the government (4) resource allocation (5) credible sanctions (6) continuous efforts in the fight against corruption, and (7) learning and adoption of new working initiatives. These manifestations are further discussed below.

Origin of government anti-corruption initiatives or strategies

If the source of anti-corruption initiatives is pressure from external actors, this is considered a low or lack of political will. This may require nurturing commitment and ownership so as to fully adopt the solutions. Where there is political will, the initiatives should come from the country's decision makers to prove there is a meaningful political desire to fight corruption.

Reforms seem to work better if they take into account a country's socio-cultural and political experience (Haruna, 2003; see also Wescott, 1999; Kjaer, 2004; Rugumyamheto, 2004). Besides, reforms or initiatives imposed by outsiders can only work effectively if there is commitment by the beneficiaries.

Most countries performing poorly in the war against corruption are subjected to aid conditionalities. They are required to put in place mechanisms to fight corruption, before accessing loans. For example, for Kenya, in July 1997, the Bretton woods institutions withdrew their support due to weak governance structures. Isopi (2013) notes that most Scandinavian countries tend to give more aid to countries with less corruption cases as a mechanism to fight the vice. Despite these donor conditionalities, anti-corruption initiatives are given lip service (Doig, 1995; Doig, Watt and Williams, 2007; Schütte, 2012). Even if an initiative is copied from outside, it signifies a strong political will, if well implemented.

Rigorous analysis of the initiatives

Low political will is manifested in the symbolic nature of the anti-corruption policies. To achieve the required results, it is necessary to analyze the design of anti-corruption programmes. We must look at the initiatives and policies the anticipated outcomes or benefits, and the costs. These characteristic features require a careful examination of the programmes and initiatives. Specific focus should be on the institutions that fight corruption. How capable are they of preventing corruption? What is the cost, and are the policies and strategies practical.

Saddique (2010; 2011) observes that the root cause of corruption in Malaysia was its defects in the political system, cultures and institutions. Moreover, Kapeli and Mohamed (2015) found that newly elected governments in Malaysia tend to introduce new plans and reforms, and establish new agencies to fight corruption. These always come as part of reform measures, but the new plans are implemented without any proper assessment of the status and efficacy of the previous plans.

Political will is also evident when countries choose their own anti-corruption programmes and policies, based on their own needs assessment. Such policies are more practical, easy to implement, and are likely to produce positive results.

Kenya's journey in fighting corruption has been characterized by a proliferation of institutions, laws and initiatives, but with marginal improvement on perception. Transparency International (TI) has over the years continued to rank Kenya low on the Corruption Perception index (CPI). One may be quick to point out that Kenya did not carefully consider the efficacy of the laws, initiatives and strategies aimed at fighting corruption, before implementing them.

Quah (2015) has analyzed the experience of curbing corruption using different paths. He observes that several countries have successfully managed to fight corruption using a single institution or agency. He cites countries with perceived low levels of corruption such as Denmark, Finland, Singapore and Hong Kong (Transparency International, 2018). Denmark and Finland only rely on the office of the Ombudsman. Singapore and Honk Kong each have one Anti-corruption agency. This success is attributed to strong political will and careful consideration of the policies and strategies, before implementation. Klitgaard (1984) proposes that countries should carefully consider the anti-corruption polices and make sure they are practical and can prevent corruption.

Public commitment and mobilization of support and resources

In the fight against corruption, adequate budgetary allocations demonstrate the extent of political good will. That is in addition to incorporating key stakeholders such as the civil society and the private sector in advocating for change.

From 2008-2014, Singapore's government increased per capital expenditure of the Corruption Prevention Investigation Board (CPIB) – the anti-corruption body in Singapore – from US$ 2.32 to US$ 5.68; and personnel ratio from 1:56,163 to 1:24,638. This happed under the People's Action Party (PAP), hence political will.

In comparison, South Korea's per capital expenditure rose from US$ 0.97 to US$ 1.15 between the period 2008 and 2014, and the staff ratio decreased from 1:105,021 to 1:108,430 (Choi, 2011). South Korea's top graft body is the Anti-Corruption and Civil Rights Commission (ACRC).

Similarly, Hong Kong's Independent Commission Against Corruption (ICAC) receives its funding from the government. From 1974 to 2009, its budget increased substantially by 63 times. This tremendous increase of CPIB and ICAC's budgets shows the extent of political will given by the two governments in the fight against corruption.

Application of credible sanctions

Both negative and positive sanctions signal dedicated efforts from the government in the fight against corruption. According to Brinkerhoff (2010), the sanctions imposed may mean firing top officials. Studies in psychology prove that punishment or rewards regulate behaviour.

Singapore's CPIB is able, because of political will, to investigate corruption cases against top party officials and civil servants and sentence them. For example, in 1966, Tan Kian Gan, Minister for National Development, was stripped off his post after being accused of assisting his friend in the sale of Boeing aircraft to Malaysian airways. Similarly, in 1975, Wee Toon Boon, Minister of State for Environment was found guilty of bribery and sentenced to four and a half years in jail. He was also ordered to pay US$ 7,023.

In January 2016, Phey Yew Kok, a People's Action Party (PAP) MP and president of the National Trade Union Congress (NTUC) was sentenced to five years imprisonment. He was accused of criminal breach of trust committed in 1986. Sadly, he committed suicide before being given the sentence. In 1999, Choo Wee Khiang, a the Secretary of PAP, resigned from the party before pleading guilty to cheating. He was sentenced to a two-week jail term and fined US$ 10,000 (Quah, 2015).

In Singapore, CPIB and the Commercial Affairs Departure (CAD) have investigated several civil servants for corruption malpractices. These include: Glenn Knight the CAD's director, who in 1991, was sentenced to three months in prison for attempted cheating and giving false information for a government car loan. Again, in 1997, he was sentenced to three months in jail for misappropriating US$ 2,720 and fined US$ 10,000.

In 1983, Yeo Seng Teck, Chief CEO of the Trade Development Board, was found guilty of cheating and forgery involving US$ 2 million worth of Chinese antiques and sentenced to four years in jail. In 1995, Choy Hon Tin, the Deputy CEO of Public Utilities Board was found guilty of accepting bribes from contractors and sentenced to 14 years in jail. He was also ordered to pay back US$ 13.85 million. In 2014, Edwin Yeo, a CPIB Assistant Director, was found guilty of misappropriating US$ 1.76 million from 2008 to 2012 and sentenced to ten years' jail (Quah, 2017).

Similarly, Hong Kong's ICAC has won public confidence as a result of investigating and prosecuting anyone, irrespective of the position in government. ICAC has an average conviction rate of 83.6 per cent. Between 2000 and 2009, it convicted 4,411 persons, among them 1,657 civil servants (Quah, 2017).

A Corruption Perception Survey by ACRC in 2008 identified "lenient punishment" for corruption as one of the main causes of corruption in South Korea (ACRC, 2009). In 1997, President Kim Young-Sam of Korea granted amnesty to two former presidents Chum Doo-hwan and Roh Tae-woo.

President Chum Doo-hwan had been sentenced to death and fined US$ 270 million for mutiny, treason and corruption. Similarly, President Roh Tae-woo had been sentenced to twenty-two and a half years in prison on similar charges and fined US$ 350 million. The duo had only served 16 months of their sentence (Quah, 2011).

Similarly, in 2013, President Lee Myung-bak granted special pardon to 55 persons who had been imprisoned for bribery. Among them were political friends and family members (*Straits Times*, 2013). This shows lack of political will in the fight against corruption in South Korea. The country has a CPI score of 54, ranking position 51 out of 180 countries (Transparency International, 2018). Most of the countries that are perceived as highly corrupt have low conviction rates (Doig and Riley 1998; Kpundeh, 2004; Riley, 1998). In fact, Chang, Golden and Hill (2007) observe that in such countries, corrupt politicians stand a better chance of being re-elected to public office.

Learning and adaptation

Political is an effective strategy in fighting corruption. The focus is on closely tracking the progress of the anti-corruption policy and programmes, and actively adjusting accordingly. Learning also means studying the anti-corruption policies and programmes of countries that perform well in the fight against corruption, and if possible modifying them to suit domestic situations.

Leichter (1979) observes that the strategy Singapore's PAP government used in fighting corruption was borrowing policies, ideas and solutions from other countries. Instead of re-inventing the wheel, which is unnecessary and expensive, the PAP government went for what had been done in other countries. It would then remould the policies and programmes to fit the domestic environment.

Institutional structures and strength

Anti-corruption institutions are law enforcement agencies that are specialized in combating corruption. According to OECD (2013), they focus on a range of issues related to integrity and criminal acts. Issues such as bribery, ethical violations like conflict of interest, and acts of corruption such as regulatory capture or abuse of procurement processes.

Anti-Corruption Agencies (ACAs) gained their popularity in 1990s after the success of Singapore and Hong Kong in the fight against corruption. ACA was accorded all the credit (Klitgaard, 1998; Quah, 2011). Since then, the uptake of ACA among countries has been on the increase, popularized by international financial institutions, international organizations and development agencies.

Kenya is one of the countries who succumbed to international pressures after donors cut off non-humanitarian balance of payments support, pending economic and political reforms. This paved way for multiparty elections in 1992. Opposition MPs found themselves chairing key parliamentary watchdog committees such as the Parliamentary Accounts committee (PAC). It is through their leadership that audit reports were scrutinized, forcing the government to form a tribunal to investigate the Goldenberg's scandal. In the scandal, it is estimated that the country had lost US$ 600 million. It involved compensation for questionable exports of gold and diamond between 1990 and 1993 (Kpundeh, 2004).

A number of ACAs have been ineffective in controlling corruption. Most are incapacitated by constrained resources, poor management, political co-optation and public distrust. Very few have managed to conduct investigations and convict high ranking public officials (Quah, 2013). The success of Singapore's anti-corruption initiatives is credited to the ability of CPIB to investigate and prosecute public officials, irrespective of their position or political party.

A study by Kurius (2015) documents the experiences of dozens of ACAs worldwide. The study shows that the effectiveness of ACAs does not depend on law enforcement powers. Neither are they always helpful. In the study, the agencies were grouped into two, based on the strength of their investigative powers. First were the "guard dogs' agencies, which use law enforcement to address crimes of corruption directly. The second were the 'watchdog' agencies, which merely uncover and report corruption issues. Both groups face unique challenges and constraints. The study points out that for the two groups to be effective, they require a conducive working environment such as independence, political will and the reliability of partner institutions (administrative autonomy, independent leadership, appointment and removal process).

Heilbrunn (2011) also notes that ACAs have failed to prevent corruption. A few have managed in only a handful of cases. In some instances, the failure is as a result of absence of relevant laws, inability to enforce existing laws, and interference from the political leadership. Kpundeh (2004) notes that many ACAs, even with prosecution powers, especially in countries plunged with corruption and impunity, are ineffective. At the start, the ACAs tend to be promising, but collapse under political pressure. Kenya is a good example. In 2002, KACA collapsed after it was declared unconstitutional by the constitutional court. This was an indication that the anti-corruption body, and by extension others, are not given sufficient powers to fulfil their mandates.

As noted earlier, many scholars have identified various characteristics that support the success of an ACA. Available sources point out the following: 1) independence, 2) budget allocation; and 3) complementary with other institutions. These are

the characteristic features that support an effective ACA (Kpundeh, 2004 and De Souza, 2010).

De Souza (2010) further notes that the independence of an ACA does not mean free will, absence of reporting or external control. More importantly, it is the ability to carry out its functions without political interference. Its operations must be autonomous. Political interference can be exerted directly through threatening to terminate the work agency, dismissal of its top officers, inciting other State agencies not to work with the body, reducing its mandate and powers, or reducing its financial support.

Additionally, Kpundeh (2004) notes that the independence of an ACA should include its ability to investigate corruption cases everywhere and follow trials wherever they lead. Choi (2018) notes that anti-corruption efforts in South Korea yielded partial success because the grand corruption remained intact. Using institutional approach, he cites institutional failure because of political interference. The operations of ACAs in Uganda, Tanzania, Zambia and Malawi are always funded by donors. Therefore, the ACAs have always been affected when donors cut their funding because of dismal performance in preventing corruption (Doigi et al., 2007). Similarly, complementary institutions such as the justice system, police, and the prison must work well together. Besides, they must be supported by established laws, the rule of law and other oversight institutions.

In addition, De Souza (2010) notes that institutional cooperation together with international cooperation networks are important sources of knowledge transfer across different ACAs. She cites the example of regional cooperation arrangements such as the Eurojust, Group of States Against Corruption (GRECO) of the Council of Europe, and the International Association of Anti-Corruption authorities (IAACA), the OLAF's Anti-Fraud Communications Network, and the Anti-Corruption Agencies Network (ANCORAGE-NET). These institutions are important in facilitating the transfer of information and stimulating the coordination of corruption investigations and prosecutions between member-states' agencies.

A study by Banuri and Eckel (2011) shows that punishment is effective in constraining people from dishing out favours. But it has no independent effect on bribes. The study carried out a laboratory experiment in the US and Pakistan to assess the effect of sanctions on people. It used a repeated, three-person game that is designed to capture key elements of bribery.

It included a firm that can initiate a bribe, a government official that can grant a favour, and a third party (citizen), whose welfare is affected by the bribe transactions. The findings also showed that in the US, there is a small reduction in bribe offers, after punishment. This indicates a small sustained reduction in corruption, a trend that was not observed in Pakistan.

Basu et al. (2016) also note that bribery ends if the expected penalties are sufficiently high. Similarly, the bribe increases as the expected penalties increase also. The study theoretically analyzed the effects of systematic punishment on harassment and bribes. It built on a model that combines two key features where

bribe size is determined by Nash Bargaining and whistle blowing is costly and imperfect.

Good governance and effectiveness on corruption

Good governance has been cited as essential in preventing corruption. For example, Denmark, Finland, New Zealand, Singapore and Hong Kong are more effective in preventing corruption because of ensuring good governance. Curbing corruption is a prerequisite for good governance as highlighted by Gerald E. Caiden (1997) in his analysis of the major causes of corruption. In a country, corruption is not only an important cause of poor governance, but also a serious consequence of poor governance (Quah 2009).

The World Bank governance indicators (WGI) capture *six* dimensions about the quality of governance and what impact it may have on the level of corruption; voice of accountability, political stability, government effectiveness, regulatory control, rule of law, and control of corruption (see appendix table 1). Studies conducted by (Leite and Weidmann 1999; Lederman, Loayza and Soares 2005) emphasize the significance of political stability in influencing prevalence of corruption. An empirical analysis on determinants of corruption by Serra (2006) points out that corruption is higher where political instability is a major problem. This is contrary to Nasry El Bahnasawy and Charles Fevier (2012) who argue, in their study, that political stability and absence of violence does not influence corruption. The study used panel data analysis as a determinant of corruption.

In the battle against corruption, a cross-country panel data analysis by Nasry El Bahnasawy and Charles Fevier (2012) on determinants of corruption highlighted the importance of the rule of law and the voice of accountability. The study emphasized the need to strengthen the rule of law and build strong democratic institutions. The other determinants were more freedom of expression, a free media, and faster and sustained democratization.

Brewer, Choi and Walker (2007), in their study, found a significant correlation between government effectiveness and accountability and corruption. The study used World Bank Governance indicators to investigate government effectiveness in Asia. Countries with effective governments score higher on the index of accountability and prevention of corruption. Open and transparency societies are more likely to deliver public services effectively.

Freedom of press and prevention of corruption

Freedom of expression and press freedom are important ingredients of human rights. A free press plays an important role in detecting any public wrongdoing such as corruption. It therefore, as part of the system of checks and balances, acts as a powerful tool to any government malfeasance. The media, through investigation and reporting, raises public awareness about corruption, highlighting its causes,

consequences and possible remedies. The effectiveness of media reportage on corruption lies heavily on the ability of the media access to information, freedom of expression and professional journalistic skills in corruption investigation.

Chowdhury (2004) provides evidence that free media is effective in preventing corruption. He argues that democracy and freedom of the press have a significant impact on the war on corruption. Using a regression analysis for a cross section of countries, OLS regression, and robustness checks, he points out that a change in democracy and freedom of the press has a significant impact on corruption. Without freedom, a dramatic change is unlikely.

Similarly, in their analysis of data from a cross section of countries, Brunetti and Weder (2001) established that there is a strong association between levels of press freedom and the levels of corruption across countries. The study implied that an improvement of 1 Standard Deviation (SD) in press freedom could lead to a reduction of corruption of between 0.4 and 0.9 on a scale of 0-6; where 0 is the minimum and 6 the maximum. This results show that an independent media can be a good check on corruption.

Similarly, Kalenboun and Lessmann (2012) using a dataset from a cross section of 170 countries from 2005-2010 note that press freedom increases the probability of detection of corruption behaviour, thereby reducing expected gains from the same.

Freille, Haque and Kneller (2007) in their analysis using disaggregated data concur that restrictions on the freedom of the press contribute to higher levels of corruption. Their study reveals that only positive political and economic influences on the media are strongly and robustly related to prevention of corruption. On the contrary, detrimental laws and regulations against the media do not. Ahrend (2000) also notes that lack of free press leads to higher levels of corruption. Ahrend uses press freedom data from freedom house and corruption data from International Country Risk guide.

A different study, by Dutta and Roy (2016), looked at press freedom and media reach (internet and mobile phone access by the population). It used principal component analysis which established that press freedom helps curb corruption. From the study it can be said that the advancement of technology has aided in access to information and spread of free speech. This has in turn promoted much of the needed government accountability.

Gender and corruption

There have been numerous calls for government to increase the number of women representations in electoral seats and in governance. Proponents say that women make good leadership, policies and can steer governments to new heights of development. Several studies also link women leadership to better governance and accountability. For example, Swamy et al. (2001) show that where women hold more parliamentary seats, more senior positions in government, and comprise a larger share of the labour force, corruption is less. Swamy et al. used cross country

data from World Values Survey analysis. Besides, fewer women are also likely to condone bribe-taking.

The study does not in any way equate these findings to the biological differences between men and women. The gender differences are attributed to socialization and association to corruption networks or knowledge of corrupt practices.

Debski et al. (2018) arrived at the same findings. Their study shows that increased participation in politics and the labour force by women is correlated with lower levels of corruption. However, the study revealed that once country fixed-effects are incorporated, the relationship disappears. That means increased participation by women in politics does not necessarily lead to reduced levels of corruption. Debski et al. used panel data of 177 countries.

These findings are contrary to Sung (2003) whose study found that although participation by women in government may be correlated to lower levels of corruption, this association loses significance when the effects of constitutional liberalism are more or less controlled. He also points out that the Judiciary and the press are important guardians against government excesses. The study used data from TI on corruption, Inter-Parliamentary Union on women in parliament, Freedom house on freedom of the press, and Fraser Institute on liberal democracy.

Economic growth, freedom, and inequalities

A review of related literature indicates a positive relationship between corruption and economic growth. For example, Cieslik and Goczek (2017), state that corruption prevention has a positive and statistically significant effect on the growth rate of real per capital Gross Domestic Product (GDP). They further state that it increases the investment ratio. Cieslik and Goczek used a panel data set of 142 countries and GMM methods. The study found out that corruption hinders economic growth by hampering investments.

These findings are similar to those of Pellegrinni and Gerlagh (2004). Both concur that corruption affects economic growth. The study used regression analysis on panel data sets. A 1-point increase in standard deviation on the corruption index is associated with a decrease in investments of 2.46 percentage points. This in turn decreases economic growth by 0.34 percentage points.

However, a study by Saha and Gounder (2012) contradicts the other findings. Using a hierarchical polynomial regression and panel data sets of countries on CPI scores and GDP index, the study established that there exists a non-linear relationship between corruption and the level of economic development. The study also points out that an improvement by 1-point standard deviation in real GDP per capita reduces corruption between 0.925 and 1.39 points.

Shahbaz et al. (2013) also established that corruption impedes economic development. They used a series of data from Pakistan and incorporated financial development and Cieslik and Goczek rade openness.

In liberal economies, there is little or no intervention; market forces are left to

determine everything. There is no control over to produce, and whom to produce for. More government involvement means less economic freedom. A burdensome regulatory environment increases the opportunities for individuals who may want to avoid these regulations by corrupting their way.

Carden and Verdon (2010) conducted a study using cross-country sectional data collected over a 10-year study period (1995-2005). The study revealed that a corrupt business environment increases acts of corruption in countries with relatively high economic freedom. The same relationship exists in countries where some aspects of economic freedom happen to deter corruption while others do not. This is exhibited in a study by Graeff and Mehlkop (2002), on the impact of economic freedom on different patterns of rich and poor countries. The study used regression analysis on the seven areas of economic freedoms.

An analysis by Apergis, Dincer and Payne (2011) reveals that in the long run, economic freedom, per capita income, and education have a negative impact on corruption. The study used records of government officials convicted of crimes related to corruption and exploited both time series as well as cross-sectional data.

Richardson (2006), notes that wealthy countries, with significant income inequalities, are likely to experience more fiscal corruption, especially when the level of development is low. This sentiment is also echoed by Jong-Sung and Khagram (2005) who point out that income inequalities influence corruption through "material and normative mechanism." In their cross-country study analysis of 129 countries, they found that a reduction in income inequality leads to a reduction in corruption. That means that income inequality has a major impact on corruption in democratic regimes. But the impact may be higher in non-democratic countries.

However, this contradicts Suleman and Kplenbaareh (2018) who assert that in Africa, higher income inequalities are associated with lower levels of corruption. Suleman and Kplenbaareh used unbalanced panel data for 48 Sub-Saharan African countries from 1996-2016. These findings match those of Andres and Ramlogan-Dobson (2011), who used panel data analysis. There study established that lower levels of corruption are associated with higher income inequalities in Latin America. But the duo cautioned that their findings were risky, if they were to be implemented, stating that high corruption levels may lead to weaker institutions, leading to bad governance in the countries.

Education instils moral values in people, thereby helping them develop a culture of obedience to the laws of a country. As a key driver of social norms, the level of education of citizens has an influence on their involvement in acts of corruption. A survey by Rory Truex (2010) indicates that improving access to education in developing countries may reduce corruption. This means that education can change social acts and attitudes that motivate individuals to engage in corruption.

Therefore, a higher level of education reduces the attitudes to indulge in corruption. Asongu and Nwachukwu (2015), point out that lifelong learning (extended years of schooling from primary through to tertiary) helps reduce corruption. This demonstrates the importance of promoting education as a tool of

fighting corruption. The study used panel analysis data for 53 African countries.

From the literature, effectiveness of government initiatives in delivering on the fight against corruption depends on several factors. Part of it is taking a holistic approach. Others include strong political will, and an independent well-financed anti-corruption agency. Similarly, applying sanctions is seen as effective in deterring corruption. Therefore, it is recommended as an effective measure in the fight against corruption.

3.3 Evaluating the Effectiveness of the Indicators of Anti-corruption

For the purposes of this analysis, factors that explain how levels of corruption are perceived were estimated by combining the various global corruption-related indices. These indicators were as follows; the World Bank's World Governance Indicators (WGI); Corruption Perception Index (CPI) of Transparency International (TI); and the Mo Ibrahim Foundation's Ibrahim Index of African Governance (IIAG).

From these indicators, some of the measures identified were voice and accountability; political stability and absence of violence; government effectiveness; regulatory quality; rule of law; independence of the judiciary; accountability of public officers; sanctions for abuse of public office; freedom of expression; media freedom; satisfaction with poverty reduction; income inequality; control of corruption; economic freedom; gender; and the levels of education. Besides the literature review, relevant indicators were also derived from an empirical analysis of factors affecting the effectiveness of anti-corruption efforts.

Subsequently, annual data was collected from 23 lower income countries in sub-Saharan Africa (SSA), based on the International Monetary Fund (IMF) classification of lower-income countries covering the period 2007 to 2017. Sudan was also added to the cluster, as it satisfied the conditions of being in sub-Saharan Africa and in the low-income category.

To this end, the empirical analysis estimated the following model:

$$\boldsymbol{Y_{it} = \beta_o + \beta_{1Xit} + \varepsilon_{it}}$$

Where i = 1, . . . , N (N denotes the total number of countries); t = 1, . . . , T (T denotes the total number of years); Y_{it} denotes corruption score for country i in year t; X_{it} is the vector of exogenous time-varying explanatory variables for country i in year t and ε_{it} is the error component of country i in year t.

a) The dependent variable

To determine the corruption levels, five distinct corruption-related variables from the three indices, were combined to form a single composite '*Corruption*' variable. This variable was used as a dependent variable in the study. Each of the constituent data sources had data on corruption as standalone variables, covering

the specified 10-year period. These included a variable on '*Control of corruption*' (CC) from WGI; CPI from TI; and '*Corruption in government and public officials*', '*Corruption and bureaucracy*' and '*Corruption investigation*' from the Ibrahim Index of African Governance (IIAG).

The '*Control of corruption*' constituent variable is one of six dimensions WGI issued annually by the World Bank. It covers approximately 215 countries and territories between 1996 and 2017. This index measures governance in countries through the following; looking at the processes used in the selection of governments, monitoring and replacing them; the effectiveness of a government in formulating and implementing sound policies; the level of respect that both citizens and the state have for institutions, and the economic and social interactions.

'*Control of Corruption*' measures "the extent to which public power is exercised for private gain. It measures both petty and grand forms of corruption, "capture" of the state by elites, and private interests."[1] This indicator is measured using a weighted average of various individual indicators. Greater weight is given to sources with higher correlations.

As the definition of corruption evolves, new indicators are added and adjustments made to the scaling, to accommodate the new indicators and make the measure more robust. The range of score lies between -2.5 and 2.5 and is adjusted so that – -2.5 indicates the 'most corrupt' country and 2.5 denotes the 'least corrupt'. The scores were adjusted in this study to reflect a scale of 1-100, with 1 representing the 'most corrupt' country and 100 representing the 'least corrupt'.

The CPI has been issued annually by TI since 1995. In this index, surveys of business people, local citizens, and 'experts' are used to capture perceptions of the frequency and total value of bribes paid. The result of this survey is a global ranking of countries along a CPI score on a scale of 1-100, with 1 representing the 'most corrupt' country and 100 representing the 'least corrupt'.

Finally, The Mo Ibrahim Foundation's Ibrahim Index of African Governance (IIAG) 'Safety and Rule of Law' cluster captures corruption in its various forms. The variable, 'Corruption in Government and Public Officials' focuses on corruption in the public and private sectors. Some of the corrupt practices that are captured include: cronyism – whether key individuals have an undue influence over appointments or contracts. It also measures whether law enforcement agencies exist and are independent.

The other indicators measured are the degree to which public officials are involved in corrupt practices. It takes into account the misuse of public office for private benefit; accepting bribes; dispensing of favours; patronage for private gain; the length of time that the regime or government has been in power; the number of officials appointed, rather than elected; and the frequency of reports or rumours of bribery.

The second variable, 'Corruption and Bureaucracy' assesses the intrusiveness of bureaucracy; the amount of red tape; and the likelihood of encountering corrupt public officials, and other groups.

1 World Governance Indicators, World Bank - info.worldbank.org/governance/wgi/#doc

The third variable, 'Corruption Investigation', measures two indices. First, the extent to which allegations of corruption in the public sector and the executive are investigated by an independent body. Second, the extent to which the public is satisfied with the way the government is handling corruption. A simple average score for the ten annual indexes (2007-2016) was computed from the three indexes described above, to create a composite 'corruption' score, with the additional aim of reducing *measurement error*.

(a) The independent variables

The main factors that influence corruption remain widely debated. There is no real consensus that has emerged on the true determinants of the levels of corruption, whether perceived or actual.

This paper reviewed literature on what determines the effectiveness of anti-corruption strategies and initiatives. A variety of factors thought to influence the levels of corruption were considered. First were the WGI – voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality and rule of law.

From the IIAG, we considered independence of the judiciary, accountability of public officers, sanctions for abuse of public office, freedom of expression, media freedom, and satisfaction with poverty reduction. Also noteworthy, was the decision to use the 'satisfaction with poverty reduction' indicator as a proxy for perceptions of 'income inequality', since income inequality data for all the years and countries of interest was unavailable (Appendix Table 1 details descriptions of the specified variables).

(b) Data and econometric framework

As indicated above, panel data consisting of observations from 23 countries for the years 2007 to 2017 was aggregated. Next, a 10-year period was selected to take full advantage of both the variation in corruption-related scores across countries and the periods of time. The study selected the panel data analysis approach because of two reasons. First, it allows the use of larger data sets, and second, it facilitates the control of variables that cannot be observed or measured, thus accounting for individual heterogeneity.

Besides compared to cross-sectional or time-series data, panel data blends in dynamic differences across time and different contexts (Hsiao, 2007). It generates more accurate inferences of model parameters because it contains greater degrees of freedom and more sample variability. Therefore, it improves the efficiency of econometric estimates (e.g. Hsiao et al., 1995 cited in Hsiao, 2007). The panel data set used in this study was unbalanced because observations for some of the variables, for some years, for some countries were missing. To remedy this situation, an average corruption score was used as the dependent variable.

The two commonly used techniques in *panel data analysis* relate to assumptions of fixed effects or random effects. The former is usually appropriate for analyzing the effect of variables that vary over time in the panel data. Random effect assumptions are preferred when there is a need to include time invariant variables in the estimation.

Before assessing the factors that explain the occurrence of corruption, this study sought to obtain an estimate a Fixed Effect (FE) model. To estimate the FE model, several tests were run to check whether the variables were stationary or non-stationary, and possessed unit roots. The FE model assumes that variables are stationary in order to get consistent coefficients.

To achieve this, specific tests were done to test the variables for the existence of unit roots. These tests were; the Levin-Lin-Chu test, Harris-Tzavalis test, Breitung test, Im-Pesaran-Shin test, and Hadri Lagrange multiplier stationarity test. It was found that all the independent variables, except *government effectiveness*, possessed unit roots.

With these results, a new model was run. It estimated the FE model using the new variables at the first difference. From the results, the FE model was insignificant with a p-value of 0.1185. Also, only three variables were found to be significant in explaining corruption perception. Based on these results, a need arose to explore whether the Random Effect (RE) model was more appropriate than the FE model.

To decide which model was more appropriate between FE and RE, the Hausman test was run. The null hypothesis was: *The random effect model is preferred*; and the alternative hypothesis was: *The fixed effects model is preferred* (Green, 2008). It tests whether the errors between the countries are correlated. If they are correlated with the explanatory variables, then the *null hypothesis* is true. But if the unique errors are not correlated with the explanatory variables, then the *alternative hypothesis* is true.

This test is important because something within the country may impact or bias the explanatory variable or outcome variables. The results showed that the value of the Hausman test's chi-squared statistic was 3.62 and the p-value was 0.9629. Therefore, the study failed to reject the null hypothesis (that states that RE model is preferred). Following this, the random effect model was estimated. The model turned out to be significant (p-value = 0.0441). However, only two variables were significant.

With very few variables being significant, an additional test for random effects, the Breusch-Pagan Lagrange multiplier (LM) test, was run. The purpose was to decide between a random effects regression and a pooled OLS regression. The null hypothesis in the LM test was that variances across units (countries for our case) is zero; meaning there were no significant differences across units (in other terms no panel effect).

The resulting p-value from this test was 1.0000 while the null hypothesis was not rejected. That means that there is no evidence of significant differences across

countries. Therefore, the study concluded that the random effects model is not appropriate. Consequently, the pooled OLS regression was adopted. In the pooled OLS model, the individual specific effects are completely ignored.

In interpreting the results, it is important to note how the corruption variable is captured. The higher the 'corruption' perception scores, the 'less corrupt' a country is perceived to be. On the contrary, the lower the score, the 'more corrupt' a country is. These parameters informed the interpretation of the results of this empirical analysis.

In this study, the explanatory factors influencing corruption are estimated using panel data for a sample of 23 countries. The factors are based on the IMF's classification of lower-income countries in Sub-Saharan Africa. It covers the period from 2007-2017 (annual data). Sudan was added to the cluster (classified under low-income oil producers) since it satisfies the condition of being sub-Saharan Africa, and it is in the low-income category. The study used secondary data sources from several organizations. Most of it was published cross-country data sets measuring the perception of corruption.

(c) Descriptive analysis

In analyzing the panel data set of the 23 developing countries for the period 2007-2016, a comparison between countries can be made across the different variables. Such a comparison can help distinguish strong and weak areas of performance. Table 3.1 shows an analysis of the countries that scored highest, second-highest, lowest and second-lowest in each variable. Also, it highlights Kenya's scores vis-à-vis other countries.

From Table 3.1, Kenya did not score the highest in any of the variables. Under 'Corruption score', the best performing country is Rwanda with a mean score of 44.38. Kenya lags with a mean of 23.74 which is below the cluster average of 28.6.

For the 'Government Effectiveness', the best performing country is Rwanda again, with a mean of 53.41. Kenya scores 37.62 points which is above the cluster average. In 'Political Stability', Zimbabwe takes the lead with a mean score of 59.51, while Kenya has a mean score of 10.90, which is far below the cluster mean score (25.04).

In terms of 'Regulatory Quality', Ghana leads with a mean score of 53.46. Kenya has a score of 45.10, which is far above the average (28.98). Ghana again takes the lead in the 'Rule of Law' with a score of 56.19, while Kenya scores 25.25, which is very close to the cluster average of 26.54. Ghana scores again the highest in 'Voice and Accountability', with a mean score of 62.38. Kenya scores 39.91, which is not a poor performance compared to the cluster average of 29.57. Ghana also scores the highest for 'Independence of Judiciary' with a mean of 83.06 while Kenya has a mean of 64.18, which is above the cluster average.

Ghana also performed the best in 'Accountability of Public Service', 'Sanctions', 'Freedom of Expression' and 'Media Freedom' with mean scores of 68.55, 66.40, 93.38 and 93.45, respectively. In the same variables, Kenya lags behind with

Table 3.1: Mean score for 23 low-income developing countries (IMF classification) 2007-2016

Variable Per Country	Benin	Burkina Faso	Cameroon	Chad	Congo, Democratic Republic	Congo Republic	Côte d'Ivoire	Ethiopia	Ghana	Guinea	Kenya	Madagascar	Mali	Mozambique	Niger	Nigeria	Rwanda	Senegal	Sudan	Tanzania	Uganda	Zambia	Zimbabwe
Corruption Score	32.9	35.6	24.7	18.9	25.6	20.3	22.0	29.7	42.4	21.9	23.7	29.4	30.2	32.3	26.7	29.4	44.4	36.7	19.9	30.6	25.9	33.5	21.2
Government Effectiveness	35.3	20.6	32.7	5.0	10.7	2.8	15.2	37.0	51.2	11.8	37.6	17.8	19.7	30.3	28.7	13.9	53.4	39.5	7.0	32.3	35.0	7.6	29.1
Political Stability	54.2	23.5	33.1	10.3	29.3	3.5	11.9	7.3	45.5	12.4	10.9	28.6	24.3	46.9	16.1	4.4	37.6	38.6	2.2	38.3	18.5	19.3	59.5
Regulatory Quality	36.0	21.3	45.6	13.0	8.8	6.8	25.2	16.3	53.5	14.9	45.1	33.3	34.8	35.0	31.3	23.5	48.2	46.5	6.1	37.8	46.7	2.3	34.5
Rule of Law	33.3	14.4	41.1	5.1	11.2	2.5	16.6	30.2	56.2	5.7	25.3	26.8	35.7	28.5	33.9	13.2	47.6	47.1	7.9	39.8	43.2	2.8	42.3
Voice and Accountability	57.2	19.2	39.2	10.2	16.0	9.8	23.3	11.8	62.4	18.5	39.9	30.8	46.3	41.4	35.6	28.8	13.8	47.2	4.7	42.0	30.6	10.0	41.4
Independence of Judiciary	57.2	35.6	19.2	11.2	14.0	21.2	32.9	27.9	83.1	32.3	64.2	30.7	46.3	38.7	41.9	59.9	46.9	53.5	10.3	58.1	57.6	60.6	36.3
Accountability of Public Service	62.0	51.2	42.5	28.0	21.9	37.7	49.9	37.6	68.6	30.0	58.3	38.7	56.5	45.8	58.2	56.2	55.5	60.9	19.2	62.7	53.4	61.1	27.3
Sanctions	46.5	36.5	42.9	25.0	28.6	28.6	28.6	37.2	66.4	45.7	39.3	49.3	40.0	40.8	57.1	48.6	57.1	61.4	13.4	49.3	55.7	46.5	23.6
Freedom of Expression	82.2	77.9	55.4	45.5	48.4	47.1	65.1	28.0	93.4	71.5	77.9	66.4	76.4	68.1	74.2	72.6	34.1	88.7	23.1	64.1	59.7	61.8	40.7
Media Freedom	77.3	84.6	65.5	65.7	74.2	54.7	75.6	58.4	93.5	75.2	76.5	78.6	70.71	77.0	83.8	68.6	41.0	80.6	18.9	78.3	71.9	74.2	63.2
Satisfaction of Poverty Reduction	32.0	29.1	.	.	.	22.4	94.0	47.4	23.3	23.5	8.10	25.7	46.6	35.4	21.21	.	24.5	8.20	30.0	31.9	31.4	45.03	26.57

mean scores of 58.28, 39.32, 77.94 and 76.54 respectively. For the 'Satisfaction of Poverty Reduction' variable, Côte d'Ivoire scored the highest with a mean of 94.10, while Kenya scored far below with mean scores of 8.10, the worst score across all countries.

Individual country scores help to explain the composite scores across all variables. Using the lowest and highest scores, one can easily work out what undermines the mean scores across the variables (see Table 3.2).

Table 3.2: Composite variable scores for 23 developing countries (IMF classification) – 2007-2016

Composite Variables				
Variable	**Mean**	**Min**	**Max**	**Std. Dev.**
Corruption score	28.60	15.00	54.00	7.92
Government effectiveness	24.97	0.95	57.77	14.77
Political stability	25.04	0.95	68.72	18.13
Regulatory quality	28.98	1.46	61.54	15.66
Rule of law	26.54	0.47	60.58	16.85
Voice and accountability	29.57	3.45	67.49	16.56
Independence of judiciary	40.85	6.40	85.80	19.15
Accountability of public service	47.08	14.40	70.80	14.68
Sanctions	42.34	7.10	85.70	14.22
Freedom of expression	61.83	20.40	96.10	19.01
Media freedom	69.91	15.60	95.90	15.61
Satisfaction of poverty Reduction	30.03	0.80	94.10	15.69

Source: Authors own compilation on composite variables score

From Table 3.2, all the Standard Deviations were less than the mean, meaning that the distribution of the scores was relatively normal; meaning there were no outliers.

(d) Empirical results

Table 3.3 shows the results of the pooled OLS regression with and without Driscoll and Kraay standard errors, fixed effects and random effects models, and estimation

of the 11 variables that explain the corruption perception scores. After estimation, (diagnostic test) there was enough evidence that there was no cross-sectional independence in our panel following the results from Pesaran's, Friedman's and Frees' test for cross-sectional dependence.

In addition, Wooldridge test for autocorrelation confirmed that there was first-order auto-correlation. In order to collect for cross-sectional dependence and auto-correlation, xtscc program was used to produce Driscoll and Kraay (1998) consistent standard errors for the model. The xtscc program is suitable for use with both, balanced and unbalanced panels because it is capable of handling missing values. It produces consistent standard errors for coefficients estimated by pooled OLS regression. The program assumes that the error structure is heteroskedastic, auto-correlated up to some lag, and possibly correlated between the panels. To this end, the research arbitrary assigned a lag of 8 months and estimated the model.

From the results, *Government Effectiveness* has a significant influence on perceived levels of corruption at 5% significant level (p= 0.021). This result was in line with that of Brewer, Choi and Walker (2007) who found that countries with higher corruption scores have a high *Government Effectiveness* score. This means that as the government becomes more effective, in terms of offering quality services, operating independently from political pressure, formulating and implementing quality policies, and committing to such policies, the perception that it is corrupt will reduce – leading to a higher score in the CPI.

Political stability was found to be statistically significant at 1% (p=0.000), meaning that absence of political violence is an important factor influencing perception about corruption. This finding corresponds to that of Lederman, Loayza and Soares (2005) and Serra (2006) who point out that corruption is higher where political instability is a major problem. This result however does not correspond with that of Nasry El Bahnasawy and Charles Fevier (2012) whose study found that political stability and absence of violence have no influence on the perception about corruption.

Regulatory quality and the rule of law also have an impact on the perceived level of corruption, with a p-value of 0.002 and 0.009, respectively. This finding corresponds to that of Nasry El Bahnasawy and Charles Fevier (2012) who emphasize that, high scores on *Rule of Law* lead to good governance and reduced acts of corruption.

Voice and accountability is also statistically significant at 5% (0.011), meaning that if the public is free to speak up, the perceived corruption level will reduce. In addition, the accountability by the government and its employees influences perception of corruption at 1% significant level (p= 0.001).

Freedom of expression and *media freedom* also have a significant influence on perception of corruption. The freer the public and the media, the less the corruption. This is in line with studies by Nasry El Bahnasawy and Charles Fevier (2012). The duo advocate for enhanced freedom of expression and media freedom to reduce corruption (p= 0.001 and 0.054, respectively).

Satisfaction with poverty reduction (a proxy for income inequality) is also statistically significant at 1% (p= 0.002). *Sanctions for abuse of office* was also found to influence the perceived corruption (p=0.021). This shows that the score on corruption is also determined by the extent to which public officers who abuse their positions are prosecuted or penalized.

Table 3.3: Results for Pooled OLS, fixed effect model and random effect models

	P-OLS	FE	RE
	coefficient	coefficient	coefficient
Government effectiveness	0.07*	0.00	0.01
Political stability	0.12***	0.02	0.03
Regulatory quality	(0.09**)	(0.12*)	(0.11)
Rule of law	0.14***	0.06	0.08*
Voice and accountability	(0.28***)	(0.17**)	(0.17**)
Independence of judiciary	(0.02)	0.05	0.02
Accountability of public service	0.30***	0.14	0.14*
Sanctions	0.12**	0.03	0.08
Freedom of expression	0.33***	-0.03	(0.01)
Media freedom	(0.22***)	0.51*	0.41
Satisfaction of poverty reduction	0.06**	0.00	0.02
cons	1.43***	0.03***	0.03**
R^2	0.65		
Prob>F (p value)	0.00	0.21	0.17

Source: Authors' own compilation of Pooled OLS, fixed effect model and random effect models results

***, **, * shows significant at 1%, 5% and 10% respectively.

3.4 Conclusion

Compared to other countries in the region, Kenya scores very low on the factors that influence effectiveness of government initiatives in the fight against corruption. From the analysis, there are several key ingredients in the fight against corruption. These are; government effectiveness (quality of services), formulating, implementing and commitment to quality policies; political stability, the rule of law, and voice and accountability.

Public officers are aware that corruption exists in the sector, but they are not acquainted with the government initiatives aimed at preventing the vice. This lack of information is one of the reasons that fight against corruption is not effective. As such, it is important to create awareness among public officers about the government initiatives against corruption to ensure effect implementation.

4. THE CHAIN OF ANTI-CORRUPTION STRATEGIES IN KENYA

The framework for anti-corruption is broad because it focuses on institutions in both the public and private sectors, and the officers or employees. While this is explicable, with the exception of the Bribery Act, the role of the private sector in corruption has not been given much attention. A weak framework for the protection of whistle-blowers and witnesses undermines the efficacy of anti-corruption strategies.

In addition, there are several key gaps in the strategies. For example, the process that should be followed after one has been charged with or is being investigated for corruption is not clear. The other gaps are; the varying definitions of who a "public officer"; and, it is not clear who is subject to the requirements imposed on public officers. This poses a challenge when prosecuting anti-corruption cases.

Luckily, there are some opportunities that can be exploited in the war against corruption. First, the agencies can use the proceeds of crime such as anti-money laundering to bolster the anti-corruption framework. Other immediate opportunities are; leveraging on the Bribery Act to rope in the private sector, reviewing penalties for conviction of corruption, and learning from other jurisdictions the forms of corruption defined in their laws. Lastly, is to leverage on the untapped role of institutions such as the Competition Authority of Kenya, in detection of acts of corruption by cartels such as bid rigging and collusion.

4.1 Introduction

This chapter discusses the legislative frameworks aimed at preventing corruption. In addition, it highlights the inconsistencies, weaknesses and gaps in the various anti-corruption legislations. This is important because the inconsistencies undermine the ability to enforce certain provisions or achieve the objective of preventing corruption.

The chapter adopts a retrospective analysis of the laws. First, it identifies the scope, objectives and thematic areas of the laws. Thereafter, it highlights the various legislative instruments that have been enacted to codify and operationalize the anti-corruption objectives. The purpose is to assess the objectives of the anti-corruption legislations and the development in scope over time. This is important in assessing whether the law adequately addresses, covers, and regulates anti-corruption activities and elements.

In analysing Kenya's laws, and comparing them with corruption offences prescribed and how they are prevented in foreign jurisdictions, the chapter unearths the missing links and gaps between the two. It also assesses other legislations with a bearing or implication on acts of corruption. General laws with implications on anti-corruption include the penal code and the Evidence Act.

The respondents were asked to rate the effectiveness of the legal instruments. From the results, majority cited the following as *very effective;* 'The Constitution of Kenya, 2010' (36%), 'The United Nations Convention against Corruption' (33%), and 'The Mutual Legal Assistance Act' (27%). The legal instruments considered *ineffective* were 'The Bribery Act' (19%), 'The Leadership and Integrity Act' (29%), and 'The Public Officer Ethics Act' (29%). 'The Fair Administrative Action Act' (30%), 'The Witness Protection Act 2006' (33%), and 'The Elections Act' (38%) as shown in the table 4.1.

Table 4.1: Effectiveness of legal instruments for fighting corruption

	Very ineffective	Ineffective	Somewhat effective	Effective	Very effective
1. The Constitution of Kenya, 2010	4%	8%	16%	36%	36%
2. The United Nations Convention Against Corruption	0%	14%	33%	19%	33%
3. The Bribery Act	19%	10%	19%	24%	29%
4. The Mutual Legal Assistance Act	9%	5%	32%	27%	27%
5. The Leadership and Integrity Act	5%	24%	29%	19%	24%
6. The Elections Act	24%	14%	24%	14%	24%
7. The Proceeds of Crime and Anti-Money Laundering Act	5%	5%	23%	45%	23%
8. The Commission on Administration of Justice Act	9%	9%	22%	39%	22%
9. The African Union Convention on Preventing and Combating Corruption	0%	25%	40%	15%	20%
10. The Public Procurement and Asset Disposal Act	4%	16%	16%	44%	20%
11. The Public Finance Management Act	4%	8%	16%	52%	20%
12. The Anti-Corruption and Economic Crimes Act, 2003	5%	14%	32%	32%	18%
13. The Ethics and Anti-Corruption Commission Act	13%	9%	30%	30%	17%
14. The Witness Protection Act 2006	8%	25%	25%	25%	17%

15.	The Fair Administrative Action Act	5%	25%	15%	40%	15%
16.	The Public Officer Ethics Act	0%	29%	13%	46%	13%

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

Majority of the respondents (>50%), 'Strongly Agree' that "the laws can be enforced" (60%), "the laws are clear" (56%), and "the laws are appropriate" (56%). Cumulatively, more than 80% of the respondents 'Agree' that "It is possible to enforce the laws", "The laws are clear", and "The laws are appropriate." These findings are shown in **Table 4.2**.

In contrast, less than 30% of the respondents 'Strongly Disagree' that "The laws are foreign to Kenyan culture" (44%), "The laws equally apply to all" (36%), and "The laws are consistent and stable" (32%). Notably, the number of respondents who greed that "The laws adequately capture the various forms and elements of corruption" was equal to the number of those who disagreed (see **Table 4.2**).

Table 4.2: Legislation in fight against corruption

		Strongly Disagree	Disagree	Indifferent	Agree	Strongly Agree
1.	The laws are clear	8%	4%	8%	24%	56%
2.	The laws are appropriate	8%	0%	8%	28%	56%
3.	The laws are foreign to Kenyan culture	20%	24%	16%	16%	24%
4.	The laws are capable of being enforced	4%	0%	8%	28%	60%
5.	The laws equally apply to all	8%	28%	20%	8%	36%
6.	The laws are consistent and stable	12%	20%	16%	20%	32%
7.	The laws adequately capture the various forms and elements of corruption	8%	4%	20%	28%	40%

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

4.2 Establishment of an Institutional Regulatory Framework Anchored on Shared Responsibility and Separation of Powers

In Kenya, anti-corruption strategies and measures are not carried out or implemented by not one but several separate institutions. The institutional model adopted in the fight against corruption is based on the principle of separation of powers, collective exercise of power and shared responsibility. So far, Kenya has put in place a tripartite institutional framework; the EACC, ODPP and the Judiciary. Three main institutions have the distinct mandate to fight corruption through various strategies.

This Kenyan tripartite model is coordinated through shared responsibility. The investigations are carried out by the EACC, prosecution by the Office of the Director of Public Prosecutions (ODPP) and adjudication by the Judiciary. Other agencies that play complementary and oversight roles include the Commission on Administrative Justice (CAJ); the Office of the Auditor-General; the Independent Electoral and Boundaries Commission (IEBC); Parliament; the National Anti-Corruption Campaign Steering Committee (NACSC); the Directorate of Criminal Investigations (DCI); the Mutual Legal Assistance Central Authority; the Assets Recovery Agency (ARA); and the Financial Reporting Centre. This section focuses on the roles and functions of the EACC, the ODPP and the Judiciary as the main institutions in the fight against corruption.

In the fight against corruption, EACC is at the apex. It is bestowed with the overarching mandate such as investigation, prevention, public education and awareness, monitoring and asset recovery. The EACC, *inter alia*, receives complaints related to the breach of the code of ethics by public officers. It then investigates the accusations and then drops the case or recommends prosecution or appropriate action against the State or public officer alleged to have engaged in unethical conduct. The role of the Director of Public Prosecutions (DPP) is to prosecute acts the corruption cases. The DPP institutes and conducts proceedings in court to recover or protect public property, freeze or confiscate proceeds of corruption, payment of compensation, or other punitive and disciplinary measures. Therefore, EACC does not prosecute cases. Its power is limited to instituting and conducting investigations as stated above and forwarding the cases to the DPP for prosecution.

The role of the ODPP is also critical. It prosecutes cases related to corruption and economic crimes. Under the previous Constitution, prosecutions were handled by the office of the Attorney General. This was deemed unfavourable because the Attorney General was also a member of the Cabinet. The Constitution of Kenya, 2010, attempted to cure this anomaly by creating an independent Office of Director of Public Prosecutions to discharge the prosecutorial functions of the State.

Pursuant to the provisions of the Constitution and the Anti-Corruption and Economic Crimes Act, 2003, the mandate of the DPP is to prosecute criminal and corruption and economic crimes cases, after investigation by the EACC. The ODPP works closely with the EACC and the DCI in the investigations. The DCI is required to carry out further investigation when asked by the DPP.

The Anti-Corruption and Economic Crimes Act, 2003, and the EACC Act, provide that cases investigated by the EACC be referred to the ODPP for prosecution or appropriate directions. Upon receipt of a report from EACC, the ODPP may direct prosecution, further investigations, administrative action or closure of a file, depending on the assessment of the available evidence. The function of the ODPP is to decide whether or not to prosecute cases, based on the evidence provided.

The Constitution of Kenya, 2010, underscores the independence of the ODPP. In Article 157 (10), it states that, "*The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be*

under the direction or control of any person or authority." Therefore, the ODPP has been granted the exclusive mandate of prosecuting corruption and economic crimes cases. That ensures independence and impartiality in the war against corruption.

Another facet in the Kenyan anti-corruption model is the Judiciary, which adjudicates over cases of corruption and economic crimes. The Anti-Corruption Court was established in 2002 to handle cases of corruption. This court exercises the same jurisdiction as magistrate's courts as set out in various statutes. Special Magistrates (magistrates or those above the position of a Principal Magistrate) preside over Anti-Corruption Courts, adjudicating over cases of corruption and economic crimes. The Chief Justice (CJ) gazetted names of over 160 Special Magistrates to work in the Anti-Corruption Courts. However, it is recommended that special Magistrates should not be assigned any other cases. This will ensure efficacy in adjudicating cases of corruption and economic crimes.

The law has consistently provided for an oversight body to spearhead anti-corruption investigations. An over-arching institution helps fight corruption alongside the institutions that undertake prosecution and adjudication – in line with the principles of shared responsibility. Although the titles, structures, powers and authority of these institutions have oscillated over time, their traditional mandate and powers is to investigate. Albeit there is general concurrence that there should be a separate oversight institution, the extent of their mandate and power of investigation has also waxed and waned over time.

Complementing the EACC is the CAJ, which enquires into public complaints arising out of an administrative action of a public office, State Corporation or any other body or agency of the State. The CAJ investigates complaints perpetuated or arising out of the conduct by public officers. Such complaints include abuse of power, unfair treatment, manifest injustice or unlawful treatment, oppressive, and unfair or unresponsive officers. Others are inquiries into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, and inefficiency or ineptitude within the public sector.

After the investigations, CAJ makes recommendations to the relevant public entity for action. However, CAJ cannot investigate criminal offences. It can only resolve cases through conciliation, mediation, negotiation or making recommendations to another entity. The distinction between CAJ and EACC is that, the EACC is intended to handle matters related to economic crimes. On the other hand, CAJ is supposed to handle matters of administrative law.

Nonetheless, there is an overlap in their functions, especially in relation to where to report *abuse of power* and the role of *investigation*. There, the role of CAJ in acts of anti-corruption needs to be clarified and strengthened so as to complement the EACC. This can be done through appropriate filtering of complaints, sharing of information and increased awareness about the role of CAJ. For example, it can resolve certain complaints using *alternative dispute resolution* method. This can prevent overburdening of EACC or the Courts.

Proposals have been made to grant EACC prosecutorial powers. Such a move would enhance the efficiency and institutional capacity of the ODPP in carrying out prosecution of corruption related offences and economic crimes. This may be deemed as unconstitutional because EACC would be seen as usurping the mandate of the ODPP as outlined in the 2010 Constitution.

In addition, granting the EACC prosecutorial powers would result in bias and oppressive conduct. One institution should not conduct investigations and also make prosecutions on the same matter. This would be discordant with the independence envisaged for the ODPP. Therefore, it is only prudent for the EACC and ODPP to enhance their collaboration, co-operation and communication channels in fighting corruption. What is necessary is to put measures in place to enhance the institutional, personnel and technical capacity of the ODPP. Also, the government should increase the resources allocated to them to enable them to investigate and prosecute cases effectively, efficiently and promptly.

Other relevant laws include the National Intelligence Services Act, 2012, which establishes the National Intelligence Service (NIS). NIS is responsible for national security intelligence. It also supports and aids law enforcement agencies in detecting and preventing crime. Similarly, the National Police Service Act, 2011 establishes the police. Part of its function is to prevent corruption and promote and practice transparency and accountability.

The Directorate of Criminal Investigations (DCI) investigates economic crimes and other offences in the penal code. These include abuse of office, stealing, fraud, and false accounting. Last but not least, the Kenya Defence Forces Act, 2012 mandates the Kenya Defence Forces (KDF) to participate in the prevention of corruption.

4.3 Targeting Incidents of Economic Crimes through Protection of Public Funds, Revenue and Property

(a) Prescribing standards, requirements, processes and systems to regulate and control management, use and administration of public funds

According to Svensson (2005) the most devastating forms of corruption are misappropriation and theft of funds meant for public use. The Anti-Corruption and Economic Crimes Act, 2003 prescribes offences which amount to corruption and economic crimes. This Act envisions corruption as acts which, inter alia, relate to misappropriation of public funds and economic crimes. Such comprise of various forms of abuse of public revenue and property.

The law creates requirements, conditions, and obligations to control and regulate activities that can cause offences related to corruption or economic crimes. The purpose is to prevent activities related to the abuse of public funds, revenue and property. The law therefore puts in place controls to contain activities that are likely to lead to commission of an offence related to corruption or economic crimes as envisaged under the Anti-Corruption and Economic Crimes Act, 2003.

Once Public funds – which are usually substantial – are disbursed to public entities, they require proper management, control and oversight of the expenditure. The purpose is to assess whether the funds are utilised for the purposes for which they were intended. It is necessary to ensure that they are used judiciously, prudently, efficiently and lawfully. The internal controls must ensure that these objectives are realized. Proper management of public resources (including funds and property) results in efficient use, the realization of value for money, and use of resources for intended purposes.

Initially, there were the Financial Management Act, 2004 and the Fiscal Management Act, 2009. These laws were used to control and regulate public finance management. However, these were repealed and replaced. The current legislative framework regulating and governing management of public funds is entrenched in the Constitution of Kenya, 2010 and the Public Finance Management Act, 2012, and attendant regulations.

The Constitution of Kenya, 2010, provides as follows; a) the revenue raised nationally be shared equitably among the National Government and County Governments; b) the burden and benefits of the use of resources and public borrowing be shared equitably between present and future generations; c) public money be used in a prudent and responsible way; and, d) financial management be responsible, and fiscal reporting is clear. In addition, the Public Finance Management Act, 2012, (the PFM, Act) provides clauses that can ensure effective management of public finances. These include the oversight responsibility of Parliament and county assemblies, and the different responsibilities of government entities and other bodies.

The Public Finance Management (County Government) Regulations 2015 and the Public Finance Management (National Government) Regulations 2015 (the PFM Regulations) were meant to support the Public Finance Management Act 2012. The Public Finance Management Act, 2012 states that the National Treasury is responsible for mobilizing domestic and external resources for financing National Government and County Governments' budgetary requirements. It also provides that each County Treasury is responsible for mobilizing resources for funding the budgetary requirements of the specific County Government and putting in place mechanisms to raise revenue and resources.

The Constitution of Kenya, 2010, also provides for establishment of various institutions with a key role in the management of public finances. This has led to establishment of independent offices such as the Office of the Auditor General (Article 229), the Office of the Controller of Budget (Article 228), the Salaries and Remuneration Commission (Article 230), the Commission on Revenue Allocation (Article 215 and 216), the National Treasury (Article 225 (1)), Central Bank of Kenya (Article 231), Parliament (Article 93) and County Assemblies (Article 176 (1)). In addition, there is the Kenya Revenue Authority (KRA) with a key role in tax revenue mobilization.

There is also the Public Sector Accounting Standards Board which is established under Section 192 of the PFM Act. It sets generally accepted accounting and financial standards; prescribes the minimum standards of maintenance of proper

books of account for all levels of government; and prescribes internal audit procedures which comply with this Act. It also prescribes formats for preparing financial statements and reporting by all state organs and public entities. It also publishes and publicises the accounting, financial standards and any directives and guidelines prescribed by the Board. Finally, it performs any other functions related to advancing financial and accounting systems management and reporting in the public sector.

The Cabinet Secretary (CS), Treasury, appoints receivers and collectors of National Government who are responsible for the collection of revenue. At County level, the County Executive Committee Member for finance appoints receivers and collectors of county government revenue. They are responsible for collecting, receiving and accounting for county government revenue.

There is also the Debt Management Office at National Treasury which handles issues of sustainability of public debt. The office provides regular updates of medium term debt strategy. Then there is the Public Finance Management Secretariat which deals with implementation of the Public Finance Management Act and its regulations. There is also the Inter-governmental Budget and Economic Council, and the Inter-governmental Fiscal Relations Office. The later handles the fiscal policy at both levels of Government at the National Treasury, and the Public Investment Management Department that evaluates projects before implementation.

Chapter Twelve of the Constitution, Part 6, Articles 225–227 outline several requirements to ensure control of public money. The controls envisaged include financial control, accounts and audits of public entities and control over public procurement processes.

The PFM Act, 2012, thus regulates the use, management and administration of public funds and revenue. The definition of corruption and economic crimes under the Anti-Corruption and Economic Crimes Act, 2003 include financial impropriety, wastage, misappropriation and embezzlement of public funds. The Public Finance Management Act by effect seeks to put in place controls and measures to reduce opportunities for unlawful public finance management. It also prescribes penalties for breach of obligations under the Act.

The Public Finance Management Act was enacted to "provide for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county assemblies; and the different responsibilities of government entities and other bodies." It also imposes duties on accounting officers of public institutions. Its objectives are to ensure that public finances are managed well at both the national government and the county government level in accordance with the principles set out in the Constitution. It is also to ensure that public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies. Accounting and procurement officers are usually targeted because in performing their duties, they are required to ensure that public finances are managed and used prudently. They are supposed to ensure that there is no wastage.

Part IV of the PFM Act details responsibilities with respect to management of public funds in the Counties. This Act covers all PFM aspects including but not limited to the budget making process; financial accounting and reporting; internal auditing; asset management; imprest management; revenue collection; public finance expenditure, among others. The PFM Regulations (2015), for County governments include strengthening inter-government fiscal relations; restricting wages to 35% of realised revenue; and restrictions such as limiting the development budget to 30% of the total budget.

Despite the existence of these legislative and institutional structures, non-compliance with public finance management and breach of the public finance management laws and regulations persist at various levels of government. For example, on the expenditure side, various Auditor General's reports cite several flaws; unlawful and unauthorized expenditure by public entities in excess of budget estimates; failure to document or account for expenditure, calling into question the authenticity of the claims of expenditure; payment to contractors for goods not delivered, services not rendered or projects not commenced or completed, leading to lack of value for money; failing to budget for projects commenced in previous financial years; excessive expenditure on recurrent expenses; under expenditure on development; excessive expenditure on compensation of employees; and accumulated and excessive outstanding unpaid bills.

In addition, there are expenditures, purchases, expenses and payments made by public entities without any or adequate supporting documentation to verify, authenticate and corroborate the payments. Such incidences make it difficult to confirm the propriety, validity and existence of projects, supply of goods and/or services for which payments were made, and casts doubt on the authenticity of the claim of expenditure.

Poor accounting practices and failure to adhere to prescribed financial reporting standards aid the commission of financial impropriety, fraud and unethical practices. There is also non-adherence to and flouting of procurement procedures as prescribed under the Public Procurement and Asset Disposal Act, 2015, and the Public Procurement and Disposal Regulations 2006. There is need to strengthen the ability to investigate and prosecute the findings of the Auditor General on corruption, as documented in the annual reports.

Poor public finance management and breach of public finance management laws have led to misuse, misappropriation and loss of public funds, revenue and property as reported by the Auditor General. Incidents of corruption manifest in the misappropriation of public revenue, funds, property and taxes. Continuous and periodic monitoring of compliance with relevant PFM laws is necessary. Illicit financial flows (IFFs), leakages in the tax system, money laundering and concealment of proceeds of crime, are key challenges in the fight against corruption. Therefore, surveillance of IFFs should be increased.

In addition, ACECA only prescribes a maximum (and not a minimum) penalty of a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both. These may not be punitive enough for the offences it prohibits. Neither is it proportionate to the amounts often alleged to have been

misappropriated. An attempt to cure this was made in the introduction of the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 which was gazetted on 1st March 2019, before introduction into the National Assembly. The bill proposes to amend Section 48 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003. This section states that a person convicted of a crime under the Act is liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both. However, the Amendment Act seeks to amend this section to provide a minimum penalty of a fine not less than one million shillings, or to imprisonment for a term not less than ten years, or to both.

(b) Protection of Public Property

Under the Constitution of Kenya, 2010, certain categories of public land belong to the National Government while others belong to County Governments. The Land Act, 2012 provides for the sustainable administration and management of land-based resources. It provides for management, conversion and administration of public, private and community land. The Act stipulates that any land may be converted from one category to another. It provides detailed provisions on the allocation of public land.

For example, any substantial transaction involving the conversion of public land to private land requires approval by the National Assembly or County Assembly, respectively. The National Land Commission (NLC) has discretionary power to allocate public land on behalf of the National Government and the County Governments. It also outlines the procedure for compulsory acquisition of land by government.

In Kenya, there is less public land compared to private or community land. This raises concern over the size of public land readily available for government use, whenever there is need. Public land is required for public use. Such uses include infrastructure development such as roads, railways, schools, and hospitals. Therefore, Kenya should have enough public land ready for use for a public purpose, whenever there is need. However, irregular allocation of public land to private developers has diminished the portfolio of public land available. Quite often the private developers change the use of the land allocated to them from public to other uses.

The use, conversion, alienation and allocation of public land is subject to certain regulations. For example, public land may be converted to private or community land because of public need, in the interest of defence, public safety, public order, public morality, public health or land use planning.

Any land may be converted from one category to another in accordance with the law.

Certain categories of public land may be allocated by the NLC upon request by the National Government or County Government. This should be done by way of public auction to the highest bidder, at prevailing market value, subject to and not less than the reserved price. In addition, it should not be also by way of

applications limited to a targeted group of persons or groups, to ameliorate their disadvantaged position. It can also be done through public notice such as tenders, public drawing of lots, public request for proposals, or public land exchange of equal value.

Whenever the national or county government deems it necessary to allocate specific public land, the CS or the County Executive Committee member responsible for matters relating to land submits a request to the NLC for the necessary action. Any substantial transaction involving the conversion of public land to private land is subject to approval by the National Assembly or County Assembly as the case may be. The National Land Commission Act, 2012 grants the National Land Commission discretionary power to allocate public land on behalf of the National and County Governments.

The National Land Commission Act further confers on the NLC additional powers over and above those set out in the Constitution. These powers include; to on behalf of, and with the consent of the national and county governments, alienate public land; monitor the registration of all rights and interests in land; ensure that public land under the management of the designated state agencies is sustainably managed for the intended purposes; and to develop and maintain an effective land information system for the management of public land. Private developers can acquire public land through allocation. Individuals can acquire land by following the correct and lawful procedure to be allocated land.

A critical look as the laws suggests that the measures in place for management and preservation of public land are reactionary. They are focused on recovery of public land that has already been transferred to third parties. Under the Land Act, 2012, Parliament approval is required only where a "substantial" transaction for conversion of public land is involved. In addition, parliament's oversight role is limited because transactions considered as not substantial may not be subjected to the oversight and monitoring process. This is demonstrated through the myriad cases of illegal, irregular and unprocedural allocation of public land, and unprocedural conversion of public land to other uses. This has been documented in the Ndung'u Reports (2004) which highlighted an indelible nexus between land and graft in Kenya.

(c) Regulating procurement systems and processes

The elements of corruption and economic crimes are defined in the Anti-Corruption and Economic Crimes Act. In actualizing effective regulation of these acts, a number of separate laws have been enacted to create safeguards against potentially acts corruption. Ancillary laws have been enacted to augment the Anti-Corruption and Economic Crimes Act. The aims is to control, regulate and penalise the corrupt activities contemplated thereunder.

Procurement is often used as a conduit for unjust and personal enrichment. The acts involved are self-dealing transactions, over-pricing, bid rigging, interference, collusion, price inflation, contract manipulation, and fictitious payments to contractors and suppliers. The process includes manipulation of procurement

systems to create favourable conditions that benefit individual officers. This is normally possible because processes exist in procurement that allow such practices to easily take place. The systems are vulnerable to manipulation. Procurement systems are manipulated to enable commission of corruption and economic crimes.

The law attempts to eliminate the conditions that may lead to corruption. The Public Procurement and Disposal Act, 2005, established procedures for efficient public procurement. This was in recognition of the risks and loopholes that inherently exist for corruption, in public procurement and asset disposal. And that is besides the disposal of unserviceable, obsolete or surplus stores, assets and equipment by public entities. It also prescribes improper procurement processes. The scope of the Act applies to accounting and procurement officers in public institutions. This Act was repealed by the Public Procurement and Asset Disposal Act, 2015.

The Public Procurement and Asset Disposal Act, 2015, capture the categories of economic crimes as defined under ACECA. They stipulate incidences when an officer or person whose functions concern the administration, custody, management, receipt or use of any part of public revenue or public property can be said to be guilty of an offence. For example, a person is guilty if he or she fraudulently makes payment or excessive payment from public revenues in the following circumstances; paying for sub-standard or defective goods; paying for goods not supplied or not supplied in full; or, paying for services not rendered or not adequately rendered. A person is also guilty if he or she wilfully or carelessly fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or engages in a project without prior planning. ACECA defines "public property" as real or personal property, including money, of a public body for under the control of, or consigned or due to, a public body.

The Public Procurement and Asset Disposal Act establishes procedures for efficient public procurement. It also prescribes improper procurement processes that would likely hamper free competition, transparency, openness, integrity, economy and fairness. The Act also outlines procedures for disposal of assets by public entities. The Act applies to accounting and procurement officers in public institutions who participate in public procurement processes. It establishes the Public Procurement Regulatory Authority which, *inter alia*, on its own initiative or upon request in writing by a public institution, or any person, investigates and acts on complaints received, arising from proceedings of procurement and asset disposal.

Such initiatives have been a great milestone. However, the system itself has not been able to forestall problems such as uncontrolled contract variations, overpricing (buying at inflated prices), lack of a structured authorization of expenditure levels, lack of fair and transparent competition, inappropriate application of procurement methods, non-delivery of goods, uncontrolled low value procurement of items, poor procurement records and documentation,

excessive delays in the procurement process, conflict of interest among players in the procurement system, and lack of legal permanence and enforcement.

At the moment, there are two Procurement Acts in Kenya which apply and operate simultaneously in relation to different procurement dispensations. The Public Procurement and Assets Disposal Act of 2015 repealed the Public Procurement and Disposal Act, 2005. But it provides that procurements, which commenced before 7th January 2016, shall continue to be treated in accordance with the law applicable at the time. There is also the Public Procurement and Disposal Regulations (2006), and the Amendments (2013).

This causes uncertainty regarding application of the individual Acts, and the process to be followed. Consequently, a number of procurement processes and structures are yet to be aligned to the current Public Procurement Act and the Asset Disposal Act, 2015. Procurement processes after 7th January 2016 are supposed to be aligned to the current Act. But procurements which commenced before 7th January 2016 are still subject to the procurement processes and regulations which applied under the Public Procurement and Disposal Act of 2005. This causes a spill-over effect

Besides, the regulations derived from the Public Procurement and Asset Disposal Act, 2015, are yet to be published. Therefore, the guiding regulations still in force are the Public Procurement and Disposal Regulations (2006), and Amendments (2013). Yet these were enacted to support the Public Procurement and Disposal Act of 2005. This undermines any lawful procurement, that is now considered unlawful, that may have been done prior to 2015. It also gives room for evading prosecution and inability to enforce rules because of legal technicalities.

It is therefore apparent that the law does not suggest sufficient prevention mechanisms. It has a skewed focus on reaction; it does not provide for adequate due diligence processes. Furthermore, the oversight role of Parliament and the Public Procurement Oversight Authority is weak. The two institutions, compared to other jurisdictions, do not scrutinize contracts, memoranda of understanding (MoUs), public-private-partnership agreements and plans, before they are signed and implemented. For instance, the South African Prevention and Combating of Corrupt Activities Act 12 of 2004 provides for the establishment and endorsement of a public Register in order to place certain restrictions on persons and enterprises convicted of acts of corruption relating to tenders and contracts.

The role of the Competition Authority of Kenya has been watered down, yet it has a critical role… collusive tendering of private undertakings. Although they are spread across different branches of law the intersection between anti-competitive practices and corruption becomes particularly evident in public procurement. Public procurement frequently involves large, high value projects, with barriers to entry, which present attractive opportunities for both corruption and collusion. In fact, some consider that one of the most common intersections of corruption and anti-competitive conduct occurs in government procurement, when bid rigging can be combined with or facilitated by bribery of public officials or unlawful kickbacks (OECD 2014).

There is a broad consensus that corruption has a detrimental impact on competition in public procurement processes, while transparency and open competition makes for better value for money and less opportunity for corruption to occur. Corrupt procurement officials might attempt to manipulate laws and regulations to bypass competitive tendering and additional oversight for their own interest and rent-seeking activities.

There are a number of ways by which corrupt procurement officials can restrict competition: contract specifications can be designed in a way that profits a particular company. Manipulation can also take the form of splitting up a high value contract into a number of smaller ones, in order for them to fall below the value thresholds, which require a contract to be opened to competition. Similarly, inappropriate contract bundling can b used whereby a procuring entity bundles a number of different contracts together to create a tender that is so complex that only a particular company is able to deliver, can be used to avoid truly competitive tender procedures (World Bank, 2013).

Therefore, a corrupt government agent controlling access to a formal market has the means and incentive to demand bribes in exchange for limiting the number of competing firms (Emerson, 2006). Corruption is then likely to distort the competitive pressure on firms to bid with prices that reflect the cost structure of most efficient firms, replacing price competition with bribe competition.

In such corrupt environments, corruption may also facilitate collusion among competing firms. This happens especially when there are resubmission opportunities, and the public official has legal discretion to allow for a re-adjustment of (all) submitted offers, before the official opening. In such schemes, the incentives of both the bidders and the corrupt agents become aligned (Compte, Lambert-Mogiliansky and Verdier, 2000; Lambert-Mogiliansky and Sonin, 2005). Such schemes are often made possible by having an "insider" in the public agency who provides bidders with the necessary information to rig bids. The insider may even operate as a cartel enforcement mechanism (OECD, 2010).

For firms engaging in anti-competitive practices in procurement, there are several common strategies that can be used separately or in tandem, to restrict competition. They typically take the form of bid rigging, whereby conspirators agree in advance who will submit the winning bid. Next, they share the profits obtained from an uncompetitive procurement process.

Competitors who agree not to bid can be offered compensation payments or receive subsequent contracts from the designated bidder. Thereafter, they share the proceeds of the illegally obtained high priced bid (OECD, 2009). Bid-rigging strategies take several forms. For example, "cover bidding" where participating firms agree to submit bids that are higher than the bid of the designated winner. Such will quote very high prices that cannot be accepted or they throw in terms that are known to be unacceptable to the purchaser. There is also "bid suppression" where one or more companies agree not to bid or withdraw their bids. Finally, there is "bid rotations" where firms agree to take turns to be the winning bidder. Competitors may also agree on market allocations and agree not to compete for certain customers or geographic areas (OECD 2010).

The active role played by Competition Authorities in anti-corruption efforts offer lessons from several countries. Botswana, Canada, and European Union Countries such as Norway and Sweden rank higher in competition indexes. Kenya has missed the link between anti-competitive practices and corruption. But other countries have identified and engaged their respective Competition Authorities in anti-corruption efforts.

The Competition Authority of Kenya is largely left out of the anti-corruption framework. That is not the case in a number of other countries. Competition agencies have a major role to play in combating corruption because competition violations and corruption frequently go hand in hand – particularly in public procurement. Therefore, competition agencies are well placed to detect and, in some cases, investigate corrupt organizations and individuals in cases of public procurement.

In Botswana, the anti-corruption framework includes measures to deal with collusion. These are practices in which companies collude to fix the price and eliminate competition. This was declared a form of corruption by the World Bank in 2004. Combating bid rigging is part of the responsibility of the Competition Authority of Botswana (CAB). When CAB officers find evidence of possible collusion, the matter is referred to the Competition Commission, the governing body of the CAB.

The Commission will then adjudicate, and if there is sufficient evidence, may fine the companies involved, a percentage of their turnover. Botswana discovered the need to tackle collusion in public tenders, given the small size of its economy and the limited range of companies in the private sector. Often, they may be related through same owners and directors or through personal associations. That makes it all too easy to form a collusion arrangement. The Competition Authority of Botswana has been involved in two major cases of collusion, since its formation in 2011.

In the past few years, the Swedish Competition Authority has intensified its co-operation with the Swedish National Anti-Corruption Unit. This is because of the likelihood of there being a relationship between these different types of infringement. This co-operation involves the exchange of anonymized information regarding suspected markets and pre-studies conducted by the respective authorities. They also publish articles encouraging public procurement officials who detect signs of corruption to also search for signs of cartel activity.

The Swedish Competition Authority organises mutual educational activities. Staff from the Swedish Competition Authority educates police officers who investigate bribery on how to recognize signs of bid rigging. Similarly, staff from the Swedish Anti-Corruption Unit teach case-handlers at the Swedish Competition Authority how to recognize signs of corruption. The aim here is to improve the prevention measures, discovery and investigation of a greater number of suspected infringements in both areas of responsibility and expertise.

Canada's Competition Bureau has identified the need to maintain a close relationship between cartel conduct and corruption. It does this particularly with

respect to bid rigging in public procurement.[2] Given this relationship, the Bureau has, in recent years, taken steps to maintain and improve its relationships with the police force and procurement authorities in Canada. The focus is on how they can complement each organization's efforts to promote competition and combat corruption.[3]

(d) Auditing public finance expenditure

The law has provided mechanisms for auditing public finance expenditure, which is susceptible to the fraud, misappropriation and embezzlement, as contemplated in the definition of corruption and economic crimes. Attendant to the objectives, the Anti-Corruption and Economic Crimes Act seeks to protect public property and revenue. Corruption, according to the Act, includes misappropriation of public funds and economic crimes. These comprise various forms of abuse of public revenue and property. That is why it is necessary to create a framework to enable monitoring and auditing expenditure of public revenue, and disposal of public property thus arises.

Public funds (which are usually in substantial amounts) once disbursed to public entities require management, control and oversight of the expenditure to assess whether the funds were utilised for the purposes for which they were intended and whether they were utilised judiciously, efficiently and lawfully.

Audit is an instrument of financial control that verifies financial statements, accounts and balances. It checks if funds have been used on the same purpose and premise for which it was obtained. It corroborates if all transactions and processes are in accordance with the law. To audit the efficacy of programmes to verify the result obtained from a plan for which money was employed is in conformance with the objective for which programme was made; audit of economy and efficiency to verify the way resources have been managed, whether resources have been acquired at minimum cost and employed for maximum benefit and that there is value for money. This is intended to ensure that there is no wastage of public funds and protect public revenue, property and funds.

Audit functions are intended to scrutinize public expenditure. They assess whether public funds have been utilized in a lawful, cost-effective and efficient manner that prevents wastage of public funds.

The audit exercise also seeks to identify possible incidents or likelihood of fraud, corruption, wastage of public funds or other financial improprieties. If discovered, the acts of corruption are taken up by relevant authorities, in accordance with the laid down process. Public audits scrutinize public expenditure and use of public funds/money by accounting officers of public entities or State Organs, public officers in general, public entities and State Organs to ensure that all public money has been used and applied to the purposes intended and that the expenditure conforms to the authority for such expenditure.

2 https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04114.html

3 Ibid.

The Public Audit Act, 2003 was enacted to provide for the audit of government, state corporations and local authorities. It provides for economy, efficiency and effectiveness examinations of public funds, to provide for certain matters relating to the Controller and Auditor-General and the Kenya National Audit Office, to establish the Kenya National Audit Commission. This Act provided for the functions and powers of the Office of the Auditor-General and is focused on expenditure of public funds.

This Act was repealed by the Public Audit Act, 2015. The Act sought to align the functions of the Auditor General with the Constitution of Kenya, 2010. It also sought to align the functions of the Public Audit Act with the institutional, regulatory and legal structures.

The Office of the Auditor General has the primary oversight role of ensuring accountability in the use of public resources. The Public Audit Act prescribes the functions of the Auditor General are to *inter alia* undertake audit activities in state organs and public entities to confirm whether or not public money has been applied lawfully and in an effective way. The Auditor General may audit the accounts of any entity that is funded from public funds.

The audit reports should highlight relevant material issues, systemic and control risks. In-depth audits should be carried out on the basis of risk analysis methods. The reports are individually posted on Office of the Auditor General's website. Audits are supposed to be performed according to ISSAIs. More emphasis is given to performance audits and procurement/asset disposal than under the previous law (sections 34-38 of the Public Audit Act, 2015).

Audit committees in County Governments are not fully functional or independent for one reason. The Public Audit Act and the Public Finance Management Act and attendant regulations do not prescribe the composition and membership of such committees to ensure independence and competency. In this regard, the law on audit procedures in county government does not prescribe or stipulate the requirements on how County Governments should constitute internal auditors and audit committees.

Attendant to this would be strengthening the role of the **Office of Controller of Budget** (COB) by reviewing its legal mandate as it is currently casted under the law. The role of the Controller of Budget must be strengthened to enable them to review budgets before they are approved by the National and County Assemblies, respectively. While the Act permits the Controller of Budget to give comments on budgets, their comments are rendered nugatory. The budgets are submitted to them after they have already been approved by the respective Assembly. The budgets ought to be submitted to the COB at the same time they are presented to the respective Assemblies; that is, by 30th April. This would enable the COB to assess if projects are in line with the intended objectives and to make timely interventions.

4.4 Focus on the Public Service and Officers

(a) The public service and officers as key in the fight against corruption

The Prevention of Corruption Act, 1956 adopted a dogmatic view that corruption was mainly rooted in the public sector. Therefore, the law focussed on regulating the conduct and activities by public officers. The Act prescribed actions and offences that amount to corruption such as corruption in office, corrupt transactions with agents, and public servants obtaining advantage without consideration. It also prescribed penalties therefor.

Section 7 of the 1956 Act prohibited payment, offer, promise, loan, giving, receiving money, gift, loan, fee, reward or other consideration or advantage by, a person in the employment, whether permanent or temporary, whether paid or unpaid and whether whole-time or part-time, of the Government or of a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from the Government or from any public body. It added that such money, gift, loan, fee, reward, consideration or advantage would be deemed to have been paid, offered, promised, lent or given or agreed to be given, and received or agreed to be received, corruptly as inducement or reward, unless the contrary is proved.

The elements of the law contemplated a government actor as the default party corruptly issuing a government contract. It did not contemplate a situation where one of the parties involved were not in government. The Act advanced the presumption that corruption only exists in the public service and is perpetrated by public officers. That is why, over time, various legislative instruments have targeted public officers.

Inevitably, the expanse of corruption in the private sector was largely ignored. There was no attempt to put in place anti-corruption efforts in the private sector. The scope of "persons" as specified in the Act was unclear because it did not specify whether it included legal and juristic (juridical) persons or it was limited to natural persons.

In addition, it had a narrow focus in relation to public servants, officers, the government and public bodies. Consequently, there was limited focus and reach on corruption in the private sector. Equally, the offences prescribed were narrow in scope. They left room for narrow interpretation and enforcement, evasion and loopholes. Many corrupt practices would not fall under any of the offences prescribed in the Act. The 1956 Act was repealed by the Anti-Corruption and Economic Crimes Act, 2003.

The Act had remained the only law directly targeting corruption and corrupt activities until when the Anti-Corruption and Economic Crimes Act, 2003 was enacted.

Over time, the skewed focus on corruption in the public sector by the law and legal initiatives continued in the various subsequent legislative instruments enacted. The objectives of the Acts were to regulate behaviour, conduct and activities of

both the public officers and the public sector. These Acts were; the Public Officer Ethics Act; the Anti-Corruption Ethics and Anti-Corruption Act, 2003, the Public Audit Act of 2004 and the Public Procurement and Asset Disposal Act of 2005..

(b) Setting standards, compliance and regulating the behaviour, conduct and activities of public officers

The case of Samuel Hinduri Wreathe vs. Mary N. Mugnai, Commissioner for Co-operatives and two others [2017] elk articulated eloquently that, because of the nature of work of public officers, there are certain restrictions and constraints on the liberties and freedoms that they can enjoy. These restrictions and constraints are deemed necessary to ensure good management of the public funds and resources entrusted to them. Public officers ought to comply with the constitutional requirements by adhering to the restrictions and constraints attached to the position.

The law has focused on regulating only public officers. The Public Officer Ethics Act, 2003 was enacted to set ethics, values and principles for the public service, and prescribe acceptable and unacceptable conduct. The Act specifies the general code of conduct and ethics for public officers. Its objectives are to advance the ethics of public officers by providing for a code of conduct and ethics for public officers.

To monitor acquisition of wealth and assets by public officers, the Act requires that certain public officers declare their wealth. This Act applies exclusively to public officers – that is the government employees and other state organs. The Act recognizes the importance of regulating and monitoring the behaviour and activities that are likely to lure a public officer into corruption-related activities, economic crimes and abuse of office. Therefore, it prescribes permitted and prohibited standards of behaviour and conduct of public officers. It targets aspects such as professionalism, nepotism, impartiality, conflict of interest, ethics, conduct in private affairs, and financial probity. That is why the Act requires each public offer to declare his or her income, assets and liabilities.

The Act is primarily not punitive in nature. It is intended to guide public officers on what is expected of them. It outlines proper and improper conduct in public office and benchmarks the standards and conduct of public officers. Here, there is a shift from focusing on criminality to prescribing a code of conduct and managing or shaping the behaviour of public officers. Its objectives are to shape the behaviour of public officers and prescribe conduct expected of a public officer. This can be used to instil ethos and best practices in public officers. The Act thereby seeks to standardise the ethics, behaviour, culture and standards of public officers.

Section 20 of the Public Officer Ethics Act provides that every public officer shall, once every two years, prescribed by Section 27, submit to the responsible Commission for the public officer, a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years. This requires public officers to enumerate their assets and how they were acquired.

Public officers are required to give a satisfactory explanation in the event of any disparity between their assets and their known legitimate sources of income. This furthers the objectives of the Anti-Corruption and Economic Crimes Act which provides that "unexplained assets" means "assets of a person acquired at or around the time the person was reasonable suspected of corruption or economic crimes; and whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation." These provisions impose the need to verify the sources of income of public officers in particular, in attempting to trace the use and products of proceeds of corruption and economic crimes. Unexplained assets and acquisition of wealth serve as indications and corroborative evidence of illegitimate sources of income such as corruption.

The Public Officer Ethics Act provides for establishment of "responsible Commissions." These are; the Committee of the National Assembly, the Teachers Service Commission (TSC), the Judicial Service Commission (JSC), the Public Service Commission (JSC), the Parliamentary Service Commission (PSC), the Independent Electoral and Boundaries Commission (IEBC), the Defence Council, and the National Security Intelligence Council (NSIC). The Responsible Commission receives declarations of income, assets and liabilities from their respective officers. Each Responsible Commission is required to establish a specific Code of Conduct and Ethics for public officers to adhere to. The responsible Commission can then investigate to determine whether the public officer has contravened the established Code of Conduct and Ethics.

The counties, Constitutional Commissions and Independent Offices that were created under the Constitution of Kenya, 2010, do not have a responsible Commission. So, they have no organ to whom they can report, submit wealth declaration forms or which can enforce their ethical standards. Consequently, the provisions in the Public Officer Ethics Act do not apply here.

In addition, the Act does not prescribe stringent penalties for non-compliance. For example, Section 36 provides that when an investigation discloses that a public officer has contravened the Code of Conduct and Ethics, the responsible commission is required to take appropriate disciplinary action. But if the responsible Commission does not have the power to take the appropriate disciplinary action, it can refer the matter to a body or person who possesses such power.

The Act does not specify the disciplinary action. Besides, the disciplinary procedure outlined is not in line with the legal and institutional framework provided for in the 2010 Constitution. It provides that if the Commission determines that, civil or criminal proceedings ought to be considered, after an investigation. it should refer the matter to the Attorney General or other appropriate authority. This disciplinary procedure has never been revised to reflect the mandate of the EACC.

In addition, the Act provides weak means of verifying the information provided in wealth declaration forms at the point of submission. The forms as submitted to the responsible commission only. The regulations should allow all investigative agencies to access, monitor and scrutinize the declaration of assets, income and liabilities over the course of an officer's period of service.

Section 12 of the Public Officer Ethics Act, 2003, deals with the issue of conflict of interest. It prohibits a public officer from awarding a contract to self, a spouse or relative; a business associate; or a corporation, partnership or other body in which the officer has an interest. It does, to some extent, target corruption within the private sector, by prohibiting award of contracts to entities in which the officer has an interest. Therefore, it does not target corruption in the whole of the private sector. It only limits itself to the award of contracts to entities where the officer has an interest.

Furthermore, there is a requirement for the element of "*interest*" in the corporation, partnership or other body to which the public officer is awarding the contract. The interpretation of what amounts to sufficient "interest" is wide and can be easily contestable. Questions can arise as to the precise nature, degree and level of the interest. For example, what is the sufficient level of interest to hold such an officer liable for breach of the Act? A minority shareholder? A non-executive director? When a relative is an employee in the corporation? Due to the mandatory and yet nebulous requirement that there must be interest, it is likely that a number of illicit practices would not qualify as an offence or breach of this section.

There is another key gap. The Public Officer Ethics Act is yet to be fully aligned to the Constitution of Kenya, 2010. The Constitution creates a distinction between Public Officers and State Officers. As a result, there are many gaps and lacunas in the laws. The Act is largely obsolete. It is not in line with the 2010 constitutional, regulatory and institutional landscape.

Other key laws in regulating public officers include the Leadership and Integrity Act, 2012. It was enacted pursuant to the requirements of Article 80 of the Constitution of Kenya, 2010. It provides for procedures and mechanisms for effective implementation of Chapter Six of the Constitution on Leadership and Integrity. The Public Officer Ethics Act preceded the Leadership and Integrity Act which now enhances the scope of duties and obligations placed upon public and State Officers.

The Leadership and Integrity Act (like its predecessor the Public Officer Ethics Act) is silent on the procedure to be followed, once an officer is under investigation, or is implicated or charged with an offence under the Act, or any other law. Therefore, there is a lacuna in the law about the procedure to be followed in these events – prior to investigation, charge, trial, prosecution, judgment or conviction. For example, should an officer step aside, resign or continue to hold office pending investigation, trial and conclusion of the hearing? This is a significant gap in the law.

Officers who continue to hold office during investigations and perform duties in the ordinary course of business have access to information that they are likely to destroy, tamper or interfere with. Such include documents, materials, persons, material witnesses and evidence related to the investigations or trial.

Although there is need to respect the right to presumption of innocence and ensure that it is upheld and maintained always, this should be balanced against public interest. All State and public officers with corruption cases under investigation,

proceeding to prosecution or trial should step aside. This should be the case during investigations to balance the right to presumption of innocence on one side, and the right to a fair trial and public interest, on the other. As was appositely articulated in *Mape Building & General Engineering vs Attorney General & Others, "No suspect or offender, knowing that there existed evidence which if not destroyed or vanquished would lead to his guilt or liability, can be expected to sit back once notified of possible investigations. The suspect would rid the evidence out of sight and reach. Consequently, the investigator must, where there is a foundational basis, be allowed and be in a position to seize and secure the evidence."*

Similarly, the Leadership and Integrity Act has not clearly provided for sanctions or disciplinary action against a State officer or a Public officer found guilty of acts of corruption. In addition, the confusion in the definition of a public officer found in the interpretation and enforcement of the Public Officer Ethics Act, pervades into the Leadership and Integrity Act.

The Constitution of Kenya, 2010, also prescribes values and principles for public officers under, Article 232. The Public Service (Values and Principles) Act, 2015, was subsequently enacted to codify Article 232 of the 2010 Constitution. The Public Service (Values and Principles) Act gives the public service ethos and principles that should guide public officers in the process of execution of their duties. The ethos and principles are unique to the day-to-day functions of a public officer. They are also unique to the nature of work of the officer.

These ethos and principles cover aspects such as representation of the government, exposure and interaction with public resources, and interaction with the public while delivering services. These aspects require guidance and supervision to ensure that when public officers are executing their duties and functions, they are subject to some guidance and standards, over and above those expected or required of those in the private sector. The focus is on what they do in their capacity as public officers when interacting with the public.

The requirements imposed on public officers include maintaining high standards of professional ethics. They have to be honest and display high standards of integrity in dealing and executing functions. These they have to do in a transparent and accountable manner, demonstrate respect towards others, be objective, patriotic and observe the rule of law.

Public officers are required to use public resources in an efficient, effective and economic manner. There are several ways in which a public officer can be considered to have failed to use public resources in an efficient, effective and economic manner. For example, if the officer has used the resources in a manner that is not prudent. Others are; where there is unreasonable loss, deliberate destruction, or the effect of the loss reduces the effectiveness of the public service. The public service is required to ensure that public services are provided promptly, effectively, impartially and equitably. Where there is unreasonable delay, public services are considered not to be prompt.

Public officers are also required to ensure transparency to the public and provision of timely and accurate information. A public officer is prohibited from giving information that s/he knows or ought to know that is inaccurate. He or she should not unduly delay the provision of any information where required.

However, contradictory and inconsistent definitions of "public officer" across various pieces of legislations have impaired their enforcement. The various laws have conflicting definitions of the term public officer. Examples of these laws are, first the Constitution of Kenya, 2010, followed by its Acts like the Public Officer Ethics Act, and the Leadership and Integrity Act. This makes it difficult to determine the categories of officers who are subject to the restrictions, requirements, duties, obligations and standards attributed to and imposed on public officers. Similarly, it becomes difficult to effectively prosecute officers for breach of the requirements and duties imposed on public officers because the definition is open to dispute.

The United Nations Convention Against Corruption (UNCAC) states that a "public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in Chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

The Public Officer Ethics Act, 2003, defines a public officer as any officer, employee or member, including an unpaid, part-time or temporary officer, employee or member, of any of the following – the Government or any department, service or undertaking of the Government; the National Assembly or the Parliamentary Service; a local authority; any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to local government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law; a co-operative society established under the Co-operative Societies Act.

The Constitution of Kenya, 2010, introduced the concept of "State Officer" which is distinct from the conventional "public officer." Article 260 defines a public officer as any State officer; or any person, other than a State Officer, who holds a public office. "State office" means any of the following offices — the President; Deputy President; Cabinet Secretary (CS); Member of Parliament (MP); Judges and Magistrates; member of a commission to which Chapter Fifteen applies; holder of an independent office to which Chapter Fifteen applies; Member of a County Assembly (MCA), Governor or Deputy Governor of a county, or other member of the executive committee of a county government; Attorney-General; Director of Public Prosecutions (DPP); Secretary to the Cabinet; Principal Secretary; Chief of

the Kenya Defence Forces; commander of a service of the Kenya Defence Forces (KDF); Director-General of the National Intelligence Service (NIS); Inspector-General, and the Deputy Inspectors-General, of the National Police Service (NPS); or an office established and designated as a State office by national legislation. Article 260 of the Constitution provides that a "State officer" means a person holding a State office.

Various other pieces of legislation also define who "a public officer" and what "a public office" is. The statutes include the Elections Act, the Political Parties Act No. 11 of 2011, Leadership and Integrity Act and the Public Service (Values and Principles) Act. They ascribe the meanings to the definition given under Article 260 of the 2010 Constitution. However, the Public Officer Ethics Act which was enacted before the Constitution of Kenya, 2010, is not in harmony with these Acts, which were enacted after the promulgation of the Constitution of Kenya, 2010. This makes it increasingly difficult to enforce the requirements ascribed to the "public officer" envisaged under the Public Officer Ethics Act vis-a-vis the requirements of the above Acts.

Judicial Interpretation

The Courts have also been instrumental in framing the definition of who a public officer is. The tenuous definition of a public officer was brought to the fore in the case of Samuel Thinguri Warwathe vs Mary N. Mungai, Commissioner for Co-operatives and two others [2017] eKLR. In this case, the petitioner argued that as an official of a Sacco, he was not a public officer. Therefore, he argued, he was not subject to the *Independent Electoral and Boundaries Commission (IEBC) regulations requiring that Public Officers intending to contest for elective posts in the General Elections must resign from office by 7th February 2017. Besides, he argued,* Section 43(5) of the Elections Act, No. 24 of 2011 states that a public officer who intends to contest an election under the Act shall resign from public office at least six months before the date of election. *The petitioner therefore argued that as he was not a public officer within the meaning of the Constitution, he* should not have to resign from his position before running for an elective seat in the General Elections.

The petitioner argued that the provisions of Section 2(e) of the Public Officer Ethics Act (No. 4 of 2003) were in contravention of the 2010 Constitution to the extent that the Constitution already supplies a definition of a Public Officer. The Court agreed with the petitioner and held that *Section 2 of the Public Officer Ethics Act is inconsistent with Article 260 of the 2010 Constitution and is therefore null and void to the extent that it defines a "Public Officer" differently than the definition supplied by the Constitution. The Court also held that any Section of the Co-operative Societies Act Cap 490 and any rules and regulations made thereunder that defines and or classifies Chairpersons and or leaders of Co-operative Societies registered under the Co-operative Societies Act as public officers is inconsistent with and in violation of Article 260 of the Constitution.*

Ultimately, the definition of a "Public Officer", under Section 2 of the Public Officer Ethics Act is inconsistent with the 2010 Constitution. The Public Officer Ethics Act was enacted before the promulgation of the Constitution of Kenya, 2010; and that in accordance with Section 7(1) of the Sixth Schedule of the Constitution, all laws in effect before the effective date of the Constitution (27th August 2010) continued in force and ought to *be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with the Constitution*. Therefore, any interpretation of the term "Public Officer" must adhere to the definition in the 2010 Constitution.

From a reading of the Public Officer Ethics Act and the 2010 Constitution, the definition of "Public Officer" in the Public Officer Ethics Act is broader than the definition provided in the Constitution. The Public Officer Ethics Act had been in existence prior to the promulgation of the Constitution, and so must be read subject to the 2010 Constitution.

The definition of "public officer" is therefore limited to those who hold offices in respect of which *"remuneration and benefits paid directly from the Consolidated Fund, or directly out of money provided by Parliament."* This makes it difficult to determine which officials and employees are categorized as "public officers" and therefore subject to the various requirements, duties, obligations, prohibited activities and restrictions imposed on public officers, under the various laws.

Therefore, it is difficult to implement the various legal requirements or enforce them on employees whose status in the legal and regulatory terrain is nebulous due to conflicting interpretations and lack of clarity. The employees have an inadequate understanding and awareness about their status. This may be the cause of non-compliance and the breach of the requirements of the public officer code of conduct.

Besides the requirements of the Public Officer Ethics Act and related laws on public officers, professional bodies ought to entrench the values, behaviours, culture, ethics and discipline expected of professionals in their lines of duty. For instance, the Law Society of Kenya (LSK) which regulates Advocates practicing law in Kenya holds continuous professional development courses on ethics and discipline.

(c) Vetting persons running for or seeking appointment to public office

To further prevent corruption in the public sector, the law creates standards to lock out persons who are not fit to hold public office. The purpose is to ensure that they meet a minimum threshold of requirements on the integrity continuum. The law therefore prescribes minimum standards for one to be appointed of permitted to run for public office.

The Elections Act, 2011, thus provides for the eligibility of candidates for election to various elective positions. To be elected to any one of the offices, you must fulfil the conditions set out in the Act. The elective posts are; President and Deputy President, Senator, MP, County Governor and Deputy Governor, MCAs and

Women Representative. Other democratic measures that ensure accountability are; the provision for the conduct of referenda and the provision for election dispute resolution. It prescribes the requirements, standards and qualifications for these candidates.

The Leadership and Integrity Act, 2012, is one of the laws that should be used to determine the eligibility of candidates for election to a public office. Some elected officials may fail to meet the required threshold of leadership and integrity because, the Leadership and Integrity Act is weak.

4.5 Scrutinizing Income Sources, Acquisition of Wealth and Assets

The law recognizes that proceeds of crime (including corruption and economic crimes) may be used to acquire assets and facilitate money laundering. Therefore, there is a framework in place to monitor, trace and report transactions and assets which are suspected to result from corrupt activity. This can also be useful for assessing whether a public officer's assets are commensurate with his/her income. It can also be used to detect any variance in the accounts of a public officer, as measured against his or her known sources of income. This is the main purpose and justification for wealth declaration, as discussed in previous sections.

Section 57 of ACECA provides that unexplained assets may be forfeited to the State. It is important to maintain an open channel to identify, monitor, report, track and trace assets and transactions surrounding their acquisition, allocation or disposal to third parties or other entities which were or are likely to have been acquired as a result of corrupt conduct with the institutions, businesses or professions which interact with, facilitate or structure such transactions frequently which is particularly important in investigation and prosecution of corruption suspects.

The ACECA also goes beyond the provisions of the Prevention of Corruption Act of 1956. It recognizes that unexplained assets can be an indication of illegitimate acquisition of wealth through corruption or economic crimes. Unexplained assets serve as corroborative evidence in prosecuting a person accused of corruption or economic crimes. It provides corroboration that such a person received an illegitimate benefit.

Section 2 of the Anti-Corruption and Economic Crimes Act provides that "unexplained assets" means "assets of a person acquired at or around the time the person was reasonably suspected of corruption or economic crimes; and whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation." Pursuant to Section 55, the EACC may commence proceedings in the High Court of Kenya for forfeiture of unexplained assets where investigations indicate that a person has unexplained assets and the person has failed to provide the EACC with an adequate explanation to explain the disproportion between the assets concerned and his known legitimate sources of income.

After proceedings have been commenced and the person has failed to satisfy the Court that the unexplained assets were acquired otherwise than as a result of corrupt conduct, the High Court may order the person to pay to the Government an amount equal to the value of the unexplained assets. Furthermore, Section 57 provides that unexplained assets may be taken by the court as corroboration that a person accused of corruption or economic crimes received a benefit. The wealth declaration form is thus one of the tools through which the existence of unexplained assets may be suspected, detected or proven in the public service.

In furtherance of the objectives of the Anti-Corruption and Economic Crimes Act in the existence of "unexplained assets" as being an indication of illegitimate sources of income it becomes increasingly important to be able to verify the source of income applied towards acquisition of such assets; that is whether one's assets and wealth are commensurate with their known and declared income or whether such assets and wealth were acquired through proceeds of crime or criminal enterprise.

The Proceeds of Crime and Anti-Money Laundering Act, 2009 puts in place a framework to deal with properties and assets that form part of proceeds of crime. Section 3 of the Act prescribes the offence of money laundering to deal with property that is suspected to be part of proceeds of crime. It is property who the owner may want to conceal or disguise its nature, source, location or movement.

Section 4 prescribes that acquisition, possession or use of proceeds of crime committed by self or by another person, is an offence. Section 5 creates an offence and imposes penalties for failure to report suspicious transactions. While the Proceeds of Crime and Anti-Money Laundering Act applies to all sectors and individuals, it is relevant while detecting corruption or illicit acquisition of wealth by a public officer.

The Proceeds of Crime and Anti-Money Laundering Act created an agency under Section 53 to carry out this exercise, the Asset Recovery Agency (ARA). Its function is to undertake tracing, confiscating, freezing and repatriation of unexplained assets. ARA is a semi-autonomous body under the office of the Attorney-General, who appoints its Director General.

The Act was amended in 2017 and the office restructured to give it more autonomy, budgetary allocation, powers and functions to enable it to undertake rigorous seizure of unexplained of assets. Its function now includes implementing the provisions of Parts VII to XII of the Proceeds of Crime and Anti-Money Laundering Act. It undertakes *criminal forfeiture* of all proceeds of crime after restraint orders have been issued. It also undertakes *civil forfeiture* related to recovery, preservation and forfeiture of assets. It deals with all cases related to recovery of proceeds of crime or benefits accruing from any predicate offence in money laundering. However, the mandate and functions of ARA are similar to EACC and in some land cases the National Land Commission (NLC).

The amended Act also changed the title of the head of ARA from "Director" to "Director General." The amended Act diversifies the qualifications required of a person to be appointed as Director General. Apart from knowledge in

law, economics and finance, the person must also have knowledge in public administration, management, and international relations.

Where a person or a reporting institution is in breach of, or fails to comply with any instruction, direction or rules issued by the Centre, the Amendment Act grants the Financial Reporting Centre (FRC) the power to impose civil penalties against. The penalties could be in form of any of the following:

- a warning
- an order requiring the person or institution to comply with the instruction or direction issued by the Centre
- an order barring the individual from employment within the specified reporting institution whether entirely or in a specified capacity
- an order to a competent supervisory authority requesting the suspension or revocation of a license, registration, permit or authorization of the reporting institution, whether entirely or in a specified capacity or of any director, principal, officer, agent or employee of the reporting institution.

The FRC is required to, before taking action, give the person or reporting institution, a written notice of not less than fourteen days to show cause as to why it should not take action. If the person or institution fails to show cause, FRC can impose any of the penalties stipulated above.

During investigation and prosecution, asset data transaction should be availed on demand from relevant authorities to aid the process. Such include the Kenya Revenue Authority (KRA), the Kenya Wildlife Service (KWS), the Companies registry, the Lands Registry and the National Land Commission (NLC). The Act should also address issues such as disclosure of information, confidentiality and the restrictions that arise therefrom. For example, the UK Criminal Finances Act, 2017 provides, under Section 362 G thereunder, that an unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

4.6 Regulating Channels for Channelling Proceeds of Crime

a) Targeting professions, institutions, services and systems used as channels for facilitation of proceeds of crime, financial crime and money laundering

Corruption generates proceeds of crime which often require money laundering. Therefore, money laundering is often considered a predicate offence resulting from another more serious offence such as corruption, tax evasion, theft and fraud. Regulating the financial system to prevent illicit financial flows and laundering of illicit financial proceeds is paramount. It can help identify if a crime have been committed and trace the proceeds of the crime.

For money launderers, financial institutions and some of the first points of contact, after laundering money, because of the nature of the services they offer. These

services include deposits, transfers, withdrawals, loans, investments and foreign exchange. The financial sector is regulated by the Banking Act, Cap 488 Laws of Kenya. The Act places the obligation of providing information and reporting on financial institutions.

The Central Bank of Kenya (CBK) prescribes standards and guidelines that financial institutions must comply with. It also regulates and imposes penalties on them if they fail to adhere to the directives. The Proceeds of Crime and Anti-Money Laundering Act, 2009, complements the Banking Act, but focuses on money laundering only. It prescribes the measures to be used in combating the crime. These measures include identification, tracing, freezing, seizure and confiscation of the proceeds of crime. Generally, the Act regulates the financial sector, targeting those who participate or aid money laundering and economic crimes. The Banking Act regulates the manner in which proceeds derived from all financial crimes (including corruption) are to be dealt with.

In addition, the Banking Act provides mechanisms of how to combat money laundering and proceeds of crime. The Act regulates institutions that are susceptible to money laundering. For example, it focuses on financial institutions or the financial sector, and those who aid in money laundering activities or transactions. Professionals such as accountants and real estate agencies are targets because they likely to be involved in the chain of money laundering.

Therefore, the Act focuses on the professions and institutions that provide services and systems in the money laundering chain. In most cases, they aid to facilitate or structure the transfer, transmission or holding of the illicit money. Thereafter, they integrate or convert the proceeds into seemingly legal investments such as luxury assets, financial or real estate investments. Some of the most common are securities, real estate, luxury goods, precious metals or stones.

The Banking Act does not specifically mention corruption. Therefore, its nexus and application to corruption cases may be overlooked. This may as well be the case because *money laundering* is typically treated as a financial crime, but not "corruption" as defined in ACECA. Therefore, it is a predicate offence to other offences. Nonetheless, money laundering is used to conceal proceeds of crime and corruption or legitimize the assets acquired using the proceeds. Thus, possible channels through which proceeds of crime and corruption can be laundered must be regulated, monitored and duty-bound. That is why this Act is relevant in anti-corruption efforts.

The obligation of reporting is conferred on financial institutions, designated non-financial businesses and professions. are with to enhance their ability to undertake monitoring and reporting which can assist in investigation and prosecution. Furthermore, they have been identified as key players who interact with proceeds of corruption and who can identify any suspicious transaction and activity. It is thus necessary to engage these key players to assist in monitoring, reporting, tracking, identifying and investigating persons suspected of concealing proceeds of crime through money laundering or other means of concealment. The Proceeds of Crime and Anti-Money Laundering Act provides a regulatory and institutional framework to address these aspects.

According to the Proceeds of Crime and Anti-Money Laundering Act, "reporting institutions" have the obligation to report to prevent money laundering. This is defined to mean "financial institutions and designated non-financial businesses and professions." The Act identified financial institutions and other specified non-financial professions and businesses as key duty-bearers in anti-money laundering efforts. Money laundering is used as a means or channel of committing corruption and other illegal acts. It is also used to conceal corrupt acts or the proceeds gained from corruption.

The Act was also enacted as an effort to combat Money Laundering and Terrorist Financing (MLTF). As alluded to already, financial systems of many institutions are used to transfer, transmit or maintain illicit proceeds. "Financial Institution" is defined as any person or entity, which conducts as a business, one or more of the following activities or operations — accepting deposits and other repayable funds from the public; lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions; financial leasing; transferring of funds or value, by any means, including both formal and informal channels; issuing and managing means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money); financial guarantees and commitments; trading in— (i) money market instruments, including cheques, bills, certificates of deposit and derivatives; (ii) foreign exchange; (iii) exchange, interest rate and index funds; (iv) transferable securities; and (v) commodity futures trading; participation in securities issues and the provision of financial services related to such issues; individual and collective portfolio management; safekeeping and administration of cash or liquid securities on behalf of other persons; otherwise investing, administering or managing funds or money on behalf of other persons; underwriting and placement of life insurance and other investment related insurance; and money and currency changing.

Part IV (Sections 44, 45, 46, 47 and 48) of the Act stipulates Anti-Money Laundering Obligations of a Reporting Institution. These are; monitoring on an ongoing basis all complex, unusual, suspicious, large or such other transactions; reporting to the Financial Reporting Centre of suspicious or unusual transactions or activities or any other transaction or activity could constitute or be related to money laundering or to the proceeds of crime; taking reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it or to carry out a transaction or series of transactions with it, undertaking customer due diligence on the existing customers or clients (know your client); establishing and maintaining client records and records of all transactions and where evidence of a person's identity is obtained, a record that indicates the nature of the evidence obtained, and a copy of the evidence or such information as would enable a copy of it to be obtained; obligation to establish and maintain internal controls and internal reporting procedures; obligation to register with the Financial Reporting Centre.

This is particularly important in carrying out corruption-related investigations, tracing proceeds of corruption, tracking transactions, beneficiaries and establishing an audit trail. It assists in identifying persons (natural or legal) who

carry out transactions or who are beneficiaries of transactions. The reports of reporting institutions can inform investigations and form part of documentary evidence during trial that the prosecution can rely on.

Money launderers have resorted to the non-financial sector to try and conceal their illicit money. The Proceeds of Crime and Anti-Money Laundering Act, in recognition of this fact, places certain obligations on "designated non-financial businesses and professions," based on the understanding that public servants do not commit these corruption offences exclusively on their own. Public servants violate the Code of Conduct aided by accomplices such as the professionals working in the private sector.

Section 2 of the Act contemplates several types of "designated non-financial businesses or professions." These include casinos (including internet casinos); real estate agencies; dealing in precious metals; dealing in precious stones; accountants, who are sole practitioners or partners in their professional firms; non-governmental organizations; and such other business or profession in which the risk of money laundering exists as the Cabinet Secretary may, on the advice of the Centre, declare.

According to the Act, accountants are required to report any suspicious acts in the course of duty. The Act lists the following as examples: preparing or carrying out transactions for their clients when buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies; creation, operation or management of buying and selling of business entities.

The Act also establishes a Financial Reporting Centre (FRC), whose function is to assist in identifying the proceeds of crime, combating money laundering and financing of terrorism. FRC disseminates reports to, and shares intelligence with EACC, particularly on crimes relating to money laundering.

According to CBK, that Kenya is susceptible to money laundering due to its location and the cash-based economy. Anti-money laundering efforts often face challenges in cash-based societies which often exist in developing countries (Passass, 2015). Cash-based societies are commonly considered a high risk for money laundering because "the dominance of cash transactions, coupled with the narrowness of the financial sector (low levels of penetration), makes it easier for the proceeds of crime to be integrated into the rest of [the] economy, without the involvement of the financial system in the initial stages" (Passass, 2015). However, the challenge is the anonymity associated with cash-based transactions, not the number or frequency of transactions. Anonymity hampers traceability of the transactions. Moreover, traceability is poor when checks, controls and governance in a country are weak.

Other channels for facilitating money laundering activities and illicit financial flows include financial institutions and certain businesses and professions. The financial services industry is highly susceptible to the risks associated with money

laundering due to the nature of services and products they provide including deposits, transfer, foreign exchange and investment savings.

The Proceeds of Crime and Anti-Money Laundering Act requires banks to report all cash transactions above a certain threshold to FRC. The Proceeds of Crime and Anti-Money Laundering Regulations, 2013 require that for large, frequent or unusual cash deposits or withdrawals, the customer must provide written confirmation that the nature of his business activities normally and reasonably generates substantial amounts of cash. Furthermore all reporting institutions are required to report all cash transactions amounting to or exceeding US$ 10,000 (Ksh 1 million) whether or not the transaction is suspicious. Monitoring cash transactions is an essential pillar of an effective anti-money laundering framework.

The law therefore imposed limits on daily cash transfers and mandatory reporting of transactions that exceed the set limit. The law requires that any bank withdrawal that exceeds Ksh 1 million must be documented. The transacting party must declare the source, purpose and beneficiaries of the cash. This seeks to cure the risks associated with cash transactions.

However, there is need to also monitor the number and frequency of transactions that may fall below Ksh 1 million. That said, the Banking Act was amended by Section 65 of the Finance Act, 2018 to include a new Section 33C requiring the CBK to develop regulations prescribing conditions on deposits and withdrawals (which relate directly to cash transactions). This brought confusion in the banking sector and undermined efforts to regulate cash-based transactions. This amendment is also inconsistent with the Proceeds of Crime and Anti-Money Laundering Act and its regulations. It is also likely to have a negative impact on the enforcement of these laws. There are also risks associated with weak regulation of bank safety deposit boxes. These boxes can be used to deposit and maintain illicitly acquired funds.

Digital financial platforms are increasingly becoming susceptible to money laundering. There is need to regulate these digital platforms in the financial service. Though Kenya has enacted the National Payment System Act, 2011 and the National Payment System (Anti-Money Laundering Regulation for the Provision of Mobile Payment Services) Regulations, 2013, the development of this digital class of financial products and subsequent increase in mobile transactions is potentially driving innovations in money laundering schemes. With more people transacting money digitally and more funds flowing through mobile transfer, regulators must insist on customer verification to make mobile transactions transparent and secure.

In regulating other channels for money laundering, the Betting, Lotteries and Gaming Act together with the Proceeds of Crime and Anti-Money Laundering Act regulate the risk of money laundering in the betting, gaming and lotteries industry. Casinos are one of the designated non-financial reporting institutions contemplated under the Proceeds of Crime and Anti-Money Laundering Act. The gambling industry is susceptible to money laundering by criminals due to the unregulated and common use of cash without leaving an audit trail.

Some customers may attempt to use proceeds of crime to get legitimate money or use proceeds of crime to fund their gambling activities. Moreover, many customers spend the proceeds of crime in casinos which offer individuals the ability to remain anonymous. There are also cases where individuals in the casinos and betting premises act on behalf of a third party to conceal the true origin of the funds or the identity of the customer. Criminals may also acquire arcade operators and shops in the gaming sector as a means to launder funds. Collusion with employees, poor monitoring and lack of awareness by employees in betting shops to launder criminal funds are also risk areas. Betting and gaming arcades are attractive channels for money laundering because they hide the identities of their customers.

Furthermore, money laundering activities are largely facilitated and aided (knowingly or unknowingly) by professionals including lawyers, bankers, accountants and estate agents which pose risk areas in money laundering. However, the Proceeds of Crime and Anti-Money Laundering Act only targets casinos (including internet casinos); real estate agencies; dealings in precious metals; dealings in precious stones; accountants, who are sole practitioners or partners in their professional firms; and NGOs as designated non-financial businesses and professions, which are also reporting institutions. Thus, the obligations imposed on these reporting institutions do not apply to professionals and businesses not stipulated in the Proceeds of Crime and Anti-Money Laundering Act, and its regulations. Such professionals include advocates, tax specialists and financial advisers. Furthermore, although the gambling industry is susceptible to money laundering by criminals as explained above, it is not adequately regulated to mitigate the money laundering risks associated with the industry.

The weaknesses in the Proceeds of Crime and Anti-Money Laundering Act are in the definition and obligations. For example, what are "designated non-non-financial businesses" or "professions?" These are narrow because they are restricted to casinos (including internet casinos), real estate agencies, dealing in precious metals, dealing in precious stones, accountants who are sole practitioners or partners in their professional firms, NGOs; and such other business or profession in which the risk of money laundering exists as the Minister may, on the advice of the Financial Reporting Centre, declare.

Professionals at risk of exposure to money laundering and criminal activity are not included in the list of designated professions. These include tax specialists, doctors, advocates and lawyers. Hence, they have no obligations related to anti-money laundering efforts. Furthermore proceeds do not necessarily pass through financial institutions or banks. Therefore, they money does not leave an audit trail. For example, proceeds can be used to buy real estate or cars in cash. Where such sectors are not regulated, the money disappears with no trace.

There is need to regulate the use of cash in purchasing property. The obligations imposed on reporting institutions do not apply to professions outside this bracket. Key institutions in the money laundering chain or web may be left out from exercising anti-money laundering efforts. They may also be immune from

prohibitions, requirements or obligations intended to prevent, report or penalise money laundering.

Basically, the designated non-financial businesses and professions are narrowly defined. Similarly, the clear duties and obligations placed upon them are not clear. Therefore, some professions may continue advising or assisting people engaged in money laundering because there is no explicit prohibition for them not to do so. These people may include financial analysts, tax specialists, dealers in automobiles and boats and horse races.

The Financial Action Task Force noted that certain dealers are susceptibility to money laundering. It names the following sectors as the most susceptible; automobiles and boats and horse racing, lotteries, gambling, art and antique dealers, auction houses, and sellers of luxury goods which deal in high value items. It added that this happens most in an environment where the use of cash is common. These business sectors are also largely unregulated.

Advocates or law firms are not designated as Reporting Institutions under POCAMLA. But the Act empowers the Minister to designate any person or entity as a Reporting Institution. However, because of the nature of services advocates provide, they may be vulnerable to money laundering in the course of representing clients. In this regard, legal professionals are designated as reporting entities under the Financial Action Task Force (FATF) recommendations and also in a number of international jurisdictions.

Religious institutions are also at risk of perpetuating money laundering due to lack of transparency and regulation in their operations.

The Legal Profession as the key player in the Criminal Justice System and Administration of Justice plays a vital role in the Anti-Money Laundering Framework both locally and globally. The provision of legal services is based on good faith by advocates when serving their clients. However, due to the nature of their work, advocates and lawyers are vulnerable to money laundering in the course of representing clients. For example, the provision of client account and legal advisory services to clients, drafting of legal documents, and acting as proxies for their clients. The legal profession is potentially at risk of being misused for money laundering and financing of terrorism activities., advocates may become vulnerable to exposure to money laundering activity in the course of representing their clients. As a result, an advocate or legal firm can be involved knowingly or unknowingly in money laundering and/or financing of terrorism activities thus exposing them to legal, operational and reputational risks.

Lawyers may find themselves exposed to corruption when handling commercial transactions or structuring commercial arrangements such as registering companies or acting for buyers and purchasers of property. While such activities are undertaken in the ordinary course of legal business, they are subject to abuse. This is common where a client intends to register a shelf or shell company, or purchase property with proceeds of money laundering or to conceal criminal activity. Money laundering includes integration and conversion of proceeds into

investments such as real estate. A shell company may be incorporated to conceal its true owners and its assets.

There are also cases where a law firm holds money in client accounts, on behalf of their clients pending further instructions. Law firms can receive money on behalf of clients and thereafter remit the funds as instructed. Law firms therefore do transact and deal with money on behalf of their clients. The danger arises where client accounts are used to execute corrupt transactions. Similarly, it may be difficult for an unsuspecting advocate to know or confirm the identity of their client, and whether they are involved in any criminal act. It is even more difficult to tell the source of the funds (whether they are proceeds of crime, corruption or money laundering). Examples of circumstances where advocates may be subject to money laundering risk are discussed below.

a) Provision of client account services to clients. This refers to cases where a Client's account is held in the name of the advocate. The advocate may not be privy to the source of funds. Such accounts can be used by the advocate's client to hold criminal proceeds while keeping the identity of the real owner secret. Where the advocate maintains only one client account, an innocent client is likely to lose money, if the same account is targeted by the authorities for freezing or seizure under POCAMLA. The innocent client will not be able to access his or her funds. Such accounts can also be the subject of a money laundering investigation pursuant to a suspicious activity report by the bank, where the account is domiciled.

b) Provision of intermediary and legal advisory services. Advocates also act as intermediaries and legal advisors in transactions that may lead to a predicate or money laundering offence being committed, for example, tax evasion.

c) Drafting of legal documents. Sale agreements, charge documents, incorporating companies (including shell and shelf companies), share transfers may be used to legalise money laundering.

d) Proxies. When lawyers act as proxies, or nominees in property holdings/ purchases, which may have been bought with proceeds of crime.

e) Business partners. When lawyers act as business partners in companies associated with crime (shadow directors) or in shell companies used as fronts for illegal activity.

f) In-house counsel. When they act as in-house counsel or money laundering reporting officer (MLRO) for corporations/reporting institutions, they will be required to comply with the Act irrespective of section 18.

g) Couriers. Lawyers may unknowingly be used as couriers for cash transactions.

h) Relationship. In many cases, lawyers may not be in a position to turn away lucrative businesses or question long-established clients.

i) In-house advocates. Lawyers may be in-house advocates for banks and other reporting institutions. As such, they may be compromised by lack of political good will and management support when they report suspicious transactions or give legal advice. The advice may just be ignored. Sometimes, the lawyer, as the

Company secretary, may sign or witness documents which are used to facilitate illegal transactions.

j) Advocates. Lawyers representing clients charged with money laundering offences may not be conversant with the relevant law. Hence, they may not be in a position to advise their clients or represent them effectively.

While there are calls to include lawyers, advocates and legal advisors in the list of designated non-financial institutions, the legal profession is regulated by attorney-client privilege. Similarly, other categories of privilege exist such as private privilege of witnesses, spouses and official privilege which are sacrosanct legal principles which exist with justification. There is need to weight the need for disclosure of information against client rights to seek legal counsel and legal services which is a sacred foundation in the justice system.

One must not forget the justification for client attorney privilege which is the requirement to protect a person's right to seek and obtain legal counsel. On the other hand, an advocate requires full disclosure of all facts, information and documents related to a matter to enable them to evaluate the evidence against the law to provide proper, accurate, well-informed, well-reasoned and supported legal advice. When provided with full knowledge and all material information related to a matter, an advocate is better equipped to carry out their professional services, duties and responsibilities.

Therefore, it is difficult for advocates to be put under the reporting institutions and designated non-financial businesses and professions due to professional privilege or confidentiality attached to their professions. This is confirmed by Section 6 (1) (i) of the Access to Information Act 2016 and Section 134 of the Evidence Act. The Access to Information Act provides that pursuant to Article 24 of the 2010 Constitution, the right of access to information under Article 35 of the Constitution shall be limited in respect of information whose disclosure is likely to infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.

Nonetheless, the Evidence Act already adequately and sufficiently provides for exceptions to attorney-client privilege. A search even with a warrant may not be done in cases where the material is privileged. Such include correspondence between an accused person and his spouse, lawyers or doctors. However, attorney-client privilege can be quashed where the lawyer is suspected to have participated in a criminal act or is party to the act or aided in the concealment of the criminal act.

It is possible to regulate categories of designated non-financial businesses and professions that are not subjected to regulation. Such can be monitored through self-regulatory organizations or professional bodies. In addition, Anti Money Laundering and Combating Financing of Terrorism (AML/CFT) requirements should be extended to cover them. This can be limited to the cases and conditions mentioned in the FATF recommendations.

Advocates should be equipped with the necessary tools, knowledge and guidance. This knowledge will enable them protect themselves against the risks associated with money laundering and terrorist financing. This knowledge is essential, especially when dealing with their clients. It will also enable them to handle cases of money laundering ably and represent their clients effectively.

It is also possible to direct professional bodies or self-regulatory organizations to have working manuals outlining the supervisory procedures. To this end, LSK has developed draft Guidelines on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT).

Thus, the legal profession is at risk of dealing with clients who are involved in corrupt, criminal or money laundering may instruct their lawyers to receive, hold and remit proceeds of a corrupt transaction; whereby such clients would be using attorney client privilege to protect their transactions from disclosure to authorities.

Lawyers may find themselves being prosecuted for various money laundering offences under the Proceeds of Crime and Anti-money laundering Act 2009 (POCAMLA). Under the Act, there are offences such as the acquisition and possession of proceeds of crime, assisting another to retain the proceeds of crime, or being called as witnesses in such cases. While lawyers are bound by the cab rank rule, there is need for enhanced due diligence in the legal profession. This should be coordinated by LSK amongst its members so as to remain vigilant, adopt "know your client" mechanisms, raise alarm, and provide notification on criminal suspects. In addition, more discussions on AML vigilance, know your client procedures and balancing attorney-client privilege should be held during Continuous Professional Development/Continuous Legal Education events organized by LSK.

Litigants are prone to abuse of the court process through filing frivolous and vexatious applications to delay and frustrate the court process. This includes filing stay applications, certificates of urgency, injunctions, conservatory orders and petitions supported by huge bundles of documents at each stage of the process. The judicial officer having conduct of the matter should control the number of applications by providing strict deadlines, limits, setting high thresholds for obtaining such orders and maintaining consistency in judgments.

The Financial Reporting Centre performs administrative duties such as receiving annual reports from reporting institutions and citing any irregularities to its partner organizations. However, the framework excludes EACC, the principal agency mandated to prevent and combat corruption – with respect to proceeds derived from corruption and economic crimes. Similarly, the Asset Recovery Agency (ARA) established under the Act has been empowered to undertake asset recovery in respect of corruptly-acquired assets, a function also bestowed on EACC. It is, therefore, necessary to harmonize co-operation mechanisms between the two institutions – where their jurisdictions overlap.

b) Enhancing internal controls, due diligence, identity and customer verification, reporting and AML/CTF Vigilance

Money laundering is used either as a means or channel of committing corrupt or illegal acts. It is also used to conceal corrupt acts or the proceeds from corrupt or illegal acts. This is an effort to combat Money Laundering and Terrorist Financing and misuse/abuse of services offered by financial institutions. It is also informed by the money laundering. Money launderers have resorted to using the non-financial sector to conceal the proceeds.

Proceeds of crime and corruption may require money laundering to attempt to conceal or legitimize the proceeds acquired. Thus, the channels through which money or proceeds of crime and corruption are laundered must be regulated, monitored and duty-bound hence the relevance of this Act in anti-corruption efforts. The Financial Institutions and Designated non-financial businesses and professions are conferred with reporting obligations to enhance their ability to undertake due diligence, monitoring and reporting which can assist in investigation and prosecution. Further, they have been identified as key players who interact with proceeds of corruption and who can identify any suspicious transaction and activity. It is thus necessary to engage these key players to assist in monitoring, reporting, tracking, identifying and investigating persons suspected of concealing proceeds of crime through money laundering or other concealment means as well as tracing the proceeds alleged to have been acquired illegally.

Investigation and prosecution require evidence for purposes of establishing an audit trail which can be obtained from reporting institutions. These institutions also disclose parties who have been involved in the transactions. In this regard, the Proceeds of Crime and Anti-Money Laundering Regulations, 2013 create an enabling framework for reporting institutions to trace and report any proceeds of crime and money laundering. That includes cases related to corruption which have passed through the financial system. These regulations were made to support of the Proceeds of Crime and Anti-Money Laundering Act, 2009. A reporting institution is required to adhere to the obligations set out in the Regulations in addition to the obligations set out in Sections 44, 45, 46 and 47 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

In aiding investigations, establishing an audit trail and providing documentary evidence of financial transactions and dealings, the Regulations prescribe measures reporting institutions ought to take to exercise and ensure due diligence. Customer due diligence measures are to be undertaken by a reporting institution to enable it achieve specific objectives. These include identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information; identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the reporting institution is satisfied that it knows who the beneficial owners is and it understands the ownership and control structure of the customer in case of legal persons and arrangements; understand and, as appropriate, obtain information on the purpose and nature of the business relationship; and conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout

the course of that relationship to ensure that the transactions being conducted are consistent with the reporting institution's knowledge of the customer, their business and risk profile, including where necessary the source of funds.

A reporting institution is required to take measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record for the purposes of establishing the true identity of the applicant and for the purpose of verifying that identity. This includes requiring information in relation to natural persons, legal persons, partnerships and trusts.

Reporting institutions are required to request for and obtain information on eligible *introducers*. Reporting institutions must apply enhanced due diligence measures to persons and entities that present a higher risk to the reporting institution. They are also required to ensure that they are able to identify and verify the natural persons behind a legal person and arrangement and to establish ultimate beneficiaries. Reporting institutions are mandated to take additional due diligence measures for life or other investment-related insurance business, financial institutions shall, in addition to the customer due diligence measures required for the customer and the beneficial owner.

A reporting institution is required to have appropriate risk management systems to determine whether the customer or beneficial owner is a politically exposed person. A reporting institution must ensure that its foreign branches and subsidiaries observe anti-money laundering measures consistent with the Act and the Regulations. The Regulations impose prohibitions on dealings with shell banks. Reporting institutions are not permitted to do the following with a shell bank:

a. open a foreign account

b. allow its accounts to be used

c. enter into or continue a correspondent financial relationship with; or a respondent financial institution that permits its account to be used.

To facilitate easy tracing of transactions, the regulations require a reporting institution transacting a wire transfer to ensure that information accompanying domestic or cross-border wire transfers have detailed the following particulars:

- name of the originator
- the originator account number (where an account is used for transaction)
- the originator's address
- national identity number/passport number
- date and place of birth
- the name of the beneficiary
- the beneficiary account number (where an account is used for transaction.

In the absence of an account number, a unique transaction reference number shall be included which makes it possible to trace the transaction. The regulations aid in creating a framework for establishing an audit trail in forensic and financial investigations, providing documentary evidence of financial transactions and dealings through bank record analysis to trace suspects.

It further creates additional obligations on reporting institutions under Part III of the Regulations. These include the requirement that every reporting institution shall undertake a Money Laundering Risk Assessment. The assessment will enable it to identify, assess, monitor, manage and mitigate the risks associated with money laundering. In undertaking the risk assessment, a reporting institution shall develop and implement systems that will enable it identify and assess money laundering risks consistent with the nature and size of the institution.

The outcome of such assessment shall be documented. On the basis of the results of the assessment, a reporting institution shall develop and implement policies, after approval by the Board. The controls and procedures will enable it to effectively manage and mitigate the identified risks. Every reporting institution shall put in place procedures and mechanisms for monitoring implementation of the controls and enhance them, where necessary. A reporting institution shall take reasonable measures to prevent the use of new technologies for money laundering purposes.

A reporting institution must conduct a money laundering risk assessment prior to the introduction of a new product, new business practice or new technology for both new and pre-existing products. This will help assess money laundering risks in relation to a new product and a new business practice. The same should apply to a new delivery mechanism; and new or developing technologies for both new and pre-existing products.

A reporting institution is required to formulate, adopt and implement internal control measures and other procedures to combat money laundering. These measures include programmes for assessing risks relating to money laundering; the formulation of a control policy that will cover issues of timing, degree of control, areas to be controlled, responsibilities and follow-up; monitoring programmes in relation to complex, unusual or large transactions or suspicious activities; enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place to combat money laundering; providing employees, including the Money Laundering Reporting Officer, from time to time, with training to facilitate recognition and handling of suspicious transactions; making employees aware of the procedures under the Act, these Regulations or directives, codes and guidelines issued thereunder or and any other relevant policies that is adopted by the reporting institution; establishing and maintaining a manual of compliance procedures in relation to anti-money laundering; providing for the necessary processes and working methods to ensure compliance with the Act, the Regulations and the internal rules; and provide for the responsibility of the management of the reporting institution in respect of compliance with the Act, the Regulations and the internal rules.

Every reporting institution is required to appoint a Money Laundering Reporting Officer (MLRO). The staff must also monitor and report any suspicious activity. The MLRO reports to the FRC any transaction or activity that s/he has reason to believe is suspicious.

Criminals use the banking system to expand their illicit operations without being detected. The movement of funds makes it easy for them to move from one location to another. New tracing and investigative techniques should be continuously developed. Analysis of bank records and information from the bank accounts of suspects can be useful in locating them.

Verification of customers in the gambling and betting industry is difficult to monitor and enforce. The law should provide stringent mechanisms to regulate the industry.

c) Focus on financial systems and institutions through which financial transactions and proceeds of crime are processed

Proceeds of crime are intended to be applied for use and they need a channel to facilitate the purposes for which they are being used. They also need a medium to transact the funds. Thus, financial platforms (including banks, SACCOs, mobile money operators who undertake and facilitate these transactions) must be strictly and properly regulated.

It is important to monitor, trace and report transactions (including deposits, withdrawals or transfers) and assets which are suspected to be as a result of corrupt activity. Section 84 of the Finance Act 2018 amends the Proceeds of Crime and Anti-Money Laundering Act, 2009 by creating due diligence obligations on reporting institutions. Reporting institutions are required to apply enhanced customer due diligence on business relationships and transactions with any natural and legal persons, legal arrangements or financial institutions originating from countries identified as posing a higher risk of money laundering, terrorism financing or proliferation by the Financial Action Task Force (FATF) as having strategic money laundering and combating financing of terrorism deficiencies, that have not made sufficient progress in addressing the said deficiencies or have not committed to an action plan to address the deficiencies; or the Cabinet Secretary as having ongoing substantial money laundering and terrorism financing risks.

In addition to enhanced customer due diligence measures, a reporting institution is required to apply appropriate countermeasures, proportionate to the risk presented by countries subject to a Financial Action Taskforce (FATF) public statement or as advised by the Cabinet Secretary. In order to protect the financial system from the ongoing and substantial money laundering or terrorism financing risks emanating from the jurisdictions referred to above, a reporting institution is required to apply countermeasures including limiting or terminating business relationships or financial transactions with natural and legal persons, legal arrangements, or financial institutions located in the concerned countries; prohibiting reliance on third parties located in the concerned countries to conduct customer due diligence; and applying enhanced due diligence measures on

correspondent banking. There is need to enforce stringent reporting obligations and imposition of high fines and penalties on reporting institutions in the event of their non-compliance with their reporting obligations.

4.7 Public Decision-making and Accountability

Administrative actions are carried out by administrative authorities, public bodies and quasi-judicial entities such as tribunals, boards, councils and commissions. The administrative law regulates the decision-making process of administrative bodies. This is consistent with the principle that the decision-making power entrusted to public bodies that affects the rights of individuals who seek or are affected by such decisions should be exercised in a manner that is fair and respects the principles of natural justice.

Administrative law in this sense enhances accountability in decision making. It also curbs the power of public administrative entities. It checks and controls their decision-making powers. This is one of the strategies for reigning in exercise of power, enhancing accountability of public officials and regulating decision making power of public bodies which serve as tools in the fight against corruption, which involves decision making and exercise of power by public officials over public resources.

The Commission on Administration of Justice Act, 2011 establishes CAJ, commonly referred to as the Ombudsman, the successor to the Public Complaints Standing Committee (PCSC). Its principal function is to conduct investigations into complaints against public officers or bodies about abuse of power and make appropriate recommendations. The Ombudsman is an independent Constitutional Commission. The creation of the office of the Ombudsman recognized the growing power of public authorities to affect people's daily lives; the need for these agencies to be accountable for this power; and the desirability of creating a body that provides timely, accessible and low cost means for people to resolve their disputes with these agencies.

Article 47 of Kenya's 2010 Constitution guarantees the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The enforcement of this right complements and boosts the fight against corruption as decisions carried out by administrative or public bodies ought to be lawful.

The Commission on Administrative Action Act, 2011 precedes the Fair Administrative Action Act, 2015. It therefore follows that it prescribes the conduct that amounts to fair or unfair administrative action as referred to under the Commission on Administrative Action Act. In this regard, the two Acts should be read together. The Act applies to all state and non-state agencies, including any person exercising administrative authority; performing a judicial or quasi-judicial function under the Constitution or any written law; or whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.

Generally, CAJ enquires into complaints arising out of an administrative action of a public office, a State corporation or any other body or agency of the State. Its functions include to investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice; investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct perpetuated within the public sector; and inquiries into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service.

Article 252 of Kenya's 2010 Constitution and Sections 8, 26, 27, 28 and 29 of CAJA grants it powers to conduct investigations on its own initiative or upon complaint by a member of the public. CAJA can issue summons as it deems necessary for the fulfilment of its mandate and require that statements be given under oath, to adjudicate on matters relating to administrative justice, obtain any information it considers relevant from any person or government authority including requisition of reports, records and documents and to compel the production of such information, to interview any persons, and to recommend compensation or other appropriate remedies against persons or bodies to which the CAJ Act applies. Furthermore, under Section 31 of the CAJ Act, CAJ may investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question. CAJ then makes recommendations to a public entity for action.

In spite of this framework, the scope of sanctions which CAJ can recommend against a public officer who is proved to have violated the right to fair administrative action is narrow. Section 41 of the Act provides that CAJ may upon inquiry into a complaint brought under the Act, take the following actions: where an inquiry discloses a criminal offence, it may refer the matter to the DPP or any other relevant authority or undertake such other action as it deems fit, recommend to the complainant a course of other judicial redress which does not warrant an application under Article 22 of the Constitution on enforcement of the Bill of Rights, recommend to the complainant and to the relevant government agency or other body concerned in the alleged violation, other appropriate methods of settling the complaint or to obtain relief, provide a copy of the inquiry report to all interested parties and submit summons as it deems necessary in fulfilment of its mandate.

After concluding an investigation, CAJ submits a report to the State organ, public office or organization to which the investigation relates including any recommendations, and the actions that should be taken by the concerned State organ. CAJ may also require the State organ to submit a report to it on the steps taken to implement the recommendations. If the State organ fails or refuses to implement the recommendations within the specified time, the CAJ may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations. The National Assembly can then take appropriate action. If, after an investigation, the Commission is of the opinion that there is evidence that a person, an officer or employee of the State organ, public office or

organization is guilty of misconduct, the Commission reports the matter to the appropriate authority. The Commission has no power to institute or commence Judicial Review proceedings on behalf of complainants, in furtherance of a complaint/inquiry on an administrative action or in the event of non-compliance with its recommendations.

Although Regulation 32 of the CAJ Regulations 2013 provides that orders of the Commission shall be enforced in a similar manner as Orders of Court, the Commission's powers of providing injunctive relief, pending hearing and determination of a complaint are doubtful. The CAJ Act, Section 27, only provides that the Commission has powers of a Court. It can therefore issue summonses or other orders requiring any person to appear before it, or for relevant documents or records to be produced to aid in investigations; question any person in respect of any subject matter under investigation before the Commission; and require any person to disclose any information within the person's knowledge relevant to any investigation by the Commission.

In this respect, the Act does not confer jurisdiction on the Commission to provide injunctive relief or judicial review remedies which are preserved for the High Court. This may be detrimental to a complainant whose matter is urgent or likely to suffer great prejudice and irreparable harm and render the entire proceedings nugatory.

Furthermore, the powers of the Commission, after inquiry, provided for under Section 41 of the Act are limited to recommendation or referral. The benefits of resorting to the Commission where a matter is urgent or grave do not outweigh the benefits of litigation. The Commission finds itself also having to resort to Court proceedings to obtain Court orders, for example, to obtain warrants of arrest for breach of any summons or orders of the Commission (Regulation 19) or for failure by a respondent to respond to summons (Regulation 18).

The Act is silent on the issue of enforcement and non-compliance with the determinations of CAJ. The penalty or action that should be taken in the event of non-compliance with the determinations of CAJ is not stated. The CAJ can only submit a report to the National Assembly or report to a relevant authority, as explained above.

Furthermore, there is an overlap in CAJ and EACC functions especially in two areas; abuse of power and investigatory powers. The two bodies have concurrent jurisdiction in certain cases. This was the subject of contention in the case of Republic vs Commission on Administrative Justice Ex-Parte National Social Security Fund (NSSF) Board of Trustees [2015] eKLR. CAJ initiated investigations into alleged abuse of power and disregard of procurement procedures by the NSSF's Acting CEO and the Management. The case was in the awarding of the Tassia II Infrastructure Development Project.

Subsequently, EACC, Public Investments Committee (PIC) and the Labour and Social Welfare Committee of the National Assembly initiated investigations into the same project. The findings and recommendations of CAJ were in conflict with those of PIC. Section 30(h) of CAJA Act, 2011 bars the Commission from

investigating matters under investigation by other commissions or any other person. The purpose for this limitation is to avoid conflicts between CAJ and other state agencies.

Nonetheless, the role of CAJ in anti-corruption activities needs to be clarified and strengthened to complement the EACC. This can be through filtering of complaints, sharing of information and increasing awareness on CAJ's ability to resolve certain categories of complaints through alternative dispute resolution. This would prevent overburdening EACC or the Courts. This points to the need for enhanced inter-agency accord and co-operation through early and periodic notification, feedback and reporting systems; and exchange of information where there is likely dispute in concurrent jurisdiction. However, there is a risk that this may result in bureaucracy and delays for constant back and forth.

There is need to establish guidelines on interagency collaborations and frameworks. A multi- agency approach enables an information gap analysis of offenders, information sharing and document verification. It also enhances capacity where there is skills variation among the enforcement agencies. Corruption cases are often complex with cross-cutting offences and mixed issues. Therefore, interagency collaboration is necessary to enhance the technical capacity of persons dealing with the cases.

Inter-agency collaboration is particularly pertinent and important where there may be transnational organized crime and need for mutual legal assistance. Ultimately, this would expedite investigations and prosecution. The presence of CAJ in Counties is limited because it has devolved to only four counties. Yet their services in Counties are critical. It is doubtful whether CAJ has sufficient power, mandate and capacity to handle disputes and complaints arising between the two levels of government. In this regard, it ought to be properly funded and strengthened. It also needs to collaborate with other relevant institutions such as the Inter-Governmental Relations Technical Committee. Decentralization and devolution of CAJ is necessary to ensure speedy handling and resolution of complaints at County level.

4.8 Protection of Witnesses and Informants

The law provides protection for witnesses who possess information and evidence crucial in investigation and prosecution. For every investigation or prosecution is carried out, there is inevitably an informant, witness, or whistle-blower involved. Documentary evidence is not the only evidence which can render a successful case.

In a well-managed collusion and corruption investigation, investigators can use circumstantial evidence to make the witnesses co-operate. Witnesses, if properly handled, can testify and give evidence. Authorities need to develop special investigative tactics, including the ability to collect and effectively present circumstantial evidence. Witnesses and informers play a critical role such as reporting, providing evidence and testifying. Informers have played a critical role in exposing corrupt and illicit activities by public authorities. Some notable figures

such as John Githongo exposed the Anglo Leasing scandal and David Munyakei who exposed the Goldenberg scandal.

Individuals who expose illicit activities are often susceptible to being chastised, admonished and harassed. In the case of *Christopher Ndarathi Murungaru v John Githongo [2019] eKLR Dr Murungaru* successfully sued John Githongo for libel on grounds that his allegations against Murangaru for his alleged involvement in the Anglo Leasing were fictitious and therefore libellous. The Court ruled in favour of Dr Murungaru, awarding him Kshs. 27,000,000/= in damages. Such individuals also often suffer great prejudice at work, social status, and personal security for exposing misconduct. This discourages any one from reporting due to the fear of the reprisal and repercussions .

Kenya has various laws relating to protection of witnesses. These laws however, do not prioritise whistle blowing. There is need to reassure individuals that they will be protected, if they disclose corruption activities in good faith. Lack of adequate protection and support discourages individuals from reporting. As a result, corruption goes on unreported.

It is therefore important to protect whistle-blowers, informants and witnesses from reprisal, intimidation, harassment, dismissal, or unfavourable transfer. Article 33 of the United Nations Convention Against Corruption of 2003 recommends that each State Party should consider incorporating into its domestic legal system, appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with the Convention. Furthermore, Section 65 of the Anti-Corruption and Economic Crimes Act, 2003 also has provisions on protection for "informers." However, this is only limited to protection against legal actions, proceedings and disciplinary actions against persons who have provided assistance or made a disclosure of information to the Commission or an investigator.

The Kenya's Witness Protection Agency is established under the Witness Protection Act, (Cap 79 Laws of Kenya). It came into operation on 1st September 2008 vide Legal Notice No. 110/2008 dated 19th August 2008 as amended by the Witness Protection (Amendment) Act, 2010. The Witness Protection Regulations were enacted to facilitate the efficient and effective implementation of the Act. They were promulgated vide Legal Notice No. 99 of 2011 which came into force on 5th August 2011.

The object and purpose of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies.

In recognition of the centrality of witness protection in enhanced administration of justice, the Witness Protection Agency, the Judiciary and the International Commission of Jurists-Kenya (ICJ-K) came up with the Witness Protection Rules, 2015. These rules guide the courts and interested parties in trials on judicial witness protection measures and procedures.

The Witness Protection Act 2016 provides a new definition of witness as a person who has made a statement or has given or agreed to give evidence in relation to an offence or criminal proceedings in Kenya or outside Kenya, and requires protection on the basis of an existing threat or risk. A person is a protected person under the Act if that person qualifies for protection by virtue of being related to a witness; on account of a testimony given by a witness; or for any other reason which the Director may consider sufficient. This does not cover imminent or impending threats or risks or reasonable suspicion of threat, danger or risk. However, it is not clear if these provisions extend to protection of informers within the private sector or beyond criminal proceedings.

In Sweden, an official government report has proposed new legislation to strengthen whistle blowing protection in the private sector for employees working in the following publicly funded activities and services: health, education and welfare.4

Namibia has two separate legislations, creating a distinction between whistle-blowers and witnesses – the Whistle-blower Protection Act and Witness Protection Act which were published in 2017.

The Whistle-blower Protection Act defines a whistle-blower as any person who makes a disclosure of improper conduct. It defines "improper conduct" as conduct which if disclosed and proved, shows or tends to show that a criminal offence has been committed, is about to be committed or is likely to be committed; a person has violated any of the fundamental human rights and freedoms protected by Chapter 3 of the Namibian Constitution or is in the process of violating any of those fundamental human rights and freedoms or is likely to violate any of those fundamental human rights and freedoms; or not complied with a provision of any law or is in the process of contravening a provision of any law or is likely to contravene a provision of any law which provision imposes an obligation on that person; a miscarriage of justice has occurred, is occurring or is likely to occur; a disciplinary offence has been committed, is about to be committed or is likely to be committed; in any institution, organization or entity there has been, there is or there is likely to be waste, misappropriation or mismanagement of resources in such a manner that the public interest has been, is being or is likely to be affected; the environment has been degraded, is being degraded or is likely to be degraded; the health or safety of an individual or a community is endangered, has been endangered or is likely to be endangered; or information showing or tending to show that any of the matters above has been, is being or is likely to be deliberately concealed.

"Disciplinary offence" is defined as an act or an omission which constitutes a breach of discipline in a public body or a private body or at a place of employment as provided for by law or in a code of conduct or ethics or circulars of an employment contract.

4 Swedish Government Official Report SOU 2013:79. Stärkt meddelarskydd för privatanställda i offentligt finansierad verksamhet http://www.regeringen.se/content/1/c6/22/92/58/66ada80c.pd

4.9 Creating an Enabling Framework for Extradition

The Halsbury's Laws of England, defines "extradition", as: "*... the formal surrender by one country to another, based on reciprocal arrangements partly judicial and partly administrative, of an individual accused or convicted of a serious offence committed outside the territory of the extraditing county and within the jurisdiction of the requesting country which being competent by its own law to try and punish him, demands the fugitive's surrender.*"[5]

To establish a framework to facilitate and regulate extradition of individuals accused or convicted of an offence, there are two systems of extradition in Kenya. The first one relates to extradition to non-Commonwealth countries. This system of law is governed by the Extradition (Contiguous and Foreign Countries) Act (Chapter 76 of the Laws of Kenya). The second relates to extradition to Commonwealth countries and is governed by the Extradition (Commonwealth Countries) Act – Chapter 77 of the Laws of Kenya. The provisions of the Commonwealth Act are based on the extradition treaties that Kenya has entered into with various Commonwealth countries as amended by the London Scheme For Extradition Within The Commonwealth, 2002. Other relevant laws include, Extradition (Contiguous and Foreign Countries) Act which has been revised up to 2014 and the Mutual Legal Assistance Act which was enacted after the Constitution has conferred on the AG the responsibility to deal with extradition and provision of Mutual Legal Assistance respectively.

The Extradition (Contiguous and Foreign Countries) Act authorises extradition only for an extradition offence as defined in Section 4. That is; it is an offence against the law of the requesting country which, however described in that law, falls within any of the descriptions contained in the schedule to the Act and is punishable under that law with imprisonment for a term of twelve months or any greater punishment; and the Act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Kenya if it took place within Kenya or, in the case of extra-territorial offence, in corresponding circumstances outside Kenya. This establishes the dual criminality rule. By Section 17, the AG may, by order, amend the schedule by adding to it any other offence or by deleting any offence from it. Kenya has also enacted a kindred legislation - the Mutual Legal Assistance Act which applies to requests for legal assistance from requesting States or international entities based on legal assistance agreements. But as section 51 of that Act provides, the Act does not apply to extradition or to arrest and detention with a view to extradition of any person. However, the Act applies to requests for legal assistance during investigations stage and before a request for extradition is made.

The said schedule contains a list of 32 extradition offences including any offence that constitutes an offence of money laundering under the Proceeds of Crime and Anti-Money Laundering Act, 2009. This recognizes that proceeds of corruption and economic crimes are subjected to money laundering. In realizing the transnational nature of money laundering whereby foreign jurisdictions are used to conceal proceeds of crime and where suspects attempt to escape the reach

5 The Halsbury's Laws of England, 4th Edition Vol. 18 at page 74 paragraph 201.

of national law enforcement authorities, establishing a framework to access such persons is crucial.

Currently there is confusion as to which is the proper government agency mandated and authorized to institute extradition proceedings, that is whether it is the AG or the DPP. Other factors creating confusion about extradition after promulgation of the 2010 Constitution are whether extradition proceedings are criminal in nature (and therefore fall within the mandate of the DPP) or they are part of international law and *sui generis* (and therefore fall under the mandate of the AG). Under the current laws, extradition proceedings fall under the conduct of the office of the AG and not that of the DPP.

Arguments have arisen as to whether criminal proceedings which fall under the DPP are different from extradition proceedings. The confusion originates from Section 26 (1) of the repealed Constitution which established the office of the AG and granted him prosecutorial powers. Section 26(2) of the previous Constitution provided that the AG shall be the principal legal adviser to the Government of Kenya. Section 26 (3) conferred power on the AG to institute and undertake criminal proceedings against any person before any court (other than a court-martial in respect of any offence alleged to have been committed by that person; take over and continue any such criminal proceedings that have been instituted or undertaken by another person or authority; and to discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself or another person in authority.

Section 26 (5) provided, inter alia, that the powers of the AG under S.26 (3) may be exercised by him in person or by officers subordinate to him, acting in accordance with his general or special instructions. One of the offices through which AG exercised his powers on matters of a criminal nature was the Department of Public Prosecutions which was headed by the Director of Public Prosecutions initially, but eventually by the Chief Public Prosecutor. The Constitution of Kenya, 2010, establishes the office of the AG by Article 156(1). The Office of the DPP I established by Article 157 (1). Therefore, they are separate offices. By Article 156(4), the AG is the principal legal adviser to the Government. The AG represents the National Government in court or in any other legal proceedings to which the National Government is a party, other than criminal proceedings; and shall perform any other functions conferred on the office by an Act of Parliament or by the President.

On the other hand, Article 157(6) confers on the DPP State powers of prosecution. It further confers on him the powers to institute and undertake criminal proceedings; take over and continue criminal proceedings and to discontinue criminal proceedings. Thus, the powers which were conferred on the AG under S. 26(3) of the previous Constitution including the power to delegate the powers to subordinates have been assigned to the DPP. In addition, Article 157(10) provides that the DPP shall not require the consent of any person or authority for commencement of criminal proceedings. The DPP is not under the direction or control of any authority in exercise of his powers or functions. According to Clause 31(5) of the Transitional and Consequent Provisions of the Sixth Schedule to the 2010 Constitution, the functions of the DPP were to be performed by the AG until

the DPP was appointed under the Constitution, and by Clause 31(7) of the same Schedule, the sitting AG was to continue in office for a maximum period of twelve months, and thereafter the AG was to be appointed under the Constitution.

The 2013 ODPP Act does not give the DPP power to conduct extradition or provide mutual legal assistance. Section 5(1) of the Mutual Legal Assistance Act, 2011 and revised in 2012 established a Central Authority. Section 5(2) designates the office of the AG as the Central Authority to perform the functions of providing Mutual Legal Assistance. The DPP has already commenced several extradition cases whose conclusions are likely to be prolonged or compromised due to these legal technicalities.

4.10 Enhancing Constitutionalism and Entrenching Good Governance through Constitutional Legitimacy

The former Constitution had no entrenched values such as leadership, management of public finance, procurement and public service. That left room for exclusion or lacunas in subsequent legislation. These have been the key focal areas of legislation on corruption. Establishing an overall framework at the constitutional level provides constitutional backing and legitimacy. Furthermore, any law that is passed must adhere to the minimum constitutional requirements as prescribed by the Constitution.

The Constitution of Kenya, 2010, is the supreme law of Kenya. It binds all persons and all State organs at both levels of Government. The 2010 Constitution provides that any law, including customary law that is inconsistent with it is void to the extent of the inconsistency. Any act or omission in contravention of the Constitution is invalid. Incorporating values, principles and standards in the Constitution provides the minimum Constitutional threshold which otherwise may have been omitted in legislation; had they not emanated from the Constitution in the first instance. These cannot be abrogated, arrogated or derogated, given the supremacy of the Constitution.

The Constitution of Kenya, 2010, Article 10, prescribes national values and principles of governance which include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; good governance, integrity, transparency and accountability; and sustainable development.

Article 232 prescribes values of the public service which include high standards of professional ethics; efficient, effective and economic use of resources; responsive, prompt, effective, impartial and equitable provision of services; involvement of the people in the process of policy making; accountability for administrative acts; transparency and provision to the public of timely, accurate information; subject to the ensuing provisions, fair competition and merit as the basis of appointments and promotions; representation of Kenya's diverse communities; and affording

adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of – men and women; the members of all ethnic groups; and persons with disabilities.

Chapter 6 prescribes standards and requirements for leadership and integrity based on the following principles: selection on the basis of personal integrity, competence and suitability, or election in free and fair elections; objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices; selfless service based solely on the public interest, demonstrated by honesty in the execution of public duties; and the declaration of any personal interest that may conflict with public duties; accountability to the public for decisions and actions; and discipline and commitment in service to the people.

Chapter 12 (Article 201) outlines the principles of public finance which include openness and accountability, including public participation in financial matters; promotion of the equitable development of the country in expenditure; prudent and responsible use of public money; responsible financial management; and clear financial reporting.

Chapter 12 on public finance regarding procurement of public goods and services (Article 227 (2)) states that when a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. Procurement and disposal law should provide categories of preference, protection of persons, groups previously disadvantaged by unfair competition or discrimination, sanctions against suppliers who have not performed professionally, agreements or law and sanctions against tax defaulters, corrupt and serious violators of employment laws and practices.

Enforcement and respect of the Constitution and its values in letter and spirit is paramount in advancing the fight against corruption.

4.11 Enhancing Access to Information

The Constitution of Kenya, 2010, Article 35, provides that every citizen has the right of access to information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom. In addition, every person has the right to the correction or deletion of untrue or misleading information that affects the person. The State is required to publish and publicise any important information affecting the nation.

The Access to Information Act, 2016 was enacted to give effect to Article 35 of the 2010 Constitution. It provides a framework for public entities and private bodies to disclose information that they hold and to provide information, on request, in line with the constitutional principles. In relation to corruption, there is need for information disclosure particularly for investigation and for assessment of compliance.

Section 4 of the Act provides that every citizen has the right of access to information held by the State and another person, and where that information is required for the exercise or protection of any right or fundamental freedom. Subject to the Act, every citizen's right to access information is not affected by any reason the person gives for seeking access or the public entity's belief as to what are the person's reasons for seeking access. Public entities and private bodies must provide access to information it holds expeditiously and at a reasonable cost. The Act is to be interpreted and applied on the basis of a duty to disclose. Non-disclosure shall be permitted only in circumstances exempted under Section 6.

However, Section 6 of the Act places limitations on the right of access to information, pursuant to Article 24 of the 2010 Constitution in respect of information whose disclosure is likely to undermine the national security of Kenya; impede the due process of law; endanger the safety, health or life of any person; involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made; substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained; cause substantial harm to the ability of the government to manage the economy of Kenya; significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration; damage a public entity's position in any actual or contemplated legal proceedings; or infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession. The Act further prescribes a list of information which relates to national security.

As stated above, the Act has a number of broad limitations to the right of access to information which are open to interpretation. Therefore, several categories of information which may be sought for purposes of facilitating anti-corruption investigations or prosecutions will fall under a category of the limitations and shall be exempt under Section 6 of the Access to information Act. This hampers access to information required to facilitate investigations or for evidence.

The right of access to information protected under Article 35(1) has an implicit limitation that suggests the right is only available to a Kenyan citizen. Unlike other rights which are available to 'every person' or 'a person' or 'all persons', this right is limited by reference to the scope of persons who can enjoy or enforce it. It follows that there must be a distinction between the term 'person' and 'citizen' as applied in Article 35. Only Kenyan citizens can invoke or enforce this right. Thus, the right to access information under Article 35(1) of the Constitution is very specific as to its *locus standi*. Its scope is limited to "Kenyan citizens".

There are further implications regarding the restriction of this right to "Kenyan citizens". Under the Access to Information Act, a citizen is any individual who has Kenyan citizenship and any private entity that is controlled by one or more citizens. This is inconsistent with the definition of citizen under the Constitution. The definition of a citizen as contemplated in Articles 35(1) and 38 can potentially exclude a juridical or legal person and a natural person who is not a citizen as

defined under Chapter 3 of the 2010 Constitution which specifies conditions and requirements on Citizenship. This risks limiting the availability of this right to citizens only to the exclusion of juristic or legal persons such as private limited liability companies.

Citizenship is dealt with under Chapter 3 of the Constitution, Articles 12 to 18. The purpose and effect of these provisions is that citizenship is in reference to natural persons. A juridical person is neither born nor married as contemplated by these Articles. Similarly, the provisions on citizenship by registration and dual citizenship set out in Articles 15 and 16 of the Constitution do not envisage a citizen as including a juridical person. The Article is distinct in that it does not refer to "persons" in which it could be argued to include legal/juristic/juridical persons but is very specific as to its application to "citizens".

Thus, the definition of "citizen" under the Access to Information Act is inconsistent with that provided under the Constitution and risks being void. Section 2 (4) of the Constitution provides *that* any law…that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution will be invalid.

Additionally, there are no regulations to operationalize the Access to Information Act. In addition, the presence of CAJ in Counties is limited.

Access to information should be enhanced and entrenched in advancing public accountability. Public institutions should release and provide information to citizens as and when required. This should be complemented by putting in place measures for public awareness, citizen engagement, civic education and outreach programmes. The CAJ should fast-track publication of regulations to support the Access to Information Act, 2016 to operationalize the provisions of the Act. All public officers should be trained on the Access to Information Act and strategies to establish to ensure access to information is realized. CAJ should initiate public awareness and civic education on access to information.

4.12 Enhancing Mutual Legal Assistance and International Cooperation

At times, investigators receive intelligence suggesting that criminal activity has taken or is taking place. However, secrecy jurisdiction can effectively prevent investigators from turning intelligence into evidence in the absence of formal mutual legal assistance process. The Mutual Legal Assistance Act was enacted to regulate and facilitate the processing of incoming or outgoing requests for assistance. It is relevant in investigation of persons suspected or incriminated for a criminal offence including corruption. Section 51 provides that, the Act does not apply to extradition or to arrest and detention with a view to extradition of any person. However, the Act applies to requests for legal assistance at the investigations stage, before a request for extradition is made.

The Mutual Legal Assistance Act, 2011 was enacted to regulate and facilitate the processing of incoming or outgoing requests for assistance. It establishes the Office

of the AG as the Central Authority, through which requests by or to competent authorities are channelled. Under Section 5 of the Mutual Legal Assistance Act, the AG is the Central Authority for processing all requests to and from Kenya regarding mutual legal assistance. Once the AG receives such requests, s/he channels the requests to the relevant Competent Authorities, such as ODPP, EACC, and DCI. He or she can also pass the same to any criminal investigation entity established under law, among others.

To enhance his role as the Central Authority for Mutual Legal Assistance, the AG has appointed an Acting Director of the Mutual Legal Assistance Central Authority. However, the process for Mutual Legal Assistance can be lengthy because it depends on goodwill of the requested country. Where the country is reticent, the process can be unsuccessful.

4.13 Supply-side of Corruption: The Private Sector

In 2016, there was an unprecedented paradigm shift in the focus of the legislative instruments and measures from the traditional concentration of anti-corruption measures applied on public sector, public officers, the Government and public bodies. This was in recognition that bribery and corruption was a "two-way street", with supply and demand. Enforcement now focuses on both the demand and supply side of corruption. The persons who offer bribes and the government officials who accept them should be investigated and prosecuted equally.

The Bribery Act, 2016 provides general bribery offences that include giving a bribe, receiving a bribe, bribery of foreign public officials and function and activities that relate to a bribe. There is also a shift from the traditional focus on the recipient. It also focuses on givers of bribes. In this regard, it prescribes offences for both giving and receiving bribes. It defines the offence of giving a bribe to mean if a person offers, promises or gives a financial or other advantage to another person, who knows or believes the acceptance of the financial or other advantage would itself constitute the improper performance of relevant function or activity.

It defines the offence of receiving a bribe as where a person requests, agrees to receive or receives a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly whether by that person receiving the bribe or by another person; the recipient of the bribe requests for, agrees to receive or accepts a financial or other advantage and the request, agreement or acceptance itself constitutes the improper performance by the recipient of a bribe of a relevant function or activity, in anticipation of or as a consequence of a person requesting for, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by that person, or by another person at the recipients' request, assent or acquiescence.

It does not matter if the recipient requests for, agrees to receive or receives or intends to request for, agree to receive or to accept the advantage directly or through a third party; or if the advantage is or is intended to be for the benefit of the recipient or another person.

The group of persons who the Act and its provisions target have been expanded compared to previous Acts. The Act applies to partnerships, private entities, private sector and extends to cover private persons and has a broad meaning of "advantage" which includes: money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable; any office, employment or contract; any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; any offer, undertaking or promise of any gratification, and, any facilitation payment made to expedite or secure performance by another person.

The Act requires both public and private entities to put in place procedures appropriate to its size and the scale and to the nature of its operation, for the prevention of bribery and corruption. A private entity commits an offence if a person associated with it, bribes another person intending to obtain or retain business for the private entity; or advantage in the conduct of business by the private entity. Where an offence is committed by a director or senior officer of a private entity, such private entity shall be deemed to have committed the offence.

Every State officer, public officer or any other person holding a position of authority in a public or private entity shall report to the Commission, any knowledge or suspicion of instances of bribery, within a period of 24-hours. Failing to report the act to the Commission within the specified period amounts to commission of an offence.

Consent to bribery or connivance to allow bribes by a senior public officer, private or partnership entity, or a person purporting to act in such a capacity, creates a bribery offence where both the officer and the body corporate or partnership are liable for prosecution.

The Act also protects whistle blowers, informants and witnesses from intimidation and harassment, in a complaint or a case of bribery. They can provide information or testify in court without fear. The Act also makes it criminal for any person to demote, admonish, dismiss from employment, transfer to unfavourable working area or otherwise harass or intimidate a whistle blower or a witness. Any person who knowingly or negligently discloses the information of informants and witnesses and a result of which those informants are harassed or intimidated commits an offence and shall be liable upon conviction to a fine not exceeding Ksh. 1 million or to imprisonment for a term not exceeding one year or to both.

Under Section 27 (2) of the Act, any investigation, prosecution or court proceedings instituted before the commencement of the Act, based on an offence under the Bribery Act, shall with the necessary modifications, be treated or continued as if they were instituted under the Bribery Act.

Section 6 defines bribery offences. From the definition there is a requirement to prove "improper performance of relevant function or activity" as an element of the offence. Each element of the offence must be proved including "performance" of a "relevant" "function or activity" which must be "improper".

Although the Act outlines provisos to define what constitutes a "relevant function or activity" it fails to provide similar provisos on the other elements. It provides that a function or activity shall be construed to be a relevant function or activity if – it includes any function of a public nature, any function carried out by a State officer or public officer, pursuant to his or her duties, any function carried out by a foreign public official, pursuant to his or her duties; any activity connected with a business; any activity performed in the course of a person's employment, and any activity performed by or on behalf of a body of persons whether corporate or otherwise.

Also, if it meets one or more of the following conditions – that the person performing the function or activity is in a position of trust by virtue of performing it. Therefore, he or she is expected to perform it in good faith and impartially. A function or activity is *relevant* even if it is performed in a county or territory outside Kenya.

However, there are no oversight and surveillance mechanisms for the private sector. It is also difficult to interpret and enforce Section 27 of the Act. The Act does not make provision for the role of the AG (State Law Office and Department of Justice). The role of the AG in fighting corruption is not indicated.

The Act also does not clarify the application and interpretation of the other elements. This gives room to the accused to raise legal technicalities related to the interpretation of each word and element. Section 6 requires that to prove a bribery offence, there must be improper performance. Key questions that arise relating to the elements of the offence include:

(a) Performance – it is not clear whether this includes omissions, failing, neglecting to perform or omissions to exercise the function or activity?

(b) Improper – what amounts to "improper"?

(c) Function or activity – the definition relates to among others, functions of a public nature, functions carried out pursuant to one's duties, functions carried out in the course of a person's employment. What about functions not related to one's duties and are not of a public nature? For example, a human resource officer performing the functions of a transport officer, to gain an advantage in relation to the organization's transport policy?

(d) The function or activity being improperly performed must be *relevant* to the person's function. What if one performs a function or activity improperly that is not relevant to their function?

The United Kingdom Bribery Act (UKBA) entered into force in 2011. The UKBA defines the standard bribery offences. These include active corruption through offences of bribing another person (section 1), passive corruption including offences relating to being bribed (Section 2) and the active bribery of a foreign

official (Section 6).

In each of the above offences, bribery will have taken place if a person improperly performs their function or activity for an advantage, whether financial or otherwise. The UKBA outlaws both private corruption (e.g. the employee of a company) and public corruption (e.g. a government official). Generally, a bribe will be caught by the UKBA regardless of whether the "price" of corruption is being paid directly, through an intermediary, and that it is meant for the corrupt person or a third party. This is similar to the Kenyan Bribery Act, 2016.

The above offences are constituted even if only an attempt to bribe is made; both the offer of a bribe and the solicitation of a bribe are punishable. These offences concern, first and foremost, the individuals involved – but a body corporate may also be targeted if the offence was committed by the "controlling mind" of the corporate entity. In that latter case, its directors and senior officers may also be prosecuted if their consent or connivance to the bribe is proved.

If an act or omission which forms part of an offence under Sections 1, 2 or 6 takes place outside the UK, and such acts or omissions done outside the UK would constitute an offence in the UK, and the person has a close connection with the UK, the acts or omissions will be deemed to form part of the offences under Sections 1, 2 and 6 of the Act and in such a case proceedings for the offence may be taken at any place in the UK.

The Act specifies that a person has a close connection with the UK only if the person was one of the following at the time the acts or omissions concerned were done or made a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person who under the British Nationality Act 1981 was a British subject, a British protected person within the meaning of that Act, an individual ordinarily resident in the UK, a body incorporated under the law of any part of the UK and a Scottish partnership.

Section 15 of the Kenyan Bribery Act, 2016 similarly provides that conduct by a citizen of Kenya or by a private or public entity which takes place outside Kenya amounts to an offence under the Bribery Act, if the conduct would constitute an offence under the Bribery Act, if it had taken place in Kenya. This provision applies irrespective of whether the acts or omissions which form part of the offence take place within or outside Kenya.

Contrary to USA law, but in line with most other jurisdictions including India, the UKBA does not provide an exemption for "facilitation" or "grease" payments including those payments made to ease bureaucratic process including to expedite an authorization or a decision or to prompt a government official to perform faster in service delivery or performance of any service or decision-making.

Similarly, gifts and other entertainment offers can be potentially characterized as bribery. In the Guidance offered by the UK Ministry of Justice, the opinion is that those corporate gifts, made to business contacts, will be legitimate if (i) they are reasonable and proportionate and (ii) aimed at cementing relationships or presenting products or services. There is therefore some permissible form of gift-giving in the nature of corporate hospitality.

Section 7 attributes criminal liability to corporate bodies that fail to prevent bribery. Under this section, an offence will be committed by a corporate body carrying on business, or part of a business, in the UK, when one of its associated persons, performing services for or on behalf of that corporate body (e.g. an employee, subsidiary, joint venture partner or agent), is guilty of a corruption offence (as per Section 1 or 6, wherever the facts took place, whether prosecuted or not), with the intention to retain business or an advantage for the corporate body, unless the corporate body can prove that it had in place adequate procedures designed to prevent its associated persons from undertaking such conduct.

The key measure of the UKBA is the provision of a corporate offence of a company failing to prevent bribery by its associated persons which in the UK is punishable by an unlimited fine. The only defence to such a charge in the UK is to put into place "adequate" anti-bribery procedures, on which the UK Ministry of Justice has published guidance. Therefore, the UKBA makes the implementation of adequate procedures necessary, as preventive measures. The Kenyan Bribery Act does not explicitly provide for such a defence. Section 9 of UKBA states that adequate procedures are subject to government guidance. The Act also provides extra-territorial jurisdiction for offences committed under Section 7, irrespective of whether the acts or omissions which form part of the offence take place in the UK or elsewhere.

Section 10 of the Kenyan Bribery Act 2016 has incorporated this corporate offence by providing that a private entity commits an offence if a person associated with it, bribes another person intending to obtain or retain business for the private entity; or advantage in the conduct of business by the private entity. Section 2 of the Kenyan Bribery Act defines a private entity to mean any person or organization, not being a public entity. Such include a voluntary organization, charitable organization, faith-based organization, religious-based organization, community-based organization, company, partnership, club and any other body or organization howsoever constituted, and includes a body which is incorporated under the laws of Kenya and which carries on business within or outside Kenya; any other body corporate however established which carries on business, or part of business, in Kenya; a charity, or organization established for charitable purposes under the law of Kenya or any other law; a partnership which is formed under the law of Kenya and which carries on business, within or outside Kenya; or any other partnership on a business, or part of a business, in Kenya.

The Kenyan and the UK Bribery Acts have wide extra-territorial reach. In the UK, the offence of failure to prevent bribery under the Bribery Act applies to any company in the world that conducts business in the UK. The Kenyan Bribery Act applies to all private entities which carry on business in Kenya regardless of where they were registered or established.

4.14 Conclusions and Recommendations

Despite the challenges and gaps in individual Acts, the law in Kenya regulating proceeds of crime is robust. If used well and the technical training provided to financial investigation and prosecutorial authorities, and their officers, it can improve the quality of investigations carried out and the evidence presented during prosecution.

If leveraged upon, and collaborations across anti-corruption investigative and financial reporting agencies, the investigations and prosecutions are likely to be more effective. The missing link is the need to close the gap in implementation between anti-corruption legislation, practice and enforcement.

Nonetheless, there is need to focus on missing links and aspects. This includes providing a consistent definition of a public officer, expanding the scope of definition and outlining categories of public officers. Kenyan law, compared to other jurisdictions, has not adequately prohibited illicit enrichment, trading in influence, influence peddling, lobbying, and racketeering or characterized or defined them as corruption.

The connection between corruption and money laundering as predicate offences demands the focus on concentrated AML efforts and bolster the AML framework. In this regard, there is need to expand the list of non-designated businesses and professions to capture tax specialists and tax advisors to enhance the fight against money laundering. Furthermore, in collaboration with the LSK, Advocates should be sensitized on the parameters of Attorney-Client privilege and their implications on corruption.

Establishment of a coordinated and harmonized extradition and return of proceeds framework would enable enforcement authorities to extend their investigative reach in foreign jurisdictions and thereafter turn intelligence into evidence. Building awareness on the nexus between competition law and corruption would create concerted investigation, coordination and information exchange between competition authorities and anti-corruption agencies. Inclusion of Competition authorities in anti-corruption efforts is paramount. Where the Competition Authority identifies collusion or bid rigging, these ought to be communicated to EACC and PPOA.

The law should define who a whistle-blower is and distinguish them from witnesses and informants. The Witness Protection Agency should also make its services known and further clarify its mandate. Other pending bills including the False Claims Bill, 2017, and the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 which seeks to amend Section 48 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003 to increase the penalty currently stipulated by prescribing a minimum penalty of a fine not less than Ksh. 1 million, or to imprisonment for a term not less than ten years, or to both.

Active policy guidance from the State Law Office and Department of Justice is necessary. The role of the AG in enforcement of the Bribery Act 2016 is overlooked. The Ministry of Justice in the UK which is the equivalent to the Office

of the AG provides guidance on interpretation of statutes and provides guidelines. Collaboration between the Office of the AG in Kenya and the Judiciary and law makers would be beneficial in providing more policy guidance.

Intensified anti-corruption outreach to youth will help orient the youth. In Botswana, the anti-corruption outreach to youth is reinforced by the teaching of ethics and corruption awareness in schools and colleges. At the primary level, children are taught simple principles such as being honest, fair and upright. The teaching of behaviour is based on a cartoon mascot known as *Raboammaaruri* who symbolises honesty.

At the junior and secondary levels, since 2010, anti-corruption lessons are part of the curriculum and are examinable. The lessons include essay writing and debating. Learners have benefited from the co-operation between the *Directorate on Corruption and Economic Crime* and the Ministry of Education (Rudolph and Moeti-Lysson, 2011; Mwamba, 2013; Directorate on Corruption and Economic Crime, 2016).

Linked to this, are the anti-corruption clubs in the schools. The clubs engage in activities to disseminate information about and promote corruption awareness, such as debates, exhibitions and competitions in writing, art and public speaking. The culmination is an annual congress at the end of the year at which clubs share experiences with a view to assisting each other.

5. CORRUPTION PREVENTION, DETECTION, INVESTIGATION, PROSECUTION, AND ADJUDICATION

Corruption prevention strategies mainly focus on the public officer. The aim is to build a culture of ethics, integrity and leadership and provide the officer with the right operating framework. This ensures that the resources are effectively utilized in delivering public services. Less than 10 percent of the respondents indicated the initiatives are very effective, a lot more is required including increasing the frequency of vetting public officers, strengthening public finance management, creating awareness on the initiatives and deepening public sector reforms especially e-government.

In detecting corruption, a key emphasis is on auditing, financial reporting, as well as reporting by witnesses and informers. A lot more is required in ensuring the auditing is timely and that the recommendations from audit reports are implemented. Furthermore, is to re-look at the witness protection to avoid exposing key witnesses. Several institutions have been set up over time to undertake corruption investigations while the judiciary was set up to deal with adjudication, judgement and sentencing. In the fight against corruption, arresting, prosecution, and recovering illegally acquired assets is very effective.

5.1 Introduction

The aim of anti-corruption strategies in Kenya is to prevent, detect, investigate, prosecute and adjudicate corruption and other related offences.

In prevention several actions are taken on the actors in delivery of public service including prescribing acceptable and unacceptable conduct for public officers; requiring declaration of income, assets and liabilities by public officers; setting framework for public finance management including public procurement; undertaking financial auditing for public finance expenditure; enhancing transparency and access to information; and creating education and awareness on corruption. In detection, key among the actions taken include auditing, financial reporting and reporting by witnesses and informers. Several institutions have been set up overtime with the mandate to conduct investigation while the judiciary has been in existence since colonial period performing the role of adjudication and sentencing.

5.2 Corruption Prevention

Corruption prevention is defined as detection and elimination of the causes and conditions of corruption through the development and implementation of a system of appropriate measures as well as deterrence of persons from the commission of crimes of corruption.[6]

Attempts at establishing corruption prevention mechanisms in Kenya originated from the enactment of the Prevention of Corruption Ordinance in 1956. Although entitled the "Prevention of Corruption Ordinance," the Act did not provide mechanisms or strategies for corruption prevention. Instead, it prescribed the conduct amounting to corruption and penalties to be meted. One of the functions of the KACA were "to advise the Government and the parastatal organizations on ways and means of preventing corruption". The subsequent Kenya Anti-Corruption Authority (KACA) also had functions to prevent corruption.

The mandate of EACC includes educating and creating awareness on corruption. It also takes preventive measures against unethical and corrupt practices as per Section 13 (2) of the EACC Act 2011. Within EACC, there is a Corruption Prevention Department staffed with Corruption Prevention Officers from varied backgrounds, professions and disciplines.

EACC also carries out Corruption Risk Analysis for organizations and institutions at their request. The EACC has published Corruption Prevention Guidelines and envisions Systems Reviews, Corruption Risk Assessments, Public Outreach Programmes, and mainstreaming integrity in institutions of learning in school/ university outreach programmes to re-engineer social values among learners, establishment of integrity clubs and movements, visits to schools and integrity talks as key corruption prevention strategies. EACC also produces media education programmes. It collects, packages and disseminates Information, Education and Communication (IEC) materials to intensify public education and awareness on its anti-corruption strategies. EACC also trains integrity assurance officers and corruption prevention committees.

According to Brandolino and Luna (2006), public sector corruption prevention encourages governments to take a wide range of initiatives to stop corruption. Hanna, et al. (2011), postulated that these initiatives are; the maintenance of high standards of conduct of public officials, the demand that public officials declare personal wealth and income, the establishment of transparent financial management systems and public procurement systems and the protection of whistle-blowers. Others include the creation of effective institutions; and creation of procedures for accountability within the government as well as allowing public access to government information (Transparency International, 2008).

From the KIPPRA survey, 56% of the respondents indicated that the current initiatives put in place to '*prevent corruption*' were 'effective' (Table 5.1). However, only 8% indicated the existing initiatives as currently established are 'very effective', which means a lot more is required in preventing corruption.

6 https://www.stt.lt/en/menu/corruption-prevention/

Table 5.1: Rating of the fight against corruption along the continuum

Strategy area	Rate	Per cent (%)
Corruption prevention	Very ineffective	20
	Ineffective	24
	Somewhat effective	28
	Effective	20
	Very effective	8
Corruption detection	Very ineffective	12
	Ineffective	20
	Somewhat effective	36
	Effective	20
	Very effective	12
Corruption deterrence	Very ineffective	24
	Ineffective	16
	Somewhat effective	32
	Effective	12
	Very effective	16

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

Majority of the respondents (>50%) opined that the following actions should be taken 'very frequently' to enhance prevention; 'vetting public officers seeking public office; reviewing systems of public institutions; undertaking corruption risk analysis; and establishing transparent financial management systems and public procurement systems. Other actions that were indicated included awareness campaigns; public disclosure of detected instances of corruption; promotion of transparent and open provision of public services; civic education; provision of the information about a person seeking or holding office; and allowing public access to government information (Table 5.2). All these being the factors that deal with the actors and systems in the delivery of public service.

Table 5.2: 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 review 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 Institutional survey on efficacy of anti-corruption institutions in Kenya (January-March 2020)

(a) Regulating and managing the Public Officer

Several initiatives targeting the conduct of public officers have been put in place. The aim is to promote ethical behaviour and the officers' productivity.

(i) Setting leadership standards, integrity, ethics (Code of Conduct), culture and behaviour

Chapter 6 of the Constitution of Kenya, 2010, sets the leadership standards and conduct of public officers. The chapter underscores the fundamental aspects of a transformative leadership. It prescribes several responsibilities, requirements, standards, restrictions and guiding principles for State officers in the exercise of their authority and in leadership. These provisions form the constitutional benchmark and standard for the leadership and integrity obligations required of State officers.

Article 73 calls for a leadership that upholds the rule of law, personal integrity, and through which appointments are based on suitability and competence; objectivity and impartiality in decision-making; selfless service based on public interest; accountability and commitment in service of the people. The provision in Article 73 (1) is instrumental as it terms authority assigned to State officer as "a public trust" which incorporates the legal principle of public trusts. Significant legal implications emanate from it such as the existence of a fiduciary relationship

between the State Officer as a trustee and the Kenyan citizens as beneficiaries. An interpretation of this Article intimates that the authority bestowed upon public officers is not personal in nature. Instead, it is a "public trust" which should therefore be exercised in accordance with, and is subject to, the principles derived from the concept of public trusts and trusteeships. Article 73 (1) gives State officers the responsibility to, inter alia, exercise their authority in a manner consistent with the purposes and objects of the Constitution. Furthermore, Article 73 (2) gives State officers the responsibility to serve the people rather than power to rule them.

Article 75 prescribes the conduct required of State officers in public, official and private capacity or in association with other persons. The officers are required to act in a manner that avoids conflict of interest in exercise of their public or official duties, avoids compromise of a public or official duty in favour of a personal interest and to avoid conduct that demeans the office they hold. Article 76 has a provision on the integrity of State officers in financial matters. Article 77 restricts the activities that current and retired State officers may participate in.

Effectively, these provisions prescribe the standards required of current and former State officers (where applicable) in their appointment, exercise of their authority, performance of their public or official duties and participation in activities, remunerative positions and employment. Furthermore, Chapter 6 makes provisions for institution of disciplinary procedures against State officers who violate Articles 75, 76, 77 and 78 of the Constitution. These standards as laid down in the Constitution are the integral cornerstone of leadership. They inform and impact the eventual composition of the Acts of Parliament enacted thereafter.

The aim of these standards and requirements is to raise the threshold for leadership in the Country. Leadership standards are envisaged as being distinguished. Leadership is seen as having passed a series of tests, met a certain threshold and attained certain standards to affirm their suitability to serve as leaders. And it should be in line with the aspirations of achieving transformative leadership.

The national values are spelt out in the Kenyan Constitution in Articles 10 and 232. Article 10 sets out the national values and principles of governance which among others include good governance, integrity and transparency. To implement the principles, the Public Service (Values and Principles) Act 2015 and the Fair Administrative Action Act 2015 were enacted.

The Public Service (Values and Principles) Act prescribes standards for professionalism in the public service by public officers. It stipulates that a professional in the public service shall comply with the provisions of the relevant professional association regarding registration and continuing professional development. It further states that the person shall be bound by the Code of Ethics of his or her professional association.

It also prescribes disciplinary action to be meted out by the relevant professional association for any act of professional misconduct. And that is in addition to any disciplinary action of the public service for such professional misconduct. Public officers are mandated to use public resources in an efficient, effective and economic

manner as prescribed by the Act. PSC has also reviewed and approved thirteen (13) schemes of service and several Codes of Ethics and Conduct of several MDA's.

The Leadership and Integrity Act 2012 outlines the obligations of State and Public Officers with regards to their leadership and standards of integrity. Under Section 10, a State Officer is required to carry out the duties of the office efficiently and honestly; carry out the duties in a transparent and accountable manner; keep accurate records and documents relating to the functions of the office; and report truthfully on all matters of the organization they represent.

Besides, under Section 11, a State officer is required, to the extent appropriate to the office, maintain high standards of performance and level of professionalism within the organization. If the State officer is a member of a professional body, he or she should observe and subscribe to the ethical and professional requirements of that body – in so far as the requirements do not contravene the Constitution or the Act. According to Section 15, a State officer shall not use his or her office to wrongfully or unlawfully acquire property. A State officer shall declare and register all cases related to conflict of interest.

Section 22 states that a person shall observe and maintain the following ethical and moral requirements; demonstrate honesty in the conduct of public affairs subject to the Public Officer Ethics Act 2003; not to engage in activities that amount to abuse of office; accurately and honestly represent information to the public; not engage in wrongful conduct in furtherance of personal benefit; not misuse public resources; not discriminate against any person, except as expressly provided for under the law; not falsify any records; not engage in actions which would lead to the State officer's removal from the membership of a professional body in accordance with the law; and not commit offences. A State officer is also required to be impartial and objective when carrying out duties. He or she should avoid favouritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices.

In addition to the requirements under the Leadership and Integrity Act, any person seeking employment in a public organization must obtain clearance from EACC, KRA, the DCI, HELB, the Credit Reference Bureau (CRB) and the Commission for University Education (CUE). The clearance serves as proof that they are in good standing and that their academic, professional and personal integrity can be corroborated.

The Mwongozo Code for the Governance of State Corporations also provides guidelines for all public institutions. These guidelines aid the corporations to operate effectively and efficiently, and assist in realization of the shared national development goals. The Code allocates the responsibilities for supervision, implementation and enforcement to different institutions. It also respects the role of complementary agencies. This helps to provide checks and balances in the use of public resources.

Other legal frameworks include; EACC Act No. 22 of 2011 (which establishes EACC), the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, the

Public Service Commission Act 2012, and Public Service (Values and Principles) Act 2015.

(ii) Declaration of income and assets (wealth declaration)

Investigators occasionally carry out lifestyle audits to detect incidences of corruption in their organizational structures (Munyao, 2019). The wealth declaration form is one of the tools that provide documentary evidence to support the "lifestyle audit" process. The main objective of wealth declaration is to assess the lifestyle of the officer in question and provide a corruption detection and prevention mechanism. These audits enable investigators to obtain information relating to an individual which are intended to make corruption investigations more effective. The two concepts are interlinked.

Kenya has in place various legal frameworks that embody lifestyle audits. The key frameworks include the wealth declaration system under the Public Officer Ethics Act, 2003 (POEA), forfeiture of unexplained assets under the Anti-Corruption and Economic Crimes Act, 2003 (ACECA), regulation of bank accounts held outside Kenya under the Leadership and Integrity Act, 2012 (LIA), and the integrity vetting framework contemplated under Chapter 6 of the Constitution. Other complementary legal frameworks related to the anti-corruption regime, with salient provisions on wealth declaration include the income tax reporting framework administered by KRA, the anti-money laundering framework under the Proceeds of Crime and Anti-Money Laundering Act, 2017 (POCAMLA) and the Prudential Guidelines of the CBK.

In 2003, the Government introduced new measures in the fight against corruption – detecting corruption through Declaration of Assets and Liabilities of public officers. The requirement that public officers declare assets, income and liabilities is entrenched in the Public Officer Ethics Act 2003. Section 20 provides that every public officer shall, once every two years, as prescribed in Section 27, submit to the responsible Commission a declaration of his income, assets and liabilities, that of his spouse(s) and his dependent children under the age of 18 years.

This law requires public officers to enumerate their assets and how they acquired them. Public officers are required to give a satisfactory explanation in the event of any disparity between their assets and their known legitimate sources of income. In the public service, wealth declaration is used as a tool to assess whether the income, assets or lifestyle of a public officer are commensurate to his known legitimate sources of income. If a person fails the test, this provides grounds for suspicion of illicit enrichment or acquisition of wealth through illicit or illegal means.

The Act provides for "responsible Commissions" which includes the Committee of the National Assembly, the Teachers Service Commission (TSC), the JSC, the Public Service Commission, the Parliamentary Service Commission, the Electoral Commission, the Defence Council and National Security Intelligence Council. The Responsible Commission receives declarations of income, assets and liabilities from their respective officers, and the responsible Commission for a public officer

may investigate to determine whether the public officer has contravened the Code of Conduct and Ethics. Each Responsible Commission is required to establish a specific Code of Conduct and Ethics for the public officers for which it is the responsible Commission.

The wealth declared in the forms is assessed against the income of the officer to determine if there is significant variance with the accounts of the Public officer. The wealth is measured against the officer's known sources of income. The officer must account for any unexplained wealth. Otherwise, such wealth is assumed to have been acquired in an illicit manner such proceeds of crime.

Section 2 of the Anti-Corruption and Economic Crimes Act, 2003 provides that "unexplained assets" means assets of a person acquired at or around the time the person was reasonable suspected of corruption or economic crimes; and whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation." Pursuant to Section 55, the EACC may commence proceedings in the High Court of Kenya for forfeiture of unexplained assets where investigations indicate that a person has unexplained assets and the person has failed to provide the EACC with an adequate explanation to explain the disproportion between the assets concerned and his known legitimate sources of income.

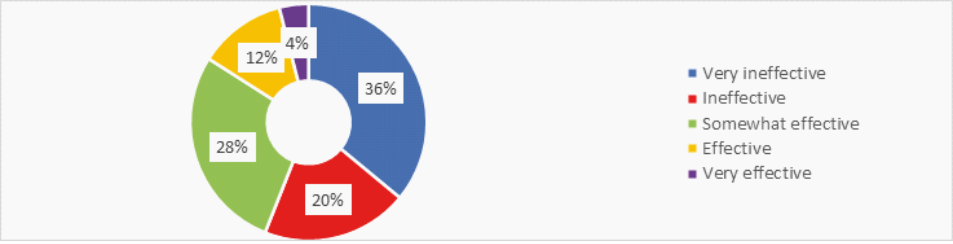
After proceedings have been commenced and the person has failed to satisfy the Court that the unexplained assets were acquired otherwise than as a result of corrupt conduct, the High Court may order the person to pay to the Government an amount equal to the value of the unexplained assets. Furthermore, Section 57 provides that unexplained assets may be taken by the court as corroboration that a person accused of corruption or economic crimes received a benefit.

Nonetheless, loopholes in Kenya's wealth declaration system undermine its very purpose. For instance, Chapter 6 of the Constitution envisages a comprehensive framework for its implementation. Some of the strategies include lifestyle audits, and integrity vetting for public officials as well as persons seeking election or appointment to office. However, the statutory framework that was enacted to operationalize Chapter 6 of the Constitution, namely the Leadership and Integrity Act, 2012, does not provide for such mechanisms (Munyao, 2019). Furthermore, provisions relating to lifestyle audits under the ACECA and LIA are too weak and insufficient to make lifestyle audits an effective tool for fighting against corruption in Kenya. The legal and administrative framework for lifestyle audits, which are fragmented in various statutes, is insufficient and weak. The same applies to Kenya's policy on corruption.

Furthermore, unexplained wealth, suspicion or evidence of illicit wealth alone are not an exact indicator that corruption is occurring (Munyao, 2019). They are thus not conclusive evidence of corruption. Therefore, they are not fully effective in identifying or proving incidences of corruption. Indeed, the results of such an audit must be complemented with more evidence for any conclusive finding on corruption to be made. This is particularly so because an individual may sustain an expensive lifestyle as a result of inherited wealth, financial support from various channels or through great business acumen.

Findings from the KIPPRA Survey indicate majority of the respondents (56%) find wealth declaration by Public or State officers 'ineffective' in the fight against corruption (very ineffective, 36% and ineffective, 20%). A total of 44% indicated wealth declaration by Public or State officers was 'effective' (somewhat effective, 28%, effective, 12%, and very effective, 4%). The results are shown in the Figure 5.1 below. Wealth declaration by public officers was introduced by the Government as a measure in the fight against corruption.

Figure 5.1: Effectiveness of wealth declaration by public and state officers



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

The respondents indicated that the wealth declaration system as currently established was ineffective in detecting corruption. It is not easy for institutions such as PSC and the responsible Commissions to access the forms. To get them, they must first write to the officer to get his/her consent to release the form. It is undoubtedly a difficult process.

In addition, the respondents explained that wealth declaration is ineffective because of significant time lags. There is often a huge time lag between when the wealth is acquired and spent, and when the person is charged, prosecuted and sentenced. By the time the person's accounts are frozen or the case concluded, the persons have already revelled in the illicit wealth.

Significant time breaks were also noted in detecting, investigating, prosecuting and adjudicating corruption cases. Such delays compromise the effectiveness of wealth declaration. In addition, wealth declaration is undermined by lack of checks and verification systems. There is no institution to verify the information given in the wealth declaration. The information is only used when the individual becomes a person of interest or is a suspect, based on an external report. The form is referred to when the suspect has already amassed significant and noticeable wealth, thus drawing suspicion. Therefore, the wealth declaration lacks sufficient monitoring mechanisms and structures to enable it to serve its purpose effectively.

(iii) Vetting public officers seeking public office

Various bodies have the mandate to vet public and State officers before appointment to public service. The Public Service Commission (PSC) is one of these institutions. Article 234 (2) (a) of the 2010 Constitution provides that one of

the powers and functions of the PSC is to appoint persons to hold or act in those offices, and to confirm appointments.

PSC ensures that there is transparency and meritocracy in recruitment of public officers; that professionalism is a mandatory requirement; that academic qualifications and experience inform the basis for recruitment; that there is objectivity in recruitment based on set criteria; that productivity and performance are recognized and rewarded, transparency and fairness in the public sector is upheld and that public sector is able to attract and retain the skills required to execute the functions assigned.

The PSC has changed the landscape of entrants into the public service. The standards of entry for public officers are based on objectivity, set standards and criteria, which all successful applicants must meet. To this end, the PSC seeks to ensure that the leadership comprises of persons who have been appointed based on merit, objective criteria, professionalism and relevant qualifications. In addition, they must have the experience required for the job to which they are being appointed. Therefore, this ensures high quality of entrants into the public service and the quality of leaders being generated in the public service.

Similarly, JSC recommends to the president persons for appointment as judges; and appoints, receives complaints against, investigates and removes from office or disciplines registrars, magistrates, other judicial officers and other staff of the Judiciary. This is required to ensure competitiveness and transparency in the process of appointing judicial officers and other staff of the judiciary; and to promote gender equality.

The Commission is required to form a selection panel consisting of at least five members. The criteria for the evaluation include integrity. The elements of integrity include a demonstrable consistent history of honesty and high moral character in professional and personal life; respect for professional duties, arising under the codes of professional and judicial conduct; and understanding the need to maintain propriety and propriety. In addition, it requires fairness. The elements of fairness include a demonstrable ability to be impartial to all persons and commitment to equal justice under the law; and open-mindedness, and capacity to decide issues according to the law, even when the law conflicts with personal views. The law (under the Constitution and the Judicial Service Act) does not require JSC nominees to be vetted by Parliament.

The National Police Service Commission (NPSC) also vets police officers. Section 7 of the National Police Service Act provides that all officers shall be vetted by the NPSC to assess their suitability and competence. These regulations therefore provide the principles, criteria and modalities for vetting by the Commission, as provided under section 7 of the NPS Act. The most prominent form of direct participation in the vetting process is the submission of complaints or compliments to the Commission. Before the vetting of each cohort, the Commission places an advertisement with the names and ranks of officers to be vetted in two newspapers with national circulation, inviting the public to submit complaints/compliments to facilitate the vetting of the officers.

To ensure maximum publicity, this information is uploaded on the websites of the Commission, the Police Reforms Working Group (PRIG) and other stakeholders. In addition to using social media platforms to reinforce the message, efforts are also made to reach the public through radio and television to educate them on their role in vetting. Complaints by members of the public are investigated and the results considered in appointment of candidates.

In furtherance of the objectives of vetting, the National Assembly (NA) vets and approves the appointment of certain categories of state officers. This stems from the Constitution of Kenya, 2010, where the President has power to nominate and, with the approval of the National Assembly, appoint, and may dismiss Cabinet Secretaries, the AG, the Secretary to the Cabinet, Principal Secretaries, and commissioners, ambassadors and diplomatic and consular representatives.

Approval of the National Assembly is also a requirement in the appointment of the DIP, the Controller of Budget, the Auditor General, and the Chief Justice. The candidates are nominated and, after the approval of the National Assembly, appointed by the President. As part of this process, the National Assembly can review the conduct of the President, the Deputy President and other State officers and initiate the process of removing them from office (Article 95 (5)), in case of any gross conduct.

The Public Appointments (Parliamentary Approval) Act, 2011, outlines the requirements for Approval of a State Officer's appointment by the National Assembly. The criteria for vetting and approval of nominees for appointment to public office by parliament include declaration of sources of income. The nominees are required to list sources and amounts of all income received during the calendar year preceding their nomination and in the current calendar year. Nominees are also required to declare their tax status and whether they have fully complied with their tax obligations to the State up to the end of the financial year preceding the nomination for appointment. Nominees must also indicate their educational qualifications and employment record.

The Elections Act, 2011 also creates standards for one to be permitted to hold public office. It provides for the conduct of elections to the office of the President, the National Assembly, the Senate, County Governor and County Assembly. It also provides for the conduct of referenda; to provide for election dispute resolution. In addition, it prescribes requirements, standards and qualifications for those who are running for public office or seeking appointment to a public office. It then establishes the criteria for clearance to run for and hold a public or State office.

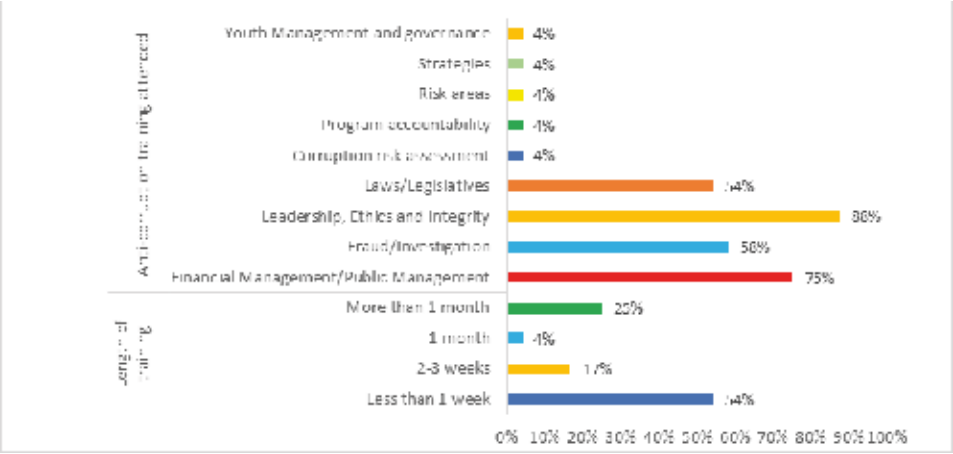
(iv) Training and capacity building

Training or capacity building has been used as a key strategy in anti-corruption strategies in Kenya. Training targets public officers handling anti-corruption cases such as investigation officers, prosecutors and judicial officers. Others include training integrity assurance officers and corruption prevention committees in public institutions, and the general public. Various training and capacity building initiatives are carried out by a number of institutions; for example, the EACC, the

Judiciary through the Judiciary Training Institute and the JSC, and the Kenya School of Government (KSG). Other players include those from civil society and NGOs.

This was collaborated by the KIPPRA Survey. A total of 96% of the respondents indicated that they had attended training. Only 4% indicated that they had not. Out of those who confirmed having attended the training, majority of them (54%), reported that the training took less than 1 week while 25% indicated it took more than 1 month. And 17% indicated that it took 2–3 weeks, but only 4% reported attending the training for 1 month (see Figure 5.2). The trainings covered topics in Financial/Public Management; Fraud/Investigation; Leadership, Ethics and Integrity; Laws/Legislatives; Corruption risk assessment; Programme accountability; Risk areas; Strategies; Youth Management and governance.

Figure 5.2: Anti-corruption training



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

According to the respondents, the common training courses were on the following themes: Leadership, Ethics and Integrity (88%), and Financial or Public Management (75%), respectively. A comparatively smaller but significant proportion of the respondents reported being aware of training on 'laws or legislatives' (54%), and 'fraud or investigation' (58%).

Box 5.1: Other anti-corruption training courses attended

Other Anti-Corruption Training attended as specified by the respondents include:

- Corruption risk assessment
- Programme accountability
- Risk areas
- Strategies
- Youth Management and governance

(v) Performance contracting for enhanced accountability, efficiency and effectiveness of the public officer

This measure was introduced in 2004 as one of the means to improve service delivery in the public sector. The aim of implementing performance management in the public sector was to integrate it with financial management and personnel management (Hoilton and Joyce, 2004).

The Economic Recovery Strategy for Wealth and Employment Creation (ERS/WEC) for the first time embedded public service reform in a national development strategy. Subsequently, the Kenya Vision 2030 identified public sector reforms as a key flagship in delivery of the transformative agenda. In supporting both effective and efficient public sector performance and service delivery, the government directed its efforts towards making the Public Service more effective, efficient and ethical in facilitating economic recovery and wealth creation with establishment of the Public Service Reform and Development Secretariat (PSR&DS). Its mandate was not only to spearhead Public Service Transformation but also to institutionalize Results-Based Management (RBM) in the Public Service. The purpose was to improve performance and service delivery and governance. Under the "Results for Kenya Programme", PSR&DS rolled out several initiatives. One of them was the Transformative Leadership Programme, a Capacity Building Programme as well as the Rapid Results Initiatives (RRI).

Performance contracting has been recognized as a fundamental pillar in strengthening public administration and service delivery in Kenya's Vision 2030. Performance contracting was intended to improve service delivery; efficiency in resources utilization; institutionalization of a performance-oriented culture in the public service; measurement and evaluation of performance; traceability of performance and results; accountability for work rendered; answerability of public and State officers; reduction or elimination of reliance of public agencies on exchequer funding and enhancing overall performance.

Government agencies are supposed to entrench Performance Contracts and commit to apply, enforce and adhere to them. Such commitment is bound to lead them to restructure operations, and maintain control of individual dockets, increase turn-around, delivery on mandates and eventual increase their productivity. It is evident that, for the period when performance contracting was enforced and applied, there was significant improvement in delivery of services in public institutions.

(vi) E-Governance and public sector reforms

In 2013, the Government introduced e-Government. The concept of e-Government is linked to the facets of customer service, citizen engagement and internal efficiency. It creates co-operation among different government departments and brings administration closer to the people and businesses. Furthermore, e-government, e-citizen and other "one stop" service delivery centres such as Huduma Centre which offer one window for public services have significantly reduced the red tape, bureaucracy and processing time for public services. This has curbed the need to offer bribes or facilitation payments to access public services. A number of e-governance systems have been introduced over time to hasten service delivery.

From the KIPPRA survey, 92% of respondents indicated that Huduma Kenya Integrated Service Delivery is a major public sector reform that has helped in the fight against corruption. Another 80% identified e-Government as the main reason. A comparatively smaller but significant proportion cited IFMIS as a reform that had helped in the fight against corruption (see Table 5.3). Only 28% of respondents thought devolution had helped in the fight against corruption. This indicates that devolution is not considered as aid in the fight against corruption. Several audit queries have been raised by the Office of the Auditor General in the County Governments' financial audit reports.

Table 5.3: Public sector reforms helping in fight against corruption

	Percent
1. Huduma Kenya Integrated Service Delivery	92%
2. E-Government	80%
3. Integrated Financial Management Information System (IFMIS)	68%
4. E-Procurement	64%
5. Tax Reforms	64%
6. ICT	60%
7. PFM	60%
8. Integrated Human Resource Information System (IHRIS)	52%
9. Devolution	28%

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

(vii) Regulation of gifts received or given by public officers

In 2003, the Public Officer Ethics Act, 2003, introduced restrictions on receipt of gifts by public officers. How? By restricting how a public officer may accept a gift given to him in his official capacity. For example, if the gift is non-monetary and exceeds the value prescribed by regulations, such a gift shall be deemed to be a gift to the public officer's organization.

In 2012, the Leadership and Integrity Act expounded the scope of regulations relating to gifts to public officers and State Officers. Any gift or donation given to a State officer on a public or official occasion is treated as a gift or donation to the State. A State officer may receive a gift given to him or her in an official capacity, provided that the gift is within the ordinary bounds of propriety. Usually, this is an expression of courtesy or protocol, and within the ordinary standards of hospitality. The gift should not be monetary. In addition, it should not exceed the value prescribed by the Commission in the regulations.

A State officer should not accept or solicit gifts, hospitality or other benefits from a person who has an interest that may be achieved by the carrying out or not carrying out of the State officer's duties; carries on regulated activities with respect to which the State officer's organization has a role; or has a contractual or legal relationship with the State officer's organization; or accept gifts of jewellery or other gifts comprising of precious metal or stones ivory or any other animal part protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

A State officer should not accept a gift given with the intention of compromising his or her integrity, objectivity or impartiality. Furthermore, the Leadership and Integrity Act requires State officers to declare the gifts or donations they receive to the Commission and the public entity which the State officer represents.

The Leadership and Integrity Act 2012 introduces the requirement for creation and maintenance of gifts register. This was not previously provided for under the Public Officer Ethics Act 2003. Every public entity is required to keep a register of gifts received by a State officer serving in in it. Similarly, it should keep a register of gifts given by the public entity to other State officers. The disclosure and keeping a record of gifts received enhances accountability and transparency.

(viii) Regulation of political contributions

In Kenya, contributions by politicians are regulated by the Political Parties Act 2011. The sources of other funds for a political party are membership fees; voluntary contributions from a lawful source; donations, bequests and grants from any other lawful source, not being from a non-citizen, foreign government, inter-governmental or NGO; and the proceeds of any investment, project or undertaking in which the political party has an interest.

It is an offence for a political party to receive funds from a non-citizen. However, a foreign agency, or a foreign political party which shares an ideology with a political

party registered in Kenya, may provide technical assistance to that political party which should not include giving any assets to the political party. The Act limits contributions to political parties to five per cent of the total expenditure of the political party in any one year. A political party is required to publish its sources of funds within ninety days after the end of its financial year.

Transparent Public Finance Management and Public Procurement Systems

The Public Finance Management Act was enacted to "provide for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county assemblies; the different responsibilities of government entities and other bodies." It also imposes duties on accounting officers working in public institutions. Its objectives are to ensure that public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution; and public officers given responsibility to manage finances are accountable to the public through Parliament and County Assemblies. Accounting and procurement officers are usually targeted because they manage public funds. So, they are required to perform their functions well and ensure that public finances are managed and utilized prudently. There should be no wastage, unlawful or unjustified expenditure or over expenditure.

Part IV of the PFM Act details responsibilities related to management of public funds in the Counties. This Act covers all PFM aspects including but not limited to budget making process; financial accounting and reporting; internal auditing; asset management; imprest management; revenue collection; and public finance expenditure. The PFM Regulations (2015) for County governments include strengthening inter-government fiscal relations; restricting wages to 35% of realized revenue; and restrictions that the development budget should be 30% of total budget.

The Government has established IFMIS, an automated system first launched in 2003 in Kenya, amidst demands for greater transparency and accountability in public finance management. It links planning, budgeting, expenditure management and control, accounting, audit and reporting.[7] The objective of IFMIS is to improve systems of financial data recording, tracking and information management.

However, there are challenges in its implementation and use. The audit process relies on IFMIS. There are disparities in the information extracted from IFMIS and that from the Counties relayed to the auditors. IFMIS was initially applied in a 1-tier Government however there is need to interrogate whether IFMIS is still applicable and efficient where there are two levels of government which are required to work together. IFMIS also poses challenges related to connectivity, centralization and logistical problems IFMIS systems face technical difficulties causing them to shut

7 www.treasury.go.ke/.../1-integrated-financial-management-informaton-system.html

down. County officers travel to Nairobi to resolve such difficulties. Where there is connectivity breakdown in one IFMIS line, the whole system becomes paralysed because of connectivity and centralization. Service delivery should not be affected where there is a connectivity breakdown at national level. An audit ought to be conducted to assess its efficiency when operating with two levels of government. IFMIS should be divided into two tiers, one to serve counties and the other to serve National Government. IFMIS needs to be upgraded and its infrastructure corrected because it has become an avenue for embezzlement of funds. Similarly, IFMIS has failed to prevent misuse of public funds.

Procurement is often used as a conduit for unjust and personal enrichment through self-dealing transactions, over-pricing, bid-rigging, interference, collusion, price inflation, contract manipulation, fictitious payments to contractors and suppliers, and manipulation of procurement systems to create favourable conditions that benefit individual officers due to the existence of processes that exist in procurement that allow such practices to easily take place and systems that are vulnerable to manipulation. Procurement systems, if manipulated enable commission of corruption and economic crimes.

The law attempts to eliminate the conditions that may lead to corruption. The Public Procurement and Disposal Act 2005 established procedures for efficient public procurement and disposal of unserviceable, obsolete or surplus stores, assets and equipment by public entities. This law was passed in recognition of the risks and loopholes for corruption that inherently exist in public procurement and asset disposal. The law also prescribes improper procurement processes. The Act applied to accounting and procurement officers in the public sector. This Act was repealed by the Public Procurement and Asset Disposal Act, 2015.

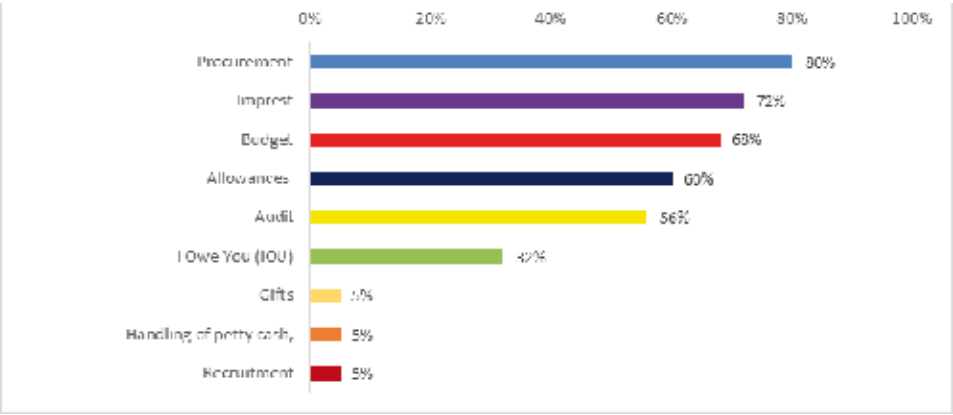
The Public Procurement and Asset Disposal Act, 2015 captures the categories of economic crimes as defined under ACECA. They stipulate that an officer or person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property is guilty of an offence if the person fraudulently makes payment or excessive payment from public revenues for sub-standard or defective goods; goods not supplied or not supplied in full; or services not rendered or not adequately rendered, wilfully or carelessly fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or engages in a project without prior planning. ACECA defines "public property" as real or personal property, including money, of a public body under the control of, or consigned or due to, a public body.

The Public Procurement and Asset Disposal Act establishes procedures for efficient public procurement, prescribes improper procurement processes that would likely hamper free competition, transparency, openness, integrity, economy and fairness. Furthermore, the Act provides the procedures for asset disposal by public entities. The Act applies to accounting and procurement officers in the public sector. It establishes the Public Procurement Regulatory Authority which, *inter alia*, on its own initiative or upon request in writing by a public institution

or any person investigates and acts on complaints received on procurement and asset disposal proceedings.

From the KIPPRA Survey, most respondents (80%) cited 'Procurement' as the department with most financial loopholes in an organization. This was followed by 72% who cited 'Imprest' and 68% who cited 'Budget'. Procurement was cited as the most corrupt because it deals with tenders for supply of goods and services. Therefore, there is a higher likelihood of malpractice given the huge amounts of money it deals with. Other departments cited by many respondents as corrupt were 'allowances' (60%) and 'audit' (56%). A minority of the respondents (<=5%) cited during 'handling of petty cash' and 'recruitment' (see Figure 5.3).

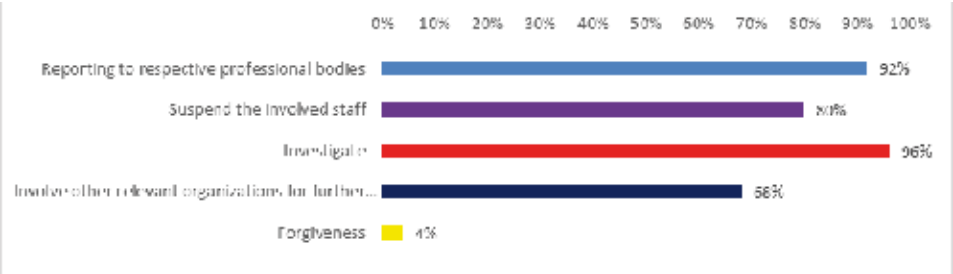
Figure 5.3: Financial Loopholes in Organizations



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

To stop the financial malpractices that occur in procurement, budget and imprest, majority of the respondents were of the opinion that investigations (96%) and reporting to respective professional bodies (92%) were likely to be effective (see Figure 5.4). Others suggested involvement of relevant organizations for further investigations (68%) or suspension of staff (80%).

Figure 5.4: Management of Financial Malpractices



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

c) Access to Information and Transparency

Article 35 of the Constitution provides that every citizen has the right of access to information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom. Furthermore, every person has the right to the correction or deletion of untrue or misleading information that affects the person. The State is required to publish and publicize any important information affecting the nation.

The Access to Information Act, 2016 was enacted to give effect to Article 35 of the Constitution. It provides a framework on how both public and private entities can disclose information that they hold. It also outlines how they can disclose information on request in line with the constitutional principles. In relation to corruption, information disclosure is essential, particularly for carrying out investigations and for assessing compliance with relevant laws.

Section 4 of the Act provides that every citizen has the right of access to information held by the State and another person and where that information is required for the exercise or protection of any right or fundamental freedom. Subject to the Act, every citizen's right to access information is not affected by any reason the person gives for seeking the information, or the public entity's belief is the reason why the person is seeking the information. Both public and private entities must expeditiously provide access to the information they hold, and at a reasonable cost. The Act is interpreted and applied based on a duty to disclose. Non-disclosure is only permitted in circumstances exempted under section 6. However, the Act places several limitations on access to information. As a result, that undermines efforts to access information.

Access to information enhances transparency. E-Government is also intended to increase transparency in public administration. It establishes systems that make it easier for public officers to account for their activities and operations. Akin to transparency is the ability to monitor, trace and track administrative actions. This should be supported by an effective, responsive, transparent and active complaints management system to enhance accountability in the public sector.

The government offers most of its services online in line with the e-government policy. Most government operations have been digitized. For example, there is IFMIS, e-procurement, e-citizen and Huduma Centres. Both the National Government and county governments offer several services online. Citizens only need access to the internet. Even payment for most government services is now cashless, thanks to the booming mobile money transfer system. It is now government policy for ministries and MDA's to offer most of their services online for ease of access by citizens. For example, in the Immigration Department, citizens can apply for, renew or replace their passports and pay for them online.

(d Awareness Creation, Advocacy and Education

EACC has power to educate the public and create awareness about its mandate. It therefore undertakes public education, training and awareness by carrying out

anti-corruption outreach clinics, school-based programmes and sensitization of community-based anti-corruption monitors.

Overall, a majority (60%) of the respondents in the KIPPRA Survey cited civic education as the most 'effective' strategy in the fight against corruption (somewhat effective, 15%, and very effective, 20%). The minority (5%) cited civic education as 'ineffective' in the fight against corruption (see Figure 5.5). The findings indicate that respondents think civic education is very important in the fight against corruption. Therefore, there is need for relevant institutions to incorporate civic education in their anti-corruption efforts.

Figure 5.5: Awareness creation advocacy and education

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

Furthermore, the responses show that out of the anti-corruption strategies in use, enforcement of the law is considered as the least effective in prevention of corruption. Social accountability was considered a very effective tool because it enables citizens to identify with the vice and effects of corruption. It also empowers the citizens and gives them the tools to fight corruption.

The respondents also opined that if the war against corruption is to succeed, the public must be involved in understanding the forms of corruption. They need to understand its vice, its effects on society, its impacts on social life and the loss of opportunities that accrue to the citizens. The public plays a crucial role in fighting corruption in several ways. First is by reporting. Second is going to court to adduce evidence. And third is by furnishing evidence (including documentary evidence) to investigating or prosecuting authorities. All members of the public have a role to play in fighting corruption.

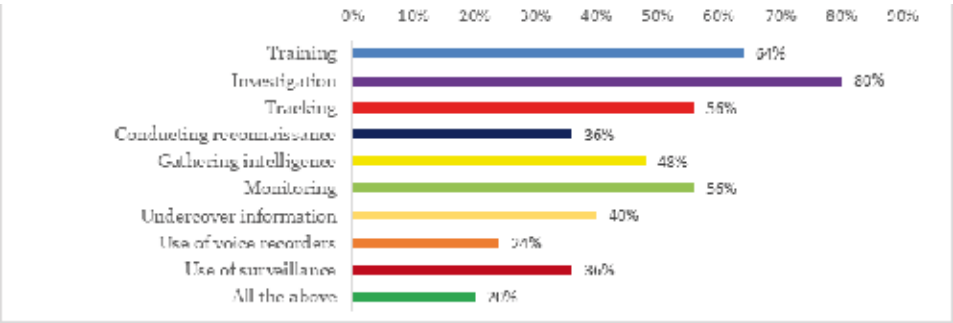
5.3 Corruption Detection and Reporting

Corruption detection measures include; establishment of EACC offices in every county; use of public information through dedicated hotlines, conducting lifestyle audit of all public servants, reporting incidents of corruption and through documentary evidence indicating existence of corruption.

From the KIPPRA survey, majority of the respondents (68%) think that the measures taken on corruption detection are 'effective' (somewhat effective, 36%, effective, 20%, and very effective, 12%). Only 32% think the measures of fighting corruption are 'ineffective' (ineffective, 20% and very ineffective 12%).

Majority of the respondents (80%) also indicated that investigation a very effective mechanism in corruption detection. A total of 64% indicated 'training', 56% 'tracking' and another 56% 'monitoring' (see Figure 5.6). Therefore, EACC should frequently investigative various institutions to detect any form of corruption within their sectors. Such include KRA, CAJ and the Competition Authority. Forms of corruption are multi-layered. There are various crimes that are committed simultaneously. Therefore, harnessing the investigative powers of complementary agencies can augment the investigative activities of EACC.

Figure 5.6: Corruption detection mechanisms



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

(a) Auditing and Reporting Financial Expenditure

The Public Procurement and Disposal Act, 2005 (*repealed*), the Government Financial Management Act 2004 (*repealed*), the Public Finance Management Act, 2015 and the Public Procurement and Asset Disposal Act, 2015 have over time focused on fighting corruption.

The purposes of audit processes are to scrutinize public expenditure and assess whether funds have been used in a lawful, cost-effective and efficient manner without wastage. The audit exercise also seeks to identify possible incidents or likelihood fraud, corruption, wastage of funds or other financial improprieties. If such are discovered, they are taken up by relevant authorities in accordance with the law. Public audits focus on scrutinizing expenditure and how public accounting officers ensure that public money is used for the purposes intended. They also confirm that the expenditure conforms to the authority given for such expenditure.

This measure was introduced pursuant to the Public Audit Act 2003. Then, it was implemented by the Auditor General and the Controller. The focus of this strategy was auditing public expenditure. At the end of each financial year, the Treasury would prepare accounts showing the financial position of the government and submit them to the Controller and Auditor General. The Controller and Auditor-General would receive the audited accounts and submit the audit report to the

Minister for Finance. The Minister would thereafter present the report to the National Assembly.

Under the Public Audit Act 2003, the report was supposed to identify cases where money was spent in a way that was not efficient or economical; the rules and procedures followed, or the records kept, were inadequate to safeguard property and the collection of revenue; money that should have been paid into the exchequer account was not so paid; money has been spent for purposes other than the purposes for which it was appropriated by Parliament; or satisfactory procedures have not been established to measure and report on the effectiveness of programmes. It requires auditing accounts of public entities and submitting reports to the Minister for Finance and the National Assembly on findings of the audit exercise.

Article 229 of the 2010 Constitution established the Office of the Auditor-General. Article 226 (3) of the Constitution provides that the accounts of all governments and State organs shall be audited by the Auditor-General. Pursuant to Article 229 of the Constitution, the Accounts the Auditor-General is permitted to audit include: the accounts of the national and county governments; the accounts of all funds and authorities of the national and county governments; the accounts of all courts; the accounts of every commission and independent office established by this Constitution; the accounts of the National Assembly, the Senate and the county assemblies; the accounts of political parties funded from public funds; the public debt; and the accounts of any other entity that legislation requires the Auditor-General to audit.

The Auditor-General may audit and report on the accounts of any entity funded by the public. An audit report shall confirm whether public money has been applied lawfully and in an effective way. Audit reports are required to be submitted to Parliament or the relevant county assembly. Within three months after receiving an audit report, Parliament or the county assembly is required to debate and consider the report and take appropriate action. This is in line with the oversight responsibility of the Legislature.

In 2015, the Public Audit Act 2003 was repealed and replaced by Public Audit Act 2015. The Auditor-General audits and reports on the accounts specified in Article 229 of the Constitution within six months after the end of each financial year. The primary role of the Office of the Auditor-General, headed by the Auditor-General, established under the Public Audit Act, 2015 is oversight. It ensures accountability in the use of public resources.

According to the Public Audit Act, the functions of the Auditor-General are to *inter alia* undertake audit activities in state organs and public entities. The purpose of the audit is to confirm whether public money has been used lawfully and effectively. The audit reports usually highlight relevant material issues, systemic and control risks. In depth audits should be carried out based on risk analysis methods. The reports audits are individually posted on the website of the Office of the Auditor-General. Audits are done following the International Standards on Supreme Audit Institutions (ISSAIs). More emphasis is given to performance

audits and procurement or asset disposal than under the previous law (sections 34-38 of the Public Audit Act, 2015).

The Auditor-General may also audit and report on the accounts of any entity funded by the public. He or she conducts performance audit to examine the economy, efficiency and effectiveness with which public money has been expended. The Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties. He or she may examine the public procurement and asset disposal process of a State organ or a public entity to confirm whether procurement is done lawfully and in an effective way. He or she may, subject to meeting conditions of high-level confidentiality, audit national security organs.

The Constitution and Public Audit Act, 2015 specify that Office of the Auditor-General (OAG) must, within six months of the end of the financial year, audit and report on the accounts of all County Governments' entities, covering revenue, expenditure, assets, and liabilities, using ISSAIs or consistent national auditing standards.

The final audit report of the Auditor-General is submitted to Parliament or the relevant county assembly, with copies to the Cabinet Secretary responsible for finance. Other copies go to the relevant County Executive Committee (CEC) member for finance and the accounting office of the entity that was the subject of the audit. Within three months of receiving the audit report, Parliament or the relevant county assembly is supposed to debate and considers the report and thereafter take appropriate action.

After an audit, the relevant accounting officer is supposed to, within three months, after Parliament has considered and made recommendations on the audit report take the relevant steps to implement the recommendations. Section 53 of the Public Audit Act 2015 on implementation of such reports provides that the officer can also give explanations in writing to Parliament on why the report has not been acted upon.

The accounting officer is liable for contempt of Parliament or County Assembly if he or she fails to comply. If Parliament or the relevant County Assembly determines that an officer has failed to act, it can recommend administrative sanctions such as removal as the Accounting Officer, demotion in rank, surcharge, among others.

The mandate of overseeing implementation of the recommendations of the reports is vested in Parliament and the County Assembly. However, there are no mechanisms of ascertaining whether the recommendations are carried out. Similarly, there are no mechanisms of assessing whether the officers and professionals implicated in audit queries are subjected to any disciplinary action or investigations, after the audit query is raised. The consequence is that, such officers may continue to remain in office or simply be re-designated to another department. Furthermore, there is no provision for coordination with the relevant professional body which is supposed to discipline the officers found culpable. Once an audit query implicates an officer, such information ought to be cascaded to the relevant professional body.

If the Auditor-General has reason to believe that money belonging to a public institution has been fraudulently or wrongfully paid into a person's account, he or she has power to examine and track the transaction. He or she can obtain a court order and investigate the account of any person in any bank. These powers are provided for in Section 22 of the Public Audit Act 2015. In such a case, the bank must produce any documents or provide the requested information relating to the account in the bank's custody or control.

Through auditing and reporting on the accounts of any entity that is funded from public funds and conducting performance audit, the Auditor-General can examine the economy, efficiency and effectiveness with which public money has been expended. The Auditor-General may, upon request by Parliament, a conduct forensic audit to establish if there is any fraud, corruption or any other financial improprieties. He or she may examine the public procurement and asset disposal process of a state organ or a public entity to confirm if procurement is done lawfully and effectively.

Several Auditor-General's reports have flagged incidents of non-compliance with procurement and public finance laws and non-compliance with the prescribed financial reporting and accounting standards. Some of the recurrent incidents identified by the Auditor-General which occur throughout the financial years are; misuse of public funds; flouting of procurement procedures; conflict of interest; improper recruitment and human resource processes; mismanagement of assets belonging to counties; misappropriation of equipment including health equipment; overstating of revenue and non-compliance with public finance management laws.

The audit function conducted at the end of a financial year is largely reactionary and explanatory. But it is not effective in monitoring misuse of public finances. So, the audit exercise flags issues when they have already occurred, and cannot be prevented. Furthermore, the monitoring framework for expenditure in public institutions is not effective. The audit process and publication of audit reports are not timely. The audit reports are produced up to two years after the end of the financial year. This hinders effective intervention because; audits are not conducted throughout the financial year. Even where incidents of fraud, corruption and financial impropriety are identified, the Auditor-General does not have enforcement mechanisms to require entities to employ timely restitutive measures.

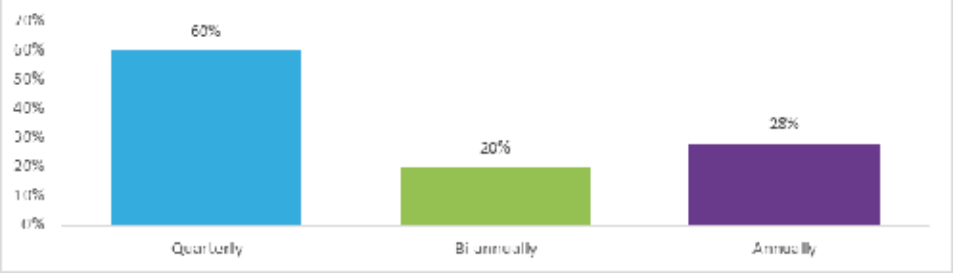
It is not clear which specific institution has the responsibility of following up on recommendations proffered by the Auditor–General. However, the AG's office does not have the investigative or enforcement mandate. The Auditor-General's mandate is discharged once it submits its reports to the National Assembly or County Assembly. The result is that the recommendations of the Auditor-General may be ignored and not implemented. A risk of non-implementation of the Auditor-General's reports, for example, exists whereby accounting officers implicated in audit reports remain in office. They continue with their duties without any disciplinary action being taken against them.

There is need to audit the status of the implementation of the Auditor-General's recommendations. This will help monitor compliance over time and assess the perennial issues across and within counties. The counties can then identify priority areas and recurrent themes of compliance with public finance laws and requirements. In this regard, the Auditor-General ought to continuously flag entities which are yet to implement the AG's recommendations. It can also audit compliance with previous audit reports (audit of audits) and submit them to the Parliament, County Assembly or to the EACC. The Auditor-General should also undertake performance audits.

The role of professional bodies should be enhanced, especially in vetting, monitoring, regulating and disciplining errant members. Many are usually implicated in corruption or economic crimes or misconduct or adversely cited in the Auditor-General's reports. Professionals employed in the public service are not only accountable to their respective employers but also to their relevant professional bodies. Therefore, the bodies should be involved or notified if one of their members is adversely mentioned or implicated. Therefore, information exchange among relevant bodies should be encouraged.

Finally, it is important to relook at the frequency of the audit process. For example, from the KIPPRA survey, majority of respondents (60%) believe that for auditing it to be effective, it should be conducted 'Quarterly' (see Figure 5.7).

Figure 5.7: Frequency of the Audit Process



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

Political will, commitment and direct involvement of top leadership in the audit process is necessary especially where county officers are directly accountable to top leadership and their respective professional bodies (where applicable). This can enhance accountability.

(b) Financial reporting by financial institutions

The Proceeds of Crime and Anti-Money Laundering Act 2009 assigns "reporting institutions" the mandate of reporting. There are two categories, "financial institutions" and "designated non-financial businesses and professions." The Act establishes the Financial Reporting Centre (FRC) which assists in identification of proceeds of crime, combating money laundering and financing of terrorism. The

Financial Reporting Centre disseminates reports to and shares intelligence with EACC, particularly on crimes relating to corruption.

Part IV (Sections 44, 45, 46, 47 and 48) of the Act stipulates Anti-Money Laundering Obligations of a Reporting Institution including monitoring on an ongoing basis all complex, unusual, suspicious, large or such other transactions; reporting to the Financial Reporting Centre of suspicious or unusual transactions or activities or any other transaction or activity could constitute or be related to money laundering or to the proceeds of crime; taking reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it or to carry out a transaction or series of transactions with it, undertaking customer due diligence on the existing customers or clients; establishing and maintaining client records and records of all transactions and where evidence of a person's identity is obtained, a record that indicates the nature of the evidence obtained, and a copy of the evidence or such information as would enable a copy of it to be obtained; obligation to establish and maintain internal controls and internal reporting procedures; obligation to register with the Financial Reporting Centre.

The Act also applies to accountants when preparing or carrying out transactions for their clients when buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies; creation, operation or management of buying and selling of business entities.

This is particularly important in carrying out corruption-related investigations, tracing proceeds of corruption, tracking transactions, beneficiaries and establishing an audit trail. This assists in identifying persons (natural or legal) who do the transactions or are beneficiaries of the transactions. The reports prepared by reporting institutions inform investigations or form part of documentary evidence relied on by the prosecution during trial. The Financial Reporting Centre thereafter furnishes investigating authorities and supervisory bodies with the information it has collected to facilitate administration and enforcement of the law.

(c) Reporting by Witnesses and Informers

Witnesses and informers play a critical role in investigating corruption cases. These include reporting, providing evidence and testifying in court. Article 33 of the United Nations Convention Against Corruption of 2003 recommends that each State Party consider incorporating into its domestic legal system appropriate measures to protect unjustified treatment of any person, who reports in good faith and on reasonable grounds to the competent authorities, any facts concerning offences established in accordance with the Convention. Besides, Section 65 of the Anti-Corruption and Economic Crimes Act, 2003 also has provisions that protect "informers." However, this protection is only limited to legal actions, proceedings and disciplinary actions against persons who have provided assistance or made a disclosure of information to the Commission or an investigator.

Kenya's Witness Protection Agency (WPA) is established under the Witness Protection Act, (Cap 79 Laws of Kenya). It came into operation on 1st September 2008 vide Legal Notice No. 110/2008 dated 19th August 2008 as amended by the Witness Protection (Amendment) Act, 2010. The Witness Protection Regulations were enacted to facilitate the efficient and effective implementation of the Act. They were promulgated vide Legal Notice No. 99 of 2011 which came into force on 5th August 2011.

The object and purpose of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons who possess important information, but face potential risk or intimidation. The source of such risk should be co-operating with prosecution and other law enforcement agencies.

In recognition of the centrality of witness protection in enhancing administration of justice, the Witness Protection Agency, the Judiciary and the International Commission of Jurists (Kenya) came up with the Witness Protections Rules, 2015, that guides the courts and interested parties in trials on judicial witness protection measures and procedures.

The Witness Protection Act 2016 provides a new definition of witness as a person who has made a statement or has given or agreed to give evidence in relation to an offence or criminal proceedings in Kenya or outside Kenya and requires protection based on an existing threat or risk. A person is a protected person under the Act if that person qualifies for protection by virtue of being related to a witness; on account of a testimony given by a witness; or for any other reason which the Director may consider enough. This does not cover imminent or impending threats or risks or reasonable suspicion of threat, danger or risk. However, it would be difficult to enforce these provisions regarding protection of informers within the private sector or beyond criminal proceedings. The legal framework in Kenya also does not distinguish between a whistleblower and witness or informant.

From the KIPPRA Survey a major challenge facing the Witness Protection Agency is that institutions they collaborate with often refer clients who have already been exposed. For example, it was reported that police statements are shared with the defence and the witness' details exposed which undermines any witness protection intervention they put in place.

While the Witness Protection Agency offers a range of witness protection measures such as concealment of physical features, voice distortion or 24-hour protection, physical and armed protection, in-camera hearings, use of pseudonyms, redaction of identifying information, video-link testimony, and distortion and obscuring the identity of the Witness, at times the identity of the witness is leaked rendering these measures ineffective and nugatory.

As an alternative measure, a witness may require relocation and change of identity, especially where their identity is exposed through cracks in the criminal justice system. This is costly. The Witness Protection Agency is required to relocate the witness and their families, find them accommodation, cater to their living expenses, facilitate their children's school fees and substitute the witness' salary, if they were employed.

Generally, it emerged that people are extremely reluctant to testify against people they know because of fear of reprisals, dismissal from jobs and upheaval of their lives. The most effective way to counter this is to reduce the bureaucracies. Such include the requirement that the prosecutors and the defence disclose and share information. This is because from the statements, it is usually obvious who the witness is.

In addition, the process referral of witnesses should be reviewed. Also, the Whistleblower Protection Bill, 2018 should be enacted into law. The Witness Protection Agency should raise public awareness on its role and mandate. Let the public know about the witness protection measures they use. Such sensitization to the public cannot inspire so that more people come out to report.

5.4 Corruption Investigation

Investigation has been one of the main strategies in the fight against corruption in Kenya. Even though, the investigating agencies have been changed and restructured over the years. In 1992, an Anti-Corruption Police Squad under the Police Unit was established to investigate and prosecute corruption cases.

a) Institutions with investigative powers

(i) The Kenya Anti-Corruption Authority

The Kenya Anti-Corruption Authority (KACA) was established vide Legal Notice No. 10 1997. This amended the Prevention of Corruption Act, 1956. The mandate of KACA under this Act, was to investigate, and subject to the directions of the AG, prosecute corruption offences, and other related crimes. S.11B was inserted into the Prevention of Corruption Act 1956, but the provisions of Section 26 of the 1963 Constitution of Kenya remained intact. Under it (Section 26 of the 1963 Constitution), the AG was the principal legal adviser to the Government. He or she exercised the prosecutorial functions of the State.

KACA was declared unconstitutional by the court in the *Gachiengo vs Republic* [2000] 1 EA 67. The Court held that KACA did not have power to prosecute because it was at the time the function of the AG. The subsequent anti-corruption commissions have since then not had any prosecutorial powers or functions.

(ii) The Ethics and Anti-Corruption Commission

The 2010 Constitution provides for the establishment of the Ethics and Anti-Corruption Commission (EACC). EACC was then operationalized after the enactment of the EACC Act, 2011. It is the main body that spearheads anti-corruption initiatives. The body has power to conduct investigations on its own initiative or act on a complaint made by any person. It receives complaints on any breach of the Codes of Ethics by a public officer. It then investigates and

recommends to the DPP prosecution of any corruption acts or violation of the Codes of Ethics.

(iii) The CAJ

The 2010 Constitution provided for the establishment of CAJ. It was then operationalized through the Commission on Administrative Justice Act, 2011. The Commission is a successor to the Public Complaints Standing Committee (PCSC). Its principal function is to conduct investigations into complaints of abuse of power by public officers or bodies and make appropriate recommendations thereon. Also called the Ombudsman, it is an independent Constitutional Commission

The responsibility of the Commission is to investigate the actions of public authorities. The creation of the office of the Ombudsman recognized the growing power of public authorities to affect people's daily lives; the need for these agencies to be accountable for this power; and the desirability of creating a body that provides timely, accessible and low cost means for people to resolve their disputes with these agencies. Article 47 of the Constitution guarantees the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The enforcement of this right complements and boosts the fight against corruption because decisions carried out by administrative or public bodies ought to be lawful.

Generally, CAJ enquires into complaints arising out of an administrative action of a public office, state corporation or any other body or agency of the State. Its functions include to investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice; investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct perpetuated within the public sector; and inquiries into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service. CAJ then makes recommendations to a public entity for action.

(iv) Mutual Legal Assistance

Mutual Legal Assistance relates to the need of authorities to obtain assistance from foreign countries where a crime has been committed across borders. The authorities in another country are assisted to gather evidence to assist in criminal investigation or proceedings. However, the process is lengthy and impedes the process of investigations of trans-boundary corruption. It is anchored in the Mutual Legal Assistance Act, 2011.

5.5 Criminal Proceedings and Prosecution

Under the 1963 Constitution, the prosecutorial function of the Republic of Kenya was carried out by the AG. However, this changed after the 2010 constitutional dispensation. The AG was perceived as not being independent because the He or she was both a prosecutor and principal legal adviser to the Government. Today, the AG no longer undertakes prosecutions. It was found undesirable for the AG to undertake prosecution and also be a member of the Cabinet and principal legal adviser to the Government. Under Article 130 of the 2010 Constitution, the AG is now part of the National Executive. He or she is a member of the Cabinet and is also the principal legal adviser to the government. The AG has been divested of powers to execute, discharge and prosecute.

The 2010 Constitution attempted to cure this anomaly by creating an independent Office of Director of Public Prosecutions (ODPP). The office was established under Article 157 of the 2010 Constitution and operationalized by the Office of the Director of Public Prosecutions Act, 2013.

The provisions of Article 157 of the 2010 Constitution, and the Anti-Corruption and Economic Crimes Act, 2003 give the ODPP the mandate to prosecute criminal cases including all corruption and economic crimes matters investigated by EACC.

The prosecution function is vested in the ODPP. He or she discharges the prosecution functions of the State. Article 157 (10) of the 2010 Constitution states that "*The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority*." Therefore, the DPP has the exclusive mandate to prosecute cases related to corruption and economic crimes. The main reason for this is to ensure independence and impartiality in anti-corruption cases.

But there is a significant departure from the powers of the AG under the 1963 Constitution. Under the 2010 Constitution, the DPP cannot terminate a case without the consent of the Court (Article 157 (8)). Previously, the KACC was required to report to the AG cases prosecuted under ACECA section 35. It had to state the result of each investigation and, where appropriate recommend prosecution. No prosecution could ensue without consent and approval from the AG.

Only Parliament has power to confer prosecutorial powers on other authorities (Article 157 (12)); the DPP may not terminate pending criminal cases without the permission of the court (Article 157 (8)); and may no longer take over pending private prosecutions or criminal proceedings commenced by other authorities unless with the latter's permission (Article 157 (6) (b). Furthermore, the DPP serves under a limited and non-renewable tenure of 8 years to prevent abuse of power.

The ODPP can also direction EACC on the investigation of corruption and economic crimes cases. It can also direct the DCI on investigation of economic crimes' cases. The DCI is therefore required to execute directions given by the

DPP. He or she also undertakes investigations over corruption and economic crimes. Both Section 35 of the Anti-Corruption and Economic Crimes Act, and Section 11(d) of the EACC Act, provide that cases investigated by EACC should be referred to the DPP for prosecution or appropriate direction. Upon receipt of a report from EACC, the DPP may prosecute, ask for further investigations, and take administrative action or close the file. These decisions depend on the assessment of the available evidence.

In case of tight evidence, the criminal proceedings commence in a court of law, leading to conviction of criminal offenders or release, if innocent. Criminal procedure gives one with the process and procedures of accessing the courts. The trial process relies on the Law of Evidence. The Constitution lays the foundation for the premise of criminal procedure.

Prosecution of corruption and economic crimes starts with a complaint submitted to the EACC. EACC then conducts investigations and submits a report to the DPP. Thereafter, the trial takes the form of the criminal trial process in Kenya which follows the steps below:

1. Complaint.
2. Investigation.
3. Submission of report/recommendation to ODPP.

If the DPP determines that there is enough evidence to prosecute the case, the next steps are as follows:

4. Arrest.
5. Charges – the charges to prefer are in the Penal Code or any other statute related to criminal offences. A charge can be referred to as information. Prosecution enables charges to be preferred against an accused person and a trial undertaken by the ODPP.
6. Plea.
7. Trial.
8. Judgment.
9. Sentence.

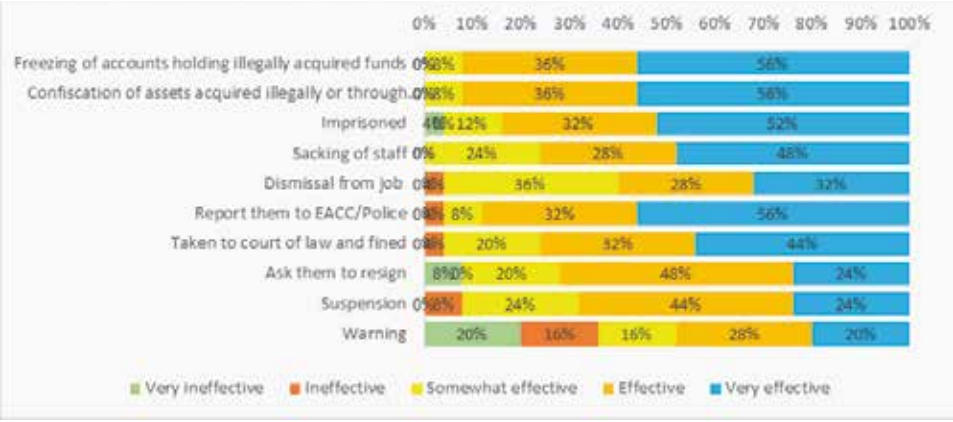
The above sequence may change depending on the offence. It can also start with an arrest. It is not a must that a complaint should be first made. EACC can on its own volition or on its own initiative conduct investigations.

5.6 Adjudication, Judgment and Sentencing

About the penalties imposed by law, 100% of respondents cited the following as '**effective'** penalties; sacking of staff, confiscation of assets acquired illegally or through corruption, and freezing of accounts holding illegally acquired funds. The other effective penalties cited by 96% of respondents were; being taken to

court and fined, reporting them to the EACC or Police, and dismissal from job (see Figure 5.8).

Figure 5.8: Effectiveness of anti-corruption penalties



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

One of the first initiatives and strategies developed in modern day Kenya in establishing a government system, was the establishment of the Judiciary. The Judiciary was first established in 1890, when Kenya was a British Protectorate. The Judiciary performs its functions through Adjudication and Sentencing. The first court in British East Africa was established by the Imperial British East Africa Company (IBEACo) in 1890 with A.C.W Jenner as its first judge. In 1895, the East Africa Protectorate was established with a Consular court to serve the British and other foreigners.

However, the first court with jurisdiction over all persons in the territory was established in 1897. It was called Her Majesty's court of East Africa. It was later renamed 'the High Court of East Africa'. Kenya's Judiciary has roots in the East African Order in Council of 1897 and the Crown regulations. The Kenyan legal system was shaped by English legal system, occasioned by the British colonial administration that lasted over six decades. During that period, the judges and the bar were exclusively European.

The focus and objective of adjudication and sentencing is to enable the hearing and determination of cases to determine their probative value and thereafter prescribe appropriate sentences stipulated as per the law. Judgement may result in conviction or acquittal. However, sentencing metes out the appropriate penalties.

The Judiciary is one of the three arms of government established in the Constitution of Kenya, 2010. It derives its mandate from Chapter 10 of the Constitution. Section 160 of the Constitution establishes the Judiciary as an independent custodian of justice in Kenya. Its primary role is to exercise judicial authority given to it, by the people of Kenya. The Judiciary is mandated to deliver justice in line with the 2010 Constitution and other laws. It is expected to resolve disputes in a just manner

and protect the rights and liberties of all, thereby facilitating the attainment of the ideal rule of law.

The Judiciary also handles the broader administration of justice including; formulation and implementation of judicial policies, compilation and dissemination of information about cases and other legal information. In addition, it provides independent, accessible, fair and responsive fora for dispute resolution and development of jurisprudence. The Judiciary promotes the rule of law by shaping public policy through interpretation of the Constitution and ensuring access to justice. In addition, it protects the Constitution by promoting national values and principles of good governance. Furthermore, it fosters social and political stability, and promotes national socio-economic development through its process and decisions.

The Judiciary hears cases and determines their probative value. Thereafter, it prescribes appropriate sentences relative to the offence. After trial, the Court renders its judgment and provides a sentence. It determines the kind of sentence to award depending on the prescribed law relative.

The Judiciary discharges its functions through the Court Systems, the JSC and The Kenya Law. It has Special Magistrates; these are magistrates of or above the position of a Principal Magistrate. The Magistrates preside over Anti-Corruption Courts and adjudicate over cases of corruption and economic crimes. It has also established an Anti-Corruption and Economic Crimes Division of the High Court with Anti-Corruption Judges.

Table 5.3: EACC case handling

Year	Recommended for Prosecution	Recommended for Administrative Action	Recommended for Closure	Cases Finalized in Court	
				Convicted	Acquitted/Discharged
2013/14	44	9	17	1	1
2014/15	75	8	22	1	----
2015/16	136	4	27	11	3
2016/17	97	7	26	18	7
2017/18	143	10	27	35	9
Total	495	38	119	66	20

Source: EACC, 2019

Each year, the number of cases recommended for prosecution has been on the increase. However, the numbers of persons convicted are minimal. Nonetheless, there may also be a significant number of pending court cases.

5.7 Civil Proceedings: Court Orders for Recovery of Assets

The initiative to trace and recover assets acquired through corrupt means or proceeds of crime is meant to diminish the gains any person may derive from keeping property accumulated through corrupt means. The High Court has powers to issue orders for confiscation, restraint, forfeiture and preservation of assets and property according to the procedure specified in the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Under the Anti-Corruption and Economic Crimes Act of 2003, KACC was empowered to recover assets and property acquired as a result of acts of corruption. The premise for this is that whereas criminalization of corruption and the prosecution of the corrupt are necessary, it is equally important to complement the criminal law processes with efforts to reduce the financial gain that emanates from acts of corruption. Indeed, this is such a significant pillar of most anti-corruption efforts. Substantial resources are often dedicated towards recovery of assets. Specifically, Section 7 of the Anti-Corruption and Economic Crimes Act of 2003 gave powers to KACC to investigate the extent of liability for the loss of or damage to any public property. Thereafter, it was supposed to institute civil proceedings against any culpable person for the recovery of such property or for compensation.

Section 2 of the Anti-Corruption and Economic Crimes Act provides that "unexplained assets" means assets of a person acquired at or around the time the person was reasonable suspected of corruption or economic crimes; and whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation." Pursuant to Section 55, the currently constituted EACC may commence proceedings in the High Court of Kenya for forfeiture of unexplained assets where investigations indicate that a person has unexplained assets and the person has failed to provide the EACC with an adequate explanation to explain the disproportion between the assets concerned and his known legitimate sources of income. After proceedings have been commenced and the person has failed to satisfy the Court that the unexplained assets were acquired otherwise than as a result of corrupt conduct, the High Court may order the person to pay to the Government an amount equal to the value of the unexplained assets. Furthermore, Section 57 provides that unexplained assets may be taken by the court as corroboration that a person accused of corruption or economic crimes received a benefit.

In 2009, the Proceeds of Crime and Anti-Money Laundering Act (PCAMLA) established the Asset Recovery Agency (ARA). Under the Act, ARA is empowered to recover corruptly acquired assets respect. This function is also bestowed on EACC. Section 56 of the Act states that after application for a confiscation or restraint order, the proceedings are civil. The remedy then focuses on the proceeds and instrumentalities of crime, not the person possessing them.

The Act distinguishes between criminal forfeiture through a confiscation or restraint order and civil forfeiture through recovery and preservation. However, the proceedings in both applications are civil proceedings. Restraint orders may

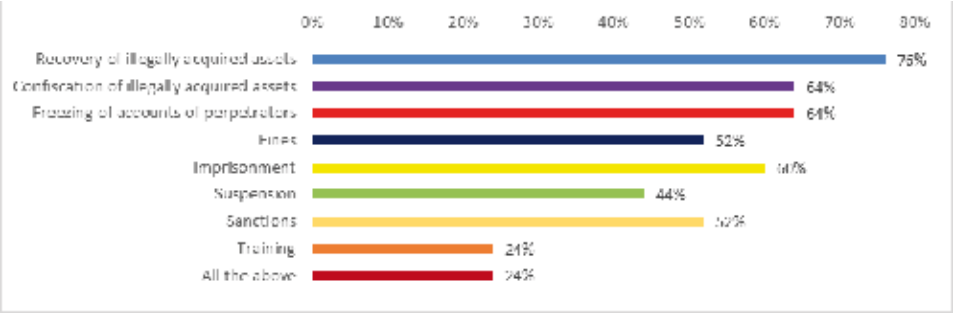
be made during investigation or after conclusion of proceedings. But confiscation orders are made once an accused person is convicted of an offence.

Proceedings brought by the agency for a restraint or seizure order under Sections 68, 69, 70 and 71 relate to *realizable property*. Realizable property is defined in Section 2 of the Act as property laundered; proceeds from or instrumentalities used in or intended to be used in money laundering or predicate offences; property that is the proceeds of, or used, or intended or allocated for use in, the financing of any offence; and property of corresponding value.

Through this, assets acquired through corruption or proceeds of corruption can be recovered. It enables recovery and return of assets acquired through corrupt acts or proceeds of corruption, for restitution. At the same time, the law is clear that the right to property of any person should not be violated. Therefore, it requires that confiscation be done after instituting civil proceedings. Therefore, it means that Kenya's asset forfeiture and recovery regime is subject to judicial proceedings in a civil court.

In the KIPPRA Survey, majority of the respondents (76%) were of the opinion that 'recovery of illegally acquired assets' is an effective strategy in deterring corruption activities. Another 64% thought 'confiscation of illegally acquired assets was the solution. Other respondents cited 'freezing the accounts of perpetrators' (64%), and 'imprisonment' (60%). Figure 5.9 shows all the results. Other corruption deterrence mechanisms cited include fines and sanctions.

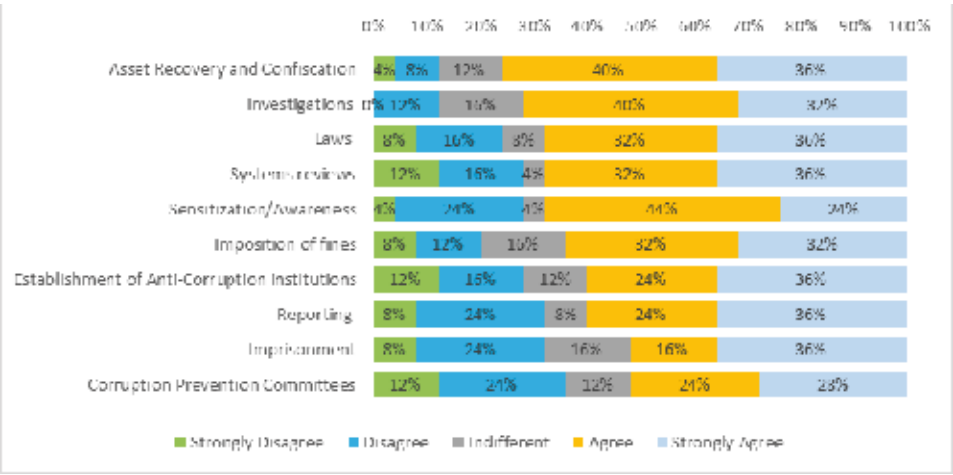
Figure 5.9: Corruption deterrence mechanisms



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

Furthermore, majority of the respondents (>70%), 'agree' that asset recovery (76%), and confiscation and investigations (72%) are the main factors that have led to the reduction of corruption cases in the country. In addition, a small but significant number 'agree' that laws, systems reviews, and sensitization or awareness have reduced incidences of corruption (See Figure 5.10).

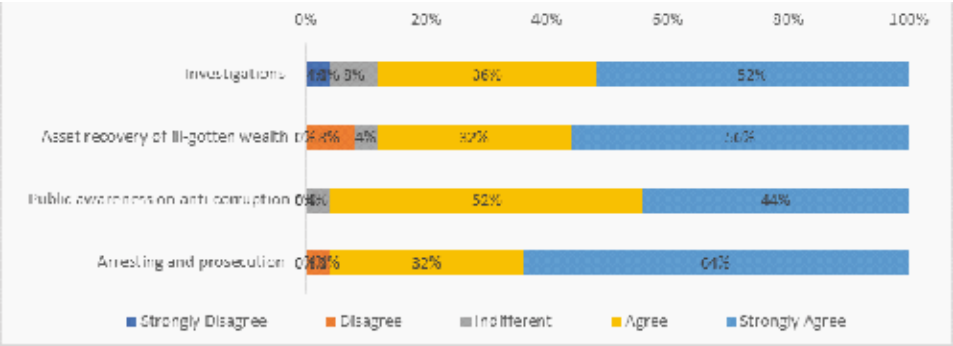
Figure 5.10: Prevalence of corruption



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

In addition, the respondents cited the following methods as effective in dealing with corruption; arresting and prosecution (96%), public awareness on anti-corruption (96%), asset recovery of ill-gotten wealth (88%), and investigations (88%). The full results are shown in Figure 5.11.

Figure 5.11: Effective ways in dealing with corruption



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

This points to a need to recalibrate the strategies currently in use. They should shift to more asset recovery and confiscation mechanisms as well as systems reviews. This should include strengthening and empowering the existing asset recovery framework. Freezing of accounts of perpetrators was considered effective because it cuts off the supply of finances of perpetrators. It also prevents them from concealing or further using the finances for other illicit purposes.

The KIPPRA Survey also found that while there are checks and balances, there is non-implementation of the laws against corruption. Other challenges include delays in cases, long procedures in prosecuting the corrupt and piece-meal prosecution. A case may significantly drag on, undermining the effectiveness of any investigative agency or the faith in the processes. Furthermore, arrests and prosecution do not culminate in judgment and sentencing. And, weak enforcement of corruption penalties was cited as a key factor. The study revealed that many corruption suspects never get to the point of judgment, sentencing and finally, imposition of penalties.

There are several key challenges that face the process of obtaining successful and sustainable convictions. Examples include the following; prosecution of proxies instead of the key perpetrators. This happens mostly in high profile cases. Proxies are usually prosecuted, leaving out the main culprits. Another challenge is the client-advocate confidentiality. Sometimes, the confidentially contradicts the provisions in the Proceeds of Crime and Anti-Money Laundering Act, 2009. Advocates should be encouraged to advise clients to take up plea-bargaining or enter into deferred prosecution agreements.

5.8 International Co-operation

Kenya has signed several bilateral agreements on corruption with several States. The purpose of such agreements is to establish mechanisms for recovery of wealth obtained through corruption in foreign countries, and return. The reverse is true, that is, put in a mechanism of bring back wealth stolen through corruption and stashed overseas. The diplomatic avenues also facilitate signing and conclusion of extradition treaties with foreign jurisdictions.

In 2018, the Government of Kenya signed the Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK) with the Swiss Federal Council. Through bilateral agreements with foreign jurisdictions, such foreign jurisdictions impose sanctions on officers implicated in corruption cases. The sanctions may include blacklisting, denying visas and banning travel of officers implicated in corruption scandals to their jurisdictions as a means of imposing sanctions and a zero-tolerance for corruption. This is one of the strategies that can be leveraged upon to deter corruption and penalize acts of corruption.

5.9 Conclusion and Recommendations

Anti-corruption strategies in Kenya have focused on *three* main aspects; prevention, detection, and deterrence. The robust legal and institutional framework prescribes acceptable and unacceptable conduct, reporting suspected or witnessed corruption, asset recovery once, where corrupt dealings occur and the benefits realized, prosecution and meting out penalties. In addition, operational systems have been strengthened to facilitate public officers to offer public services effectively.

On prevention measures, only a few (8%) of the respondents opined that the current measures that target prevention of corruption were working effectively. Clearly, additional efforts are required to enhance strategies targeting prevention of incidences of corruption. These include increasing the frequency of vetting public officers before election or appointment to public office, review of systems in public institutions, and awareness campaigns. In addition, we need to enhance the wealth declaration process, deepen public sector reforms, report offending officers to their respective professional bodies, and promote social accountability with a strong public participation process.

Institutions involved in anti-corruption awareness need to effectively build capacity and mobilize citizens to actively participate in the fight against corruption. That, they can do by refusing to elect corrupt leaders, holding leaders to account and bringing fellow citizens on board in the fight against corruption. These institutions include the National Anti-Corruption Campaign Steering Committee (NACCSC) and the EACC. Similarly, these institutions must also set aside sufficient resources to create awareness and mobilize citizens to embrace a movement against corruption. Otherwise, citizens will not identify with the ills associated with corruption. The public, through social accountability and auditing, should be empowered, emboldened and enjoined in the fight against corruption.

Furthermore, anti-corruption institutions should prioritize and uphold corruption prevention measures. These include identifying loopholes and opportunities for corruption within institutions, corruption risk areas, and developing systems reviews, and plans to seal any gaps. Public institutions should set timelines and processes to be followed in delivery of services. Furthermore, they should undertake Business Process Re-engineering (BPR) to reduce processes and cut down on human contact. All institutions (including those involved in anti-corruption) should embrace use of technology and digitization. This will scale up the fight against corruption. Furthermore, e-governance systems should be introduced in all government agencies including immigration, tax collection, the use of e-citizen and IFMIS. Where there are challenges, sufficient budgetary allocation should be made. Establishment of key e-governance systems should be prioritized across all government ministries, agencies and departments.

On detection, the audit process should be reviewed to ensure that it is timely. The recommendations from the audit report should always be implemented. The witness protection process should also be reviewed to ensure that the witnesses are not exposed in statements. careless exposure can undermine witness protection and intervention.

In addition, there is need to monitor and evaluate non-implementation of anti-corruption strategies. Some of the indicators of non-implementation include the performance of a sector on CPI by Transparency International, compatibility of the regulations against anti-corruption with UNCAC, a National Integrity Index, a corruption prevention index, the conviction rate in cases handled by EACC, percentage of assets returned, based on court verdicts, an anti-corruption behaviour index, and stakeholder satisfaction based on reporting by the Corruption Eradication Commission.

6. INSTITUTIONAL FRAMEWORK FOR IMPLEMENTING ANTI-CORRUPTION STRATEGIES IN KENYA

As already discussed, in Kenya, there is no shortage of institutions with a responsibility to fight against corruption. But EACC is the main anti-corruption agency in Kenya. However, on the continuum of anti-corruption, the several institutions play different roles. The current institutional framework is heavily guided by the Constitution of Kenya, 2010. The institutions established before the 2010 Constitution are now defunct.

Others have been reincarnated by the 2010 Constitution. Most critical is the role of the President in setting the tone on the war against corruption. Institutions have good networking – including using formally established platforms. That said, there are weaknesses that need attention. This includes the legal status of establishing some of these institutions and the need for adequate resourcing in terms of finance and staffing. There are also opportunities especially in up taking innovations and standardizing training and procedures. In addition, a lot more effort is required on prevention. Today, significant effort is placed on oversight.

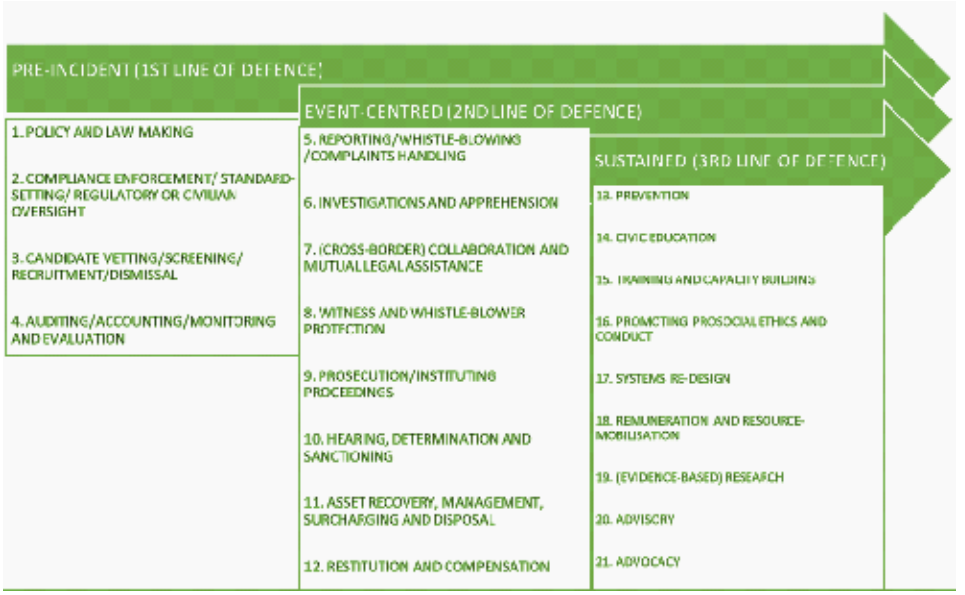
6.1 Introduction

The analysis in this chapter focuses on three types of institutions: (1) those specifically mandated to address corruption such as Kenya's anti-corruption agencies (i.e. EACC); (2) those for which addressing corruption falls within their broader scope of responsibilities (such as the Judiciary); (3) those which while acting on their own prerogative, have been indispensable to Kenya's overall anti-corruption agenda. These include various NGOs, policy research and educational institutions, and broadly CSOs such as Transparency International.

These institutions were identified along the continuum of anti-corruption strategies as indicated in Figure 8.1. Efforts were made to situate the principal institutions responsible for implementing Kenya's anti-corruption agenda along a continuum. These continuums consisted of all the anti-corruption strategies previously and currently adopted in Kenya. The institutions were identified based on the strategy/strategies they were implementing.

This approach is suitable because it evaluates the distribution and achievement of individual organizations. This is in contrast to the more common chronological approach of analysing institutions. It was discovered that this neither duly considers the stated aims of the anti-corruption institution nor controls for extraneous variables related to the period of the institution's operation. This fact affects the performance of the anti-corruption institution being analysed. The result of this mapping exercise is a *prima facie* assessment of the robustness of Kenya's institutional framework aimed at tackling corruption.

Figure 6.1: Continuum of Anti-Corruption Strategies



6.2 Anti-Corruption Agency in Kenya

The Ethics and Anti-Corruption Commission (EACC) is Kenya's principal anti-corruption agency. It was established in 2011, in fulfilment of the Article 79 of the Constitution of Kenya, 2010, EACC Act, 2011 and Leadership and Integrity Act, 2012. The EACC also derives its mandate from other Acts including the Anti-Corruption and Economic Crimes Act (ACECA), 2003 and Public Officer Ethics Act (POEA), 2003. Akin to other constitutional bodies, EACC is not subject to the direction or control of any person or authority. It is therefore entirely independent, but for constitutional and legal provisions allowing for its public accountability. Such include the EACC's obligation to report periodically to the President and the National Assembly.

EACC enjoys an expansive mandate within the Kenya's anti-corruption regime. These include prevention, complaints handling, enforcement including overseeing the enforcement of codes of ethics; investigations; making prosecutorial recommendations; the recovery of assets; provision of restitution; and both raising public awareness and promoting public education concerning corruption.

EACC is also concerned with capacity building, offering training to other public institutions including training of public sector Integrity Assurance Officers (IAOs) through the Public Service Integrity Programme (PSIP). Both the EACC and ODPP have in the past conducted joint training programmes targeting investigators and prosecutors of corruption and economic crimes cases.

Still on the preventive side, the EACC has been involved in the setting and promoting behavioural standards and best practices; the development of the Mwongozo code of ethics for State Officers; monitoring practices and procedures

used by public bodies in the detection and prevention of corrupt practices; the provision of advice to persons seeking information regarding the functions of the EACC. Administratively, the EACC is mandated to file and submit quarterly reports to the DPP on the progression of investigative matters, as well as provide reports for tabling before the President and National Assembly.

EACC enjoys a relationship with all public institutions in Kenya through its role in providing Anti-Corruption clearance certificates to persons seeking employment within Kenya's public sector. Furthermore, EACC enjoys linkages with institutions and persons across the private and non-profit sectors, through its function in receiving and investigating reports or allegations of corruption across all sectors of Kenya's economy. Through its obligations for reporting and the appointment of its Secretary/Chief Executive Officer, EACC has links with the National Assembly. In recent times, EACC has also collaborated with the Public Procurement Regulatory Authority in acknowledgement of the susceptibility of government procurement processes to corruption and economic crimes.

The establishment of the ODPP-EACC Joint Collaboration through a non-binding bilateral agreement in 2012 sought to look into ways of enhancing collaboration between the two institutions. The objective was to address, among other things, improving investigations and the prosecution of corruption and economic crimes cases; standardizing training in the collection, management and interpretation of legal evidence; and developing and implementing guidelines for the investigation and prosecution of corruption and economic crimes, to support the obligations of either institution.

The ODPP receives investigation cases and prosecutorial recommendations from EACC. The ODPP is required to substantiate the evidentiary findings of EACC. It may also direct EACC to conduct further investigations, pursue administrative action or close an investigation file. The advice depends on the ODPP's assessment of the available evidence. A recent report by the ODPP indicates that the concurrence rate of the DPP with EACC recommendations for prosecution is above 90%. This suggests that EACC's investigations meet the evidentiary threshold set by the ODPP.

From a county level perspective, EACC has 10 Regional Offices, which serve all 47 counties in Kenya. In addition, EACC benefits from a shared electronic reporting platform – the Integrated Public Complaints Referral Mechanism (IPCRM) forum. EACC co-founded the forum in 2012 as part of an Inter-Agency Coordination Committee consisting also of the Kenya National Commission on Human Rights (KNCHR); National Cohesion and Integration Commission (NCIC); National Anti-Corruption Campaign Steering Committee (NACCSC); CAJ; Transparency International-Kenya (TI-Kenya); and the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ).

The IPCRM e-platform enables collation of reports on various types of allegations. The reports are then forwarded to the relevant sister agencies. The platform benefits the county outreach concerns, thus enhancing access by people in rural areas to the procedures and mechanisms of handling public complaints and grievances. It also strengthens partnerships between oversight and co-operation

in the referral and management of complaints related to corruption and other violations.

Another boost to the work of EACC is the above-mentioned integrated referral mechanism for handling reports of violations. Its benefits include assignment of complaints to the correct agencies, and expediting the handling of complaints of corruption, human rights violations, maladministration, hate-speech and/or ethnic or racial discrimination. Finally, EACC has benefited from enhanced visibility by Kenya's mass media. The media has increased public awareness about the activities and duties of EACC. EACC also positively correlates with institutional independence.[8]

6.3 Pre-incidence of Corruption

Several strategies are applied to prevent corruption. These include developing policy and legislative frameworks; enforcement of compliance, standard setting and regulatory or civilian oversight; vetting, screening, recruitment and dismissal of state officers and public officers; and undertaking auditing, accounting, monitoring and evaluation. In implementing these strategies, the government has set up various institutions with these mandates as indicated in Appendix Table 4.

a) Policy and law making

The Presidency is established under Chapter 4 of the Constitution of Kenya, 2010. The President plays a critical role in addressing corruption as the Head of State and Government.

The President's mandate, both constitutionally and by law, includes setting the agenda and standards in government including the nation's anti-corruption agenda and standards of good governance, anti-corruption and integrity; respecting, upholding and safeguarding the Constitution including the national values and principles of governance and chapter on Leadership and Integrity, therein espoused; providing the necessary political will for fighting graft; and ensuring the protection of human rights and fundamental freedoms and the rule of law.

Constitutionally the President is required to provide annual reports on national anti-corruption efforts, through the issuance of an Annual Report or State of the Union Address to the nation. In the report, the President outlines the measures taken and progress achieved in the realization of the national values. Top among the values are; good governance, integrity, transparency, and accountability.

Besides reporting on anti-corruption efforts, the President supports the implementation of anti-corruption efforts. The President helps in formulation of the objectives, and checks the performance of government ministries, departments and agencies (MDAs). This is done through a performance contracting system of

8 Specialized Anti-Corruption Institutions: Review of models. OECD Anti-Corruption Network for Eastern Europe and Central Asia. 2008.

accountability. The President also receives and ensures that actions are taken in response to reports from EACC, relevant independent commissions and the ODPP. In addition, the President is involved in the nomination, appointment and removal of persons from positions of seniority in the government. Apart from questions and concerns raised by the public, the President takes into account relevant allegations, investigations and/or findings of corruption or impropriety made against nominees of appointees.

Towards facilitating Kenya's Anti-Corruption agenda, both the President and Parliament have a role. Parliament vets the appointments by the President while, the President sieves any nominations made by Parliament before formal appointment. The President can also address allegations of corruption within the legislature. Besides Parliament, the President's agenda informs the strategic objectives and priorities of all government MDAs. That includes the requirement that they have evidence that they are promoting national values and principles of governance, and compliance with efforts to tackle corruption in the public sector.

The President frequently interacts with the EACC, various law enforcement agencies and intelligence agencies. This is because they report periodically to the President. The President also has the capacity, indirectly, to articulate anti-corruption messages, both nationally and at the county-level. The President can use through media outlets, various anti-corruption campaigns, and meetings with Kenya's Council of Governors (CoG). Furthermore, under the 2010 Constitution, the Ministry of Interior & Coordination of National Government, in the President's, helps in detection, investigation and prevention of corruption and economic crimes. The Ministry has roots in the counties through County Commissioners.

The President supports efforts to tackle corruption in Kenya. He or she also sets the ethical and cultural tone required to combat corruption both in the public and private sector. The President mainstreams anti-corruption in the country through targeted and repeated pronouncements and prioritization of government policy.

In addition, the President's remarks can inspire public confidence in existing anti-corruption institutions or act as a catalyst for necessary institutional reforms. The President can discourage abuse of office and foster rectitude and appropriate whistle blowing in the public sector through leading by example. The President must demonstrate that is he subject to the Constitution and the rule of law.

b) Compliance oversight and standard setting

Several regulatory authorities have been set up to oversight institutions that deal with corruption. These institutions have evolved overtime and strengthened the governance structures. For example, the State Corporations Advisory Committee (SCAC) established in 1984 is responsible for reviewing and investigating the affairs of state corporations. It then makes recommendations to the President as it may deem necessary. Where necessary, SCAC may further advise on the appointment, removal or transfer of public officers and state corporations. It also advices on the secondment of officers to state corporations, the terms and conditions of any appointment, removal, transfer or secondment.

SCAC's role in tackling corruption has been significant. More specifically, SCAC chaired the Presidential Taskforce on Parastatal Reforms in Kenya which. The taskforce was given the responsibility to interrogate the policies on the management and governance of Kenya's parastatals' (Republic of Kenya, 2013). The report by the taskforce revealed that weak governance was the main cause of loss of resources and wastage in public expenditure. It then recommended…raise the public value-for-money derived from government owned enterprises.

The report further recommended professionalization, and enhancement of good corporate governance. More recently, in collaboration with the PSC, SCAC issued Kenya's Mwongozo Code of Governance for State Corporations. The Code provides guidance to State Corporations on the constitution and conduct of Board of Directors; Transparency and Disclosure; Accountability, Risk Management and Internal Control; Ethical Leadership and Corporate Citizenship; Shareholder Rights and Obligations; Stakeholder Relationships; Sustainability and Performance Management; and Compliance with Laws and Regulations.

Furthermore, the Office of the Inspectorate of State Corporations (ISC) again established in 1984 like SCAC, is principally charged with conducting investigations into the affairs of state corporations. Its mandate was expanded through Legal Notice No. 93 of 2004 on State Corporations Performance Contracting Regulations. The ISC is required to evaluate the actual results of the operations and management of state corporations on the basis of agreed performance targets; determine the methods for evaluating performance of State Corporations on the basis of specified and agreed targets; submit the results of its evaluation to the Treasury and State Corporation's respective parent Ministry; and offer advice pertaining to the administration of the performance contracts.

Of particular relevance to tackling corruption, the ISC, on account of its original mandate, is involved in advising and reporting to the Government on all matters affecting the effective management of state corporations, including reporting the misapplication of public funds by state corporations to the Auditor-General. Furthermore, the ISC reserves the right to perform special investigations on any state corporation on behalf of the SCAC and the Auditor-General; as well as undertake surcharge action against persons found to have incurred or authorized the irregular expenditure of a state corporation's funds, or through negligence or misconduct caused a loss of funds to the state corporation. Similarly, following the expansion of its mandate, the contribution of ISC in combating corruption in Kenya includes the development of State Corporation evaluation criteria; and ensuring state corporations implement sound management principles reflective of accountability and transparency.

To fulfil its functions, ISC liaises with SCAC, the Office of the Controller of Budget and the Auditor-General. On the request of any of the bodies, ISC can commence investigations into the finances of state corporations. ISC also liaises with the National Assembly and the President – to whom the Inspector delivers the results after evaluating state corporations.

ISC engages the Judiciary in the adjudication of hearings on sums due and payable to a State Corporation by offenders. ISC also works in collaboration with the

respective parent ministries or state corporations to examine and determine the adequacy of the performance targets; and negotiate with each state corporation on the implementation of their respective performance targets.

c) Candidate vetting, screening, recruiting and dismissal

Various institutions vet candidates and appointees to State offices and public service. An example is the Public Service Commission (PSC). This was established in 1954 by the colonial administration. PSC today draws its mandate form Article 233 and 234 of the Constitution of Kenya, 2010, and the Public Service Commission Act, 2012.

Broadly-speaking, the task of PSC is to establish and abolish offices in the public service; appointing persons to hold or act in specific public offices, and confirming appointments thereto; exercising disciplinary control over and removing persons holding or acting in those offices; developing human resources in the public service; and hearing and determining disputes and appeals on recruitment outcomes by the County Public Service Boards. The objective is to ensure that the public service is efficient and effective.

PSC also has a role to play in combating corruption. Its mandate includes reviewing and making recommendations to the National Government in respect of conditions of service, code of conduct and qualifications of officers in the public service; as well as evaluating and reporting on the extent of compliance with national values and principles of governance in the public sector.

PSC has a dedicated Ethics Unit which supports personnel selection and recruitment. The support includes involvement in the appointment of persons to public offices and exercise of disciplinary control.

The functions of the Ethics Unit include issuing, disseminating and enforcing compliance with Public Officer Code of Conduct and Ethics. This helps promote national values and principles in the public service. The unit is also responsible for the issuance of administrative procedures and guidelines for the Declaration of Income, Assets and Liabilities in 2009; and of a Specific Code of Conduct and Ethics for Public Officers in 2003.

PSC is also involved in monitoring, investigating and evaluating the organization, administration and personnel practices in the public service; exercising disciplinary control over and removing persons holding or acting in those offices; advising and making recommendations to the National Government on conditions of service, Code of Conduct and qualifications of public officers; evaluating and reporting on the extent of compliance in the public sector with national values and principles of governance; enforcing oversight of Public Service Code of Conduct and Ethics; as well as recommending persons for appointment as Principal Secretaries (PSs) and hearing of petitions for the removal of the DPP; and managing of financial declarations of some categories of public officers under Public Officer Ethics Act, 2003.

To fulfil its mandate, PSC benefits from institutional linkages in the public sector such as Human Resource Management (HRM). However, the mandate of PSC does not extend to matters concerning State offices; (senior) diplomatic representatives; offices in service of counties (which are principally facilitated by County Public Service Boards); and offices subject to the oversight of the Parliamentary Service Commission, JSC, TSC and NPSC.

PSC works in tandem with the Presidency and Parliament. PSC reports to both institutions the extent to which the national values and principles are complied with in the public sector; as well as regarding the selection and nomination of candidates to specified public sector offices for approval, including the members appointed to EACC and other anti-corruption agencies. As aforementioned, PSC liaises with EACC during the recruitment of EACC staff and in respect of undertaking and collating Public Service Wealth Declaration exercises.

d) Auditing, accounting, monitoring and evaluation

The objectives of the Office of the Auditor-General is to provide assurance about the effectiveness of internal controls, risk management and overall governance at national and county government; and satisfaction as to the use of public funds for intended, authorized and legitimate purposes. It achieves these objectives through: undertaking audit activities in state organs and public entities to confirm the legality and efficacy of public expenditures; confirming that all reasonable precautions have been taken to safeguard and ensure legal compliance in the collection of revenue and the acquisition, receipt, issuance and proper use of assets and liabilities; issuing audit reports specific to the audited public institutions. In keeping with legal requirements, the Office of the Auditor-General is also audited by an external auditor. Such an auditor is a professional qualified accountant appointed by the National Assembly.

The Office of the Auditor-General is the supreme auditing institution in Kenya. Therefore, it engages with all public institutions that are audited such as State Corporations. Each institution is supposed to prepare and submit for audit by the Controller and Auditor-General accounts for the pertinent financial year.

The Auditor-General also audits the National Government; county governments; all funds and authorities of the national and county governments; all courts, commissions and independent offices; National and County Assemblies; the Senate; political parties funded by the public; and any other entity that legislation requires the Auditor-General to audit. The Office of the Auditor-General also audits all public debt.

The Auditor-General is nominated by the President. The person nominated for the post must be a professional qualified accountant. Once nominated, the name is presented to the National Assembly for approval and appointment. The person serves a single 8-year term, as prescribed on Article 251 of the 2010 Constitution. The law guarantees the holder security of tenure.

The National Assembly and County Assemblies receive copies of relevant audit reports through the National Treasury. They then debate and consider the action to take. Besides tabling the audit reports before parliament, the National Treasury prepares annual accounts. The accounts are supposed to show fully the financial position of the government at the end of the year. The accounts are also submitted to the Auditor-General and Controller of Budget.

The Office of the Auditor-General conducts its audits across all 47 County Governments and County Assemblies in Kenya. The aim is to comply with a legal requirement that there should be reasonable access to its services across the country. The Commission deploy officers to the counties, from its office in Nairobi.

Through its audits, the Office of the Auditor-General is equipped to and has indeed detected instances indicative of abuses of power, misappropriation of assets, procurement malpractices, general wastage, nepotism, among other forms of corruption. The probability of detection is likely to deter corruption-related offences; thereby increasing the capacity of the Office of the Auditor-General to prevent corruption. In addition, findings about corruption-related offences by the Office of the Auditor-General, form the basis of making decisions such as further investigations, administrative action or criminal prosecution.

The Office of the Controller of Budget (OCOB) was established in 2010, in accordance with the Constitution. One of its main functions is to ensure fiscal prudence and efficiency in expenditure of public funds. OCOB authorises withdrawal of money from the various government funds. For example, it grants authority to draw money from Equalization, Consolidated and County Revenue funds. His or her other duties are monitoring, evaluating, reporting and making recommendations to the national and county governments on measures to improve budget implementation; periodically reviewing the formats of requisitions and approvals of withdrawals of funds. In addition, it enforces budgetary ceilings set by Parliament on national and county government expenditure; and submits annual and periodic reports on budget implementation to the Executive, Parliament and the County Assemblies.

As successor to the defunct Public Complaints Standing Committee (PCSC), CAJ derives its mandate from Article 59(4) of the Constitution of Kenya, 2010. In carrying out its mandate, the Commission investigates allegations of maladministration in the public sector. This includes assessing the conduct of State affairs, or any act or omission by any State organ, State or public officer at either level of government that is alleged or suspected to have practised prejudice or have been involved in improprieties.

This requires that the CAJ investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector; inquiries into allegations of delays, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service; and make recommendations to public entities for action, as to the appropriate compensation or other remedies. The CAJ assists public institutions in establishing and building complaints handling capacities. It provides advice on the improvement of public administration, including review

of legislation, Codes of conduct, processes and procedures; and through public awareness initiatives, promotes policies and administrative procedures on matters relating to administrative justice; and publishes periodic reports on the status of administrative justice in Kenya.

The CAJ is concerned with addressing complaints of maladministration in the public sector. Its role in combating corruption in Kenya cannot be overemphasized. Common manifestations of corruption relate to abuse of office, misappropriation of funds, favouritism in the provision of public services and recruitment. These constitute elements of corruption, as defined under Kenya's anti-corruption legal regime.

The CAJ has an extensive geographic network. It has established regional branch offices in Eldoret, Kisumu, Isiolo, and Mombasa, as well as at several Huduma Centres, in addition to its headquarters in Nairobi. Some of the Huduma Centres are Kakamega, Nyeri, Embu, Kajiado, Nakuru, Eldoret, Kisii, Mombasa, Kisumu, Nairobi's Teleposta Towers.

6.4 Event-centred Strategies

Over the years, Kenya has deployed various strategies in of the fight against corruption. These include reporting and complaints-handling; investigations and apprehension; cross-border collaboration and mutual legal assistance; witness and whistle blower protection; prosecution and instituting proceedings; hearing determinations and sanctioning; asset recovery, management, surcharging and disposal; and restitution and compensation. Several institutions have been set up over time to implement these strategies (see Appendix Table 4). These strategies are discussed below.

a) Reporting and complaint handling

Several reporting institutions have been set up that cover various activities related to handling of money in the economy. For example, Kenya's Financial Reporting Centre (FRC) was established to operationalize the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009, section 21 of the same Act. Apart from combating corruption, FRC, as Kenya's Financial Intelligence Unit (FIU), assists in tracing of Illicit Financial Flows (IFFs) related to corruption.

As part of its broader mandate, FRC assists in the identification of proceeds of crime, combating of money laundering and terrorist financing. In support of efforts to fight corruption, FRC receives, assesses and interprets information on suspicious transactions. It also handles other reports submitted to it by reporting institutions. Moreover, FRC is required to share intelligence reports with the appropriate law enforcement authorities or other supervisory bodies for further handling. It is also supposed to create and maintain a database of all reports of suspicious transactions, related government information and such other materials.

FRC may also compel reporting institutions to produce additional documents or other relevant information.

From a preventative perspective, part of FRC's mandate is ensuring compliance with international standards and best practice. As for anti-money laundering measures, FRC is supposed to inspect and supervise Reporting Institutions to ensure that they comply with AML/CFT reporting obligations as prescribed in POCAMLA; develop AML/CFT regulations and policies to provide guidance and support the implementation of POCAMLA; and to develop AML/CFT training programmes for building the capacity of Reporting Institutions to comply with the relevant regulations.

Through the AML Board, FRC works in tandem with the Principal Secretary, National Treasury; the AG; the Governor of CBK; the Inspector General of the National Police Service (NPS); the Chair of the Kenya Bankers' Association (KBA); the Chief Executive Officer of the Institute of Certified Public Accountants of Kenya (ICPA-K); the Director General of the National Intelligence Service (NIS); the Director-General of the Asset Recovery Agency; and two appointed members from Kenya's private sector.

Furthermore, FRC liaises closely with its sister agencies in sharing and exchanging information related to corruption investigations or offences, under POCAMLA. These include local law enforcement agencies, intelligence agencies and supervisory bodies who receive reports about suspicious activities from FRC for further handling. Examples of these local law enforcement and intelligence agencies include NPS, EACC and the National Intelligence Service. The aforementioned local supervisory bodies which FRC shares its reports with include, the Assets Recovery Agency, Betting and Licensing Control Board, Capital Markets Authority (CMA), CBK, Estate Agents Registration Board, Institute of Certified Public Accountants of Kenya (ICPA-K), Insurance Regulatory Authority (IRA), Non-Governmental Organizations Coordination Board (NGO-CB) and Retirement Benefits Authority (RBA).

FRC has signed Memoranda of Understanding (MoUs), on matters of mutual interest, with the CBK, Insurance Regulatory Authority, CMA and EACC. FRC also benefits from relationships with foreign agencies such as foreign law enforcement agencies, international supervisory bodies, to whom FRC offers similar assistance on the basis of mutual agreement and principles of reciprocity; and relevant inter-governmental bodies, such as the Financial Action Task Force (FATF) from whom FRC obtains global FATF; recommendations which are recognized as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.

Credit Reference Bureaus (CRBs) are another key element in fighting corruption in Kenya. Kenya has three licensed CRBs; Metropol Credit Reference Bureau Limited, Credit Reference Bureau Africa Limited (TransUnion Africa) and Creditinfo Credit Reference Bureau Limited.[9] These CRBs are private entities, but

9 https://www.centralbank.go.ke/wp-content/uploads/2016/06/Directory-of-Licenced-Credit-Reference-Bureaus.pdf

they are regulated by the CBK, pursuant to the provisions of the Banking Act (CAP 488); Microfinance Act, 2006; Legal Notice n.5; and the Credit Reference Bureau Regulations, 2013.

Commercially, CRBs provide credit information to banks and other money lending institutions. Examples include, the companies' registrar, registrar of business entities; business and trade licensing authorities; land registries; tax authorities; county government entities; court registries in respect of information on judgments on debts, insolvency or bankruptcy proceedings or winding up orders; registrar of names; registrar of persons and customers seeking credit reference checks.

Overall, the Survey on Efficacy of Anti-Corruption Strategies in Kenya revealed that majority of the respondents (>60%) are mostly likely to report corruption cases to EACC, the DCI and the DPP. Only 36% are likely to report to a financial reporting centre (see Figure 6.1).

Table 6.1: Preference in Reporting Corruption Issues

	Most Likely	Least Likely	Not at All	Not sure
1. Ethics and Anti-Corruption Commission	80%	8%	8%	4%
2. DCI	76%	20%	4%	0%
3. Office of the Directorate of Public Prosecutions	64%	28%	4%	4%
4. The media	52%	24%	24%	0%
5. Commission on Administrative Justice	52%	16%	24%	8%
6. NPS	40%	40%	20%	0%
7. Anti-Counterfeit Agency	40%	32%	24%	4%
8. JSC	36%	28%	24%	12%
9. Financial Reporting Centre	36%	28%	32%	4%
10. Office of the AG	32%	40%	20%	8%

11. Transparency International and Kenya's Advocacy and Legal Advisory Centres	32%	36%	24%	8%
12. Civil Society Organizations	24%	24%	40%	12%
13. Competition Authority of Kenya	20%	36%	32%	12%

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

b) Investigation and apprehension

The office of the DCI was established in 2011 pursuant to Article 247 of the Constitution of Kenya, 2010, and section 28 of the National Police Service Act, 2011.

In Kenya's war against corruption, the DCI is the principal branch of the police responsible for collecting and providing criminal intelligence; detecting and preventing crimes; conducting forensic analyses; coordinating Country Interpol Affairs; and undertaking investigations into serious crimes including homicide, narcotics' crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crimes and cyber-crime, among other violations. In addition to these functions, the DCI supports policing functions that are related to maintenance of law and order, apprehension of suspects, and maintenance of criminal records. The office has a further obligation to implement directions given to the Inspector General by the DPP; and investigate any matter referred to it by the Independent Police Oversight Authority (IPOA).

The DCI is appointed by the President upon recommendation by the National Police Service Commission (NPSC). Also, the President may at any time remove, retire or redeploy the DCI. In Kenya's anti-corruption war, the DCI co-operates with the EACC in the investigation of corruption and economic crimes. The DCI specifically supports the use of intelligence-led policing capabilities and forensic technologies. The DCI remains a national rather than county-level service. It is a branch of the National Police Service. Therefore, the accessibility of its services are seen as a national function, not a county-level function.

c) Cross border collaboration and mutual legal assistance

The enactment of the Extradition (Contiguous and Foreign Countries) Act CAP 76 of 1966, cut out a role for the Ministry of Foreign Affairs (MFA) in tackling, among other things, corruption-related offences such as embezzlement, forgery and fraud, by defined persons. The Act set out the relevant provisions and reciprocal terms

between Kenya and non-Commonwealth countries, in respect of the extradition of persons suspected of involvement in certain crimes.

In this regard, the Ministry of Foreign Affairs was given a role as outlined in several other legal provisions such as the Extradition (Commonwealth Countries) Act Cap 77 and Privileges and Immunities Act Cap 179. Under the Constitution of Kenya, 2010, the Ministry of Foreign Affairs remains accountable to the Office of the President. The Ministry receives its funding from parliamentary allocations.

The Ministry of Foreign Affairs supports Kenya's fight against corruption in line with the aforementioned legal instruments. It coordinates protocol matters for efficient diplomatic engagement on criminal and extradition matters; assists the Office of the AG and Mutual Legal Assistance Central Authority in negotiating and drafting treaties related to extradition of persons suspected of engaging in corruption, and witnesses thereto' over and above the Ministry's broader institutional mandate to oversee Kenya's foreign affairs, foreign policy and international trade. In supporting Kenya's anti-corruption efforts, the MFA works in tandem with the Mutual Legal Assistance Central Authority and the Office of the AG, particularly with respect to negotiating and concluding bilateral treaties and foreign relations related to corruption and the extradition of suspects.

The Mutual Legal Assistance Central Authority (MLACA) was established in 2011 pursuant to the Mutual Legal Assistance Act, 2011. The Authority supports the provision of international mutual legal assistance in criminal matters. This involves identifying and locating persons for evidential purposes; examining witnesses; facilitating the voluntary attendance of witnesses or potential witnesses in a requesting state; effecting a temporary transfer of persons in custody to appear as a witnesses; effecting service of judicial documents; executing searches and seizures; examining objects and sites; facilitating access to relevant documents and records; providing information, evidentiary items and expert evaluations; and facilitating the adducing of remote evidence.

Furthermore, MLACA has the powers to intercept postal services; identify, freeze and trace proceeds of crime; recover and dispose of assets; preserve communications data; interception of telecommunications; conduct covert electronic surveillance; and provide any other type of legal assistance or evidence gathering that is not contrary to Kenyan law.

In executing the above mandate, the Authority transmits and receives requests for legal assistance and executes or arranges for the execution of such requests; assesses the requests for cross-border legal assistance for conformity to the requirements of law and Kenya's international obligations; documents certification and authentication in response to requests for legal assistance; facilitates the orderly and rapid disposition of requests for legal assistance; negotiates, agrees and enforces the conditions as well as ensuring compliance with those conditions; and arranging for or authorizing the transmission of evidentiary material to a requesting state.

The above avenues of mutual legal assistance help in combating corruption and economic crimes in Kenya. The transmission and receipt of relevant legal

assistance in respect of corruption-related allegations and offences is critical in weeding out corruption.

d) Witness and whistle-blower protection

The Witness Protection Agency (WPA) was established in 2011. The Agency is anchored in the Witness Protection Act, Cap 79; the Witness Protection Act, 2006 (Principal Act); and Witness Protection (Amendment) Act, 2010.

The obligations of WPA include providing 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. In furtherance of this goal, the Agency has the power to acquire, store, maintain and control firearms and ammunition and electronic or other necessary equipment to achieve the above objective; and its officers have been conferred with the powers, privileges and immunities of police officers.

The task of the Agency is to establish and maintain a witness protection programme. It is mandated to draw upon the tools of physical and armed protection; relocation; change of identity; or any other measure necessary to ensure the safety of a protected person. It also has the task of determining the criteria for admission to or removal from a witness protection programme. It also determines the nature of protective measures required.

Furthermore, the Agency is 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. Through the Witness Protection Agency, the State provides restitution and compensation to victims of crimes or their families, through a Victims Compensation Fund. The mandate of the Witness Protection Agency extends to providing protection to witnesses in cases related to corruption and economic crimes.

WPA works closely with the Courts. Together, they implement courtroom witness protection measures. The courts also issue the necessary and relevant orders to facilitate the protection of witnesses.

The Chief Justice can appoint a tribunal to decide on the removal of the Director of the WPA. The decision of the tribunal is conveyed to the President for action.

The Agency collaborates with; law enforcement agencies, the ODPP, and legal representatives. It receives reports related to threats on the life of witnesses. Such claims lead to investigations and guiding witnesses on how to apply for protection. Furthermore, the Agency in the course of its work collaborate with the Kenya Police in sourcing and protecting key witnesses.

Other key stakeholders are incorporated in the membership of the WPA Advisory Board. These include the Cabinet Secretary for Interior and Coordination of National Government who serves as the tribunal chairperson; the AG who is the Minister responsible for matters relating to Justice; the Cabinet Secretary for the

National Treasury; the National Intelligence Service; Commissioner of Police; Commissioner of Prisons; Director of Public Prosecutions; and the Chairperson on the Kenya National Commission on Human Rights (KNCHR).

e) Prosecution or institution of proceedings

The Office of the Director of Public Prosecutions (ODPP) was established in 2010, pursuant to Article 157 of the Constitution of Kenya, 2010. The ODPP is the national prosecutorial authority. In this regard, its broad functions include directing that investigations be conducted by an investigative agency; commencing and undertaking any criminal proceedings against any persons before any court; taking over and continuing any criminal proceedings commenced in any court (besides court martials) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and formulating and reviewing policies related to public prosecution.

In addition, the ODPP has the right to lawfully discontinue any criminal proceedings it institutes or takes over at any stage before judgment is delivered. It also prepares reports as required under law; publishes and publicizes the reports; present the reports to Parliament and the President; the authority to execute Mutual Legal Assistance (MLA) requests from other countries and initiatives and prosecute extradition proceedings; and pursuant to Article 157 (9) of the Constitution of Kenya, 2010, the right to delegate prosecutorial powers to other entities, with general or specific instructions, while maintaining a supervisory role in respect to this category of prosecutions.

The role of the ODPP is critical because it directs other agencies involved in investigation of cases related to corruption and economic crimes. The other critical functions include; reviewing recommendations of EACC, prosecuting suspects; prosecuting cases investigated by EACC; to undertake applications, revisions and appeals in appropriate cases, on criminal matters related to corruption and economic crimes; and prepare and submit to the National Assembly, an annual report on actions taken and the status of the prosecution of cases investigated and submitted by EACC. The ODPP's mandate includes tracing, recovery and forfeiture of assets. The Office also builds capacity through jointly conducting training programmes with EACC and other stakeholders. The beneficiaries include investigators and prosecutors dealing with cases of corruption and economic crimes.

The DPP, in the course of his or her work liaises with investigative agencies such as NPS. NPS is required to disclose to the DPP, all material facts and information collected in its investigations to assist in the prosecution or defence of cases. The DPP works together with the Inspector General (IG) of Police. But the DPP can direct the IG to investigate any information or allegation of criminal conduct. The ODPP works closely with the DCI and EACC. Again the DPP can ask the DCI to investigate cases related to corruption and economic crimes.

Since 2012, the ODPP has enjoyed a non-binding bilateral agreement with the EACC. The ODPP-EACC Joint Collaboration has helped improve investigations and prosecution of cases related to corruption and economic crimes; undertake joint training; hold joint forums, and prosecution-guided investigations; develop and implement guidelines for investigation and prosecution.

In its work, the ODPP co-operates with all public officers, State officers or State organs. It also plays a key role in private prosecutions. Any private prosecutorial party must notify the DPP in writing of such prosecution, within thirty days of instituting such proceedings.

The ODPP has a presence in all the 47 counties in Kenya. But its headquarters are in Nairobi. All county level the office of the DPP is headed by a Chief County Prosecutor (CCP). The CCP works with the courts and the investigative agencies to ensure quality prosecution services in their jurisdictions.

As the prosecutor, the ODPP is part of the government's critical response strategy to corruption. The office decides the merits or demerits of investigations on cases and the basis on which they may be taken to court or not. The ODPP translates into legal language the investigations of corruption, and complements the facts obtained by investigative agencies. In this regard, the ODPP acts as a counterweight against the abuse of investigative powers by agencies such as EACC. He or she ensures that each case has a sound legal base before prosecution.

The DPP is a member of Kenya's Multi-Agency Task Force on Corruption. The Taskforce also makes capacity building efforts such as training counsel handling corruption cases; participating in national anti-corruption fora; developing Kenya's draft national policy on anti-corruption; and creating a specialized division to handle anti-corruption cases.

f) Adjudication and sentencing

The court system in Kenya has been in existence since the first court was established in 1890 by the Imperial British East Africa Company. The courts have possessed the mandate to adjudicate over anti-corruption cases since the establishment of anti-corruption offences in 1956.

In 2003, the Judiciary for the first time established special magistrate courts to handle specifically corruption-related offences. Then the Anti-Corruption Courts were established in accordance with the provisions of the Anti-Corruption and Economic Crimes Act, 2003. The decision to establish dedicated anti-corruption courts was in informed in part by the need to establish specialized courts, with expertise to hear and adjudicate over cases of corruption and economic crimes, which are frequently complex in nature. Prior to establishing special magistrate courts, corruption cases were handled generically. It was assumed that lack of expertise in adjudications of corruption cases was contributing to low conviction rates and lengthy duration of cases. Kenya's Judiciary and the court system are principally anchored in the provisions of Article 159 of Kenya's 2010 Constitution

on the Judiciary, as well as its operationalizing statutes found in the Kenya's Judicial Service Act, 2011.

According to the Constitution, the responsibilities of the Judiciary include representation of judicial authority of the Kenyan public; the administration and dispensation of justice; dispute resolution; formulation and implementation of judicial policies; compilation and dissemination of case law and other legal information; management of judicial services and upholding judicial independence and impartiality; facilitating the conduct of judicial processes without discrimination and in deference to the tenets of expedition, fairness, accessibility, justice, gender and social equity. The Judiciary presides over Anti-Corruption Courts and hears and determines corruption and economic crimes cases.

In Kenya, the President appoints the Chief Justice, Deputy Chief Justice and all other judges, in accordance with the recommendations of the JSC. The President also accepts resignations of Judges and on the recommendation of the JSC; appoints an independent tribunal to inquire into a petition for the removal of a judge; and suspends judges pending the conclusion (in case of any) of a tribunal on the removal of a judge. On the other hand, Parliament approves nominees to the positions of Chief Justice and Deputy Chief Justice.

The High Court hears and determines disputes on employment and labour relations, on the environment and use of land. The Judiciary adjudicates on the cases prosecuted by the ODPP. The evidence adduced is collected by Kenya's law enforcement agencies. The Judiciary has since established County Courts to embracing devolution. This has facilitated access to justice, including hearing and determination of corruption-related cases at county level.

g) Asset recovery, management, disposal and surcharging

Kenya has established the Asset Recovery Agency with specific functions set out in the 2009 Act. The functions include conducting investigations to trace assets and proceeds of crime; freezing accounts with money suspected to be proceeds of crime; confiscating proceeds of all crime; realizing properties; and valuing confiscated properties. To aid achievement of these objectives, ARA is empowered to seek prohibition orders against further dealings with a property; seek forfeiture orders of all or some properties to the Government; apply that a court inquire into the benefit derived by a convicted defendant from the offence, other related offences, any criminal activity which the court finds to be sufficiently related to the offence; and exercising administration of the Criminal Assets Recovery Fund.

In the 2017 Amendment Act, ARA's role is further expanded by making it exclusively responsible for the handling of all cases of the recovery of the proceeds of crime or benefits accruing from any predicate offence in money laundering. A news release by the State Law Office in 2016 also indicates the role of the ARA includes provision of training to law enforcement agencies during the investigation and prosecution of cases related to corruption and economic crimes.

The Agency shares information with Kenya's Financial Reporting Centre, also established under POCAMLA, 2009. Both institutions benefit from the intelligence in the advancement of their respective mandates. ARA also shares information with local and overseas law enforcement agencies.

ARA also relates well with the Judiciary; the judiciary is critical in the adjudication of legal and criminal proceeds. Such include the issuance of relevant legal orders, and facilitating inquiries into the determination of benefits a defendant receives as proceeds of crime.

ARA also relates well the AG's office. Of course, ARA was previously fashioned under the AG's office as a semi-autonomous body. Under that paradigm, the AG would appoint the Director General of the Agency; apply that a court inquire into the benefit derived by a convicted defendant from the offence, and other related offences or any criminal activity which the court finds to be sufficiently related to the offence.

Under the Amended Act, the AG in consultation with the Salaries and Remuneration Committee (SRC), approves the hiring of professional and technical staff by the Assets Recovery Agency. The AG also approves any internal regulations made by the ARA leadership team, where such regulations seek to enhance the management, administration and operations of the Agency.

In accordance with the 2017 Act, ARA is also required to produce a report on its activities and operations at the end of a financial year and submit the report to the AG. Therefore, the ARA also has a relation with the President. As a publicly audited institution, under the Public Audit Act, ARA further works together with the Office of the Auditor-General, to ensure that its own mandate is ably executed.

Two key challenges stood out in respect of the Assets Recovery Agency and execution of its mandate. ARA shared the mandate of asset-tracing and recovery with EACC. This overlap in mandates was a risk because it could result in confusion. Most at stake was appropriate accountability structures, duplication of efforts and wastage of resources. However, the challenge was resolved with the amendment to section 54 of the Proceeds of Crime and Anti-money Laundering Act. The subsequent 2017 Act (Amended) now gives all responsibility for handling asset-tracing and recovery to ARA. It is necessary for EACC to fully relinquish this mandate and transfer ongoing cases to ARA for progression.

The second challenge relates to the involvement of ARA in training law enforcement agencies. Most of the officers are trained in investigation and prosecution of cases related to corruption and economic crimes. This should not be a function of ARA. It is an overlap in mandates – a possible cause of conflict in the future. According the Act, both EACC and DPP are deemed as largely responsible for training in investigation and prosecution of corruption and economic crimes.

The National Land Commission (NLA) looks at land issues which is a key asset. Its establishment is anchored in Kenya's National Land Policy, 2009; Article 67 of the Constitution of Kenya, 2010; the National Land Commission Act, 2012; Kenya's Land Act 2012; and Land Registration Acts, also enacted in 2012. More pertinent to the work of addressing corruption, the broader mandate of NLC is initiating

investigations into present or historical land injustices – based on complaints received or on its sua moto, and making recommendations for appropriate redress; summoning witnesses for the purposes of its investigations; and managing all public land on behalf of the national and county governments.

h) Restitution and compensation

Restitution and compensation are two strategies that constitute the continuum of anti-corruption strategies in Kenya. This refers to efforts by institutions to ensure that perpetrators of corruption or specifically mandated institutions attempt to undo the harm occasioned upon victims of corruption. The other is to minimize the rewards from corruption-related behaviour and disincentivising potential perpetrators from engaging in similar corruption-related offences.

In 2015, President Uhuru Kenyatta issued a decree establishing a Multi-Agency Task Team (MATT) on Corruption. He established it largely in response to the finding and recommendations by the 2015 Taskforce mandated to review Kenya's policy, legal and institutional frameworks on anti-corruption. The President exercised direct oversight over the Task Team.

The mandate of the MATT was to enhance coordination and co-operation among key actors in Kenya's Criminal Justice System. And the goal was to enhance the investigation and prosecution of corruption and economic crimes in Kenya.

In addition to its diverse composition, MATT has at its disposal a range of anti-corruption tools. These span across varied spheres such as detection and investigation, strategic planning, domestic and overseas training. It is also empowered to undertake lifestyle audits on persons seeking public or political office. This will augment the Government's goal of vetting public officers

MATT focuses on addressing associated offences and forms of organized crime such as terrorism, trafficking, smuggling, poaching, money-laundering; as well as with dismantling criminal cartels and syndicates. In the course of executing its mandate, MATT liaises closely with the Office of the President; State Law Office and Department of Justice; EACC; ODPP; DCI, including the DCI's Anti-Money Laundering Unit, Anti Banking Fraud Unit and Cybercrime Unit; NIS; CBK; FRC; ARA; and KRA, among other agencies.

MATT is facilitated by EACC to interact with the National Assembly's Powers and Privileges Committee for the purposes of obtaining privileged information from Parliament. MATT is also closely associated is Kenya's Anti-Counterfeit Agency. Since it was established by a presidential decree, MATT reports directly to the President.

6.5 Sustaining the fight on corruption

In prevention of corruption, various activities are undertaken by various institutions (see Appendix Table 4).

i) Civic education

The National Anti-Corruption Campaign Steering Committee (NACCSC) was created by the government to coordinate a country-wide anti-corruption public awareness programme and movement. NACCSC was first established pursuant to Kenya Gazette Notice No. 4124 of 28th May 2004. Its goals were stated as coordinating a country-wide mass movement against corruption, to change cultural attitudes towards corruption, in favour of the exercise of transparency and accountability in the management of public affairs.

Its mandate focuses on changing the attitudes on the broader public, not just public officers. The mandate includes supporting anti-corruption policy making; undertaking mass public education, sensitization and awareness creation campaigns to impart a deeper understanding of corruption; and garnering public support for existing anti-corruption agencies.

NACCSC has established a broad range of partnerships and networks with Non-State Actors (NSAs) and CSOs (CSOs) for its campaign. Information garnered from its campaigns that reveals corruption-related offenses, is shared with the EACC for further action. NACCSC co-operates with the EACC in policy formulation and sharing information.

NACCSC benefits from relations with institutions such as EACC (which holds the position of the committee chair). Others are the Inter-Religious Council of Kenya (IRCK); National Youth Council (NYC); Maendeleo Ya Wanawake organization (MYWO); National Council for Persons with Disability (NCPWDs); Principal Secretaries and Chief Executives of a number of key stakeholder MDAs; and the Solicitor-General who oversees the NACCSC in the dual capacities of Authorized and Accounting Officer.

j) Training or capacity-building

The Kenya School of Government (KSG) was established in 2012 in accordance with the Kenya School of Government Act. Its broader mandate includes: developing and growing public sector leaders; promoting continuous learning in the public service; supporting the establishment of professional networks and think tanks; professional course and curriculum development and delivery; examination and awarding of diplomas to public professional; monitoring, evaluating and communicating the impact of strengthened education and training programmes for national leadership and management; developing linkages and collaborations with institutions of learning, professional organizations, private sector schools of government and other similar institutions across the world; and encouraging greater public awareness of issues related to public sector management, public administration and the role and functions of Government.

The KSG provides professional education programmes that target public officers. Many of the courses cover leadership and integrity. KSG also provides programmes that promote a culture of decency, honesty, hard work, transparency and accountability among public servants. Through these training programmes, KSG

seeks to elicit pride and excellence in the public sector and foster in public officers an appreciation of the purposes, national values and principles of governance as set out in relevant sections of the Constitution, policies, laws and regulations. In a way, this aids in fighting corruption.

In addition to training public officers, the KSG also offers consultancy and research services aimed at informing public policy formulation, promoting national development and fostering compliance with standards of competence and integrity in the public service. The KSG has trained very many senior public officers and managers across the public service.

The Director General of the KSG is appointed by the Chairperson of the Council of the KSG and the CS, Ministry of Public Service, Youth and Gender Affairs. These two offers are nominated and appointed by the President, of course the CS, with approval of the National Assembly (NA).

Several other institutions are represented on the KSG Council. These representatives include; the Principal Secretaries of the Public Service, National Treasury and Higher Education; the Secretary to the Commission for University Education; representatives from the Public Service Commission and the Kenya Institute for Public Policy Research and Analysis (KIPPRA); various private sector leaders and managers; and representatives of universities.

KSG has five campuses; Baringo, Embu, Lower Kabete in Nairobi, Matuga and Mombasa. KSG plans to establish four more campuses to increase its sub-national footprint. These additional campuses will established in Vihiga, Turkana, Isiolo and Kisumu counties. The above efforts are in line with KSG's aim to enhance capacity building in good governance in counties (Okinda, 2018).[10]

k) Promoting social ethics and conduct

The Association of Professional Societies in East Africa (APSEAs) was formed in 1961. Its mandate is to promote the interests of its members regionally and globally. APSEA has previously played and continues to play a vital role in addressing corruption. It does so through reprimanding and punishing misconduct among individuals among its member-societies.

ASPEAs also plays a role in regulating the standards and conduct of members. As a fact, it helps in the development of professional bodies to which individual members are affiliated. In recognition of the crucial role that professionals in Kenya have and continue to occupy as facilitators, bystanders or impeders of corruption, APSEA has sought to actively exercise its influence towards advancing Kenya's ongoing anti-corruption efforts.

In this regard, APSEA has focused on advancing and advocating for the highest professional standards and ethics in public interest. Some of the strategies used are training, roundtables and conferences on professional integrity. The range of tools at APSEAs' disposal to tackle corruption, include regulating the conduct

10 https://www.nation.co.ke/counties/nairobi/KSG-set-to-institute-more-campuses/1954174-4707500-13vpa8r/index.html

of members of professional bodies, prescribing or creating professional Codes of conduct for adoption by member professional bodies; building the capacity of its professional members; engaging in anti-corruption related advocacy and lobbying with political representatives in Kenya; and through its critical role as a participant in high-profile national anti-corruption for a such as the Kenya Leadership Integrity Forum or Kenya Integrity Forum (KIF).

Of particular significance, APSEAs' constituent members and immediate sphere of influence include professional bodies such as the Institute of Certified Public Secretaries of Kenya (ICPS-K), Institution of Surveyors of Kenya (ISK), Insurance Institute of Kenya (IIK), Institute of Quantity Surveyors of Kenya (IQSK), Kenya Chemical Society (KCS), Kenya Society of Physiotherapists (KSP), Kenya Veterinary Association (KVA), Pharmaceutical Society of Kenya (PSK), Society of Radiography in Kenya (SORK), Architectural Association of Kenya (AAK), Association of Consulting Engineers of Kenya (ACEK), Chartered Institute of Arbitrators – Kenya Branch (CIARB), Geological Society of Kenya (GSK), Institute of Certified Investment and Financial Analysts (ICIFA), National Nurses Association of Kenya and the Kenya Institute of Bankers.

APSEA partners with various government ministries, to promote anti-corruption efforts in Kenya. These include MDAs, NLC, EACC, and various NGOs such as the Act Change Transform (ACT), Business Advocacy Fund and the United States Agency for International Development (USAID). APSEA has signed an MoU with EACC and even co-hosted an annual convention on professionalism and integrity.

APSEAs is one of the oldest institutions in East Africa. But its role in anti-corruption initiatives is limited. The Association needs to raise its profile and influence. This will ensure it plays a greater role in far-reaching anti-corruption interventions such as vetting or screening of professionals before deployment in the public sector.

b) Systems re-design and e-Government

Huduma Centres are part of Kenya's Huduma Kenya Programme which was established in 2013. This was part of the Government's efforts to realize the Kenya Vision 2030 development initiative. What it required was efficiency in service delivery. This was to be achieved by co-locating common government services in accessible centres, to improve convenience, quality and efficiency of services to citizen. Huduma Centres offer a single point of contact for acquisition of basic government services such as applications for the acquisition or renewal of identification (ID), social security, and registration documents. In addition to physical centres, the Huduma Kenya Programme also incorporates the use of digital interface to facilitate rendering of basic government services.

A key benefit of the Huduma Kenya Programme is minimizing personal contact between citizens and public officers. Such had previously been flagged as a point of asking and receiving bribes or facilitation fees. The digitization of the delivery of select public services, establishment of centralized physical contact and calling centres and the provision of integrated, secured payment channels all contribute

to the reduction of opportunities for corruption across agencies; both at the national and county government levels.

The result has been an increase in access to government services and citizen satisfaction, as well as in Kenya receiving multiple awards.11 Some of the awards include: Winner of Customer Service Excellence 2016 Award from the Institute of Customer Service Kenya; First Place Winner of the 2015 United Nations Public Service Award on Improving Delivery of Public Services; Winner of the 2015 Gold Award on Innovative Management by the African Association for Public Administration and Management; First Place Winner of the Kenya Customer Excellence Award by the Institute of Customer Service; First Place Winner of the Best Use of ICT in the Public Service by the ICT Association of Kenya; Winner of the Most social corporate award in Soma Awards 2015; First Place Winner of The 2015 Huduma Ombudsman Award-Institution category; and Winner of Customer Service Excellence in Public Sector 2015 Award from the Institute of Customer Service Kenya.

The Kenya Huduma Programme was steered by the President. It was established under the Ministry of Public Service, Youth and Gender Affairs. The Programme and its affiliated Centres have extensive institutional linkages with parent ministries, departments and agencies across government. Examples are the Department of Immigration Services, National Transport and Safety Authority (NTSA); Business Registration Service; KRA, National Police Service (NSP); National Social Security Fund (NSSF); National Health Insurance Fund (NHIF); Higher Education Loans Board HELB); NCIC; Ministry of Health, Kenya Power and Lighting Company; Independent Electoral and Boundaries Commission (IEBC); Retirement Benefits Authority (RBA); Ministry of Education, Science and Technology (MoEST); Women Enterprise Fund (WEF); General Post Office; and the Kenya Accountants Secretaries National Examination Board (KASNEB). Huduma Number is connected with many other government entities. In addition, the Programme has presence in all 47 counties of Kenya.

The Programme has been critical in reducing incidences of corruption. The 52 Centres serve an average of 30,000 customers daily. Over 45 different types of services are offered, raising Ksh. 12 billion in revenues. Ensuring adequate funding of the Centres and timely payments of the contractors is necessary, if Kenya is to maintain its Huduma programme and the associated benefits such as combating corruption.

c) Rewards and remuneration

The Salaries and Remuneration Commission (SRC) was established as an independent constitutional commission under Articles 230 and 249 of the Constitution of Kenya, 2010. Its principal function is to inquire into and advise on the salaries and remuneration to be paid out of public funds. In this regard, the SRC sets and regularly reviews the remuneration and benefits of all State and public officers; advises the national and county governments on the remuneration

11 https://www.hudumakenya.go.ke/awards.html

and benefits of all other public officers.

The goal is to ensure fiscal sustainability of levels of public compensation; attraction and retention of talent in the public sector; recognition and reward of productivity and performance, taking into account commensurate levels of pay in the wider labour market. SRC further seeks to promote transparency and fairness and make recommendations as to the review of pensions payable to holders of public office.

SRC relates with all institutions that require public funding to meet employment costs. Akin to several other constitutional commissions, the President convenes a panel for selecting suitable candidates for appointment to the post of chairperson. The National Assembly approves the chairperson of the Commission.

The SRC works in tandem with the CS, Treasury; the AG; and representatives from the Parliamentary Service Commission; Public Service Commission; JSC; Teachers Service Commission (TSC); NPSC; the Defence Council; the Senate (on behalf of the county governments); Trade Unions; Employers Associations; and from the joint forum of Professional Bodies. The SRC also works in tandem with the Judiciary. The Chief Justice administers oaths of office to the chairperson, members and the SRC secretary.

Low remuneration has long been associated with dissatisfaction by employees, creating the motivation for a corrupt environment. This is evident in countries such as Singapore who have long-since adopted robust remuneration levels in the public sector. It is believed that this is an incentive and deterrent to corruption. SRC represents a key stakeholder in Kenya's ongoing war against corruption. It should address pernicious incentives towards rent-seeking in the public sector, through regular review and adjustment of the remuneration of public officers.

SRC has encountered some challenges on the road to the attainment of its state objectives. Key among them has been the contrast between the government policy of offering competitive salaries and the need to reduce the public wage bill.

In many cases, SRC has proposed rationalization in public salaries, rather than increases. If implemented the proposed reduction of wages is likely to increase incentives for corruption. It will generate strains that may lead to justification of corrupt acts. Even without reducing the pay of public offers, Kenya's fight against corruption is unlikely to succeed. There is need for concerted efforts to ensure better working conditions and rewards to alleviate incentives for illicit enrichment.

d) Anti-corruption advisory

The National Intelligence Service (NIS) was established under Article 242 of the 2010 Constitution. It was previously called the National Security and Intelligence Service. It operates under the National Intelligence Service Act, 2012. The Prevention of Terrorism Act, 2012 and the Security Laws (Amendment) Act, 2014 relate the performance of NIS. The Service is overseen by a National Intelligence Service Council, Parliament and the Intelligence Service Complaints Board.

The responsibilities of the Service include security intelligence and counter-intelligence operations to enhance national security. This consists of intelligence gathering, analysis, transmission and regulation among relevant State agencies; the detection and identification of existing and potential threats to national security; safeguarding and promoting national security and national interests within and outside Kenya; performing protective and preventive security functions within State departments, agencies, facilities and diplomatic missions; safeguarding information systems and processes within State departments or agencies; commissioning research relevant to the protection and promotion of national security; obtaining intelligence regarding the activities, capabilities and intentions of foreign people or organizations; advising the President and Government of any threat or potential threat to national security; making policy recommendations to the President, National Security Council and responsible Cabinet Secretary concerning security intelligence; and Advising county governments on appropriate security and intelligence matters.

NIS has the capacity to collect, assess and share intelligence at the request of any State department or organ, agency or public entity, including Kenya's anti-corruption agencies. Furthermore, NIS provides confidential security reports on persons: seeking to hold positions requiring vetting; those seeking to be registered as citizens of Kenya; or foreign institutions seeking authorization to undertake any activity in the Republic which may have a bearing on national security.

The Service works in tandem with law enforcement agencies. It assists them in the detection and prevention of serious crimes and other threats to national security, such as corruption. More specifically, this includes the periodic intelligence sharing between NIS and EACC. The two organs share information on areas of strategic interest. NIS provides technical and tactical support to EACC investigation teams.

As described earlier, the Service submits to the President reports on, among other things, matters related to corruption. The Service liaises closely with intelligence or security services, agencies or other authorities in other countries and provides material support, advice and assistance to domestic State offices, State departments, County governments and public entities relevant intelligence matters.

The role of the Service in gathering intelligence related to corruption is vital in Kenya's overall anti-corruption efforts. But there is a perception that NIS lacks accountability. Many people believe it operates with minimal oversight. The result is abuse of its powers. A 2016 report by Privacy International cites this perceived lack of accountability and its resultant impact on generating perceptions regarding the complicity of the law enforcement agencies in perpetuating rather than thwarting corruption.[12]

12 https://privacyinternational.org/sites/default/files/2017-10/track_capture_final.pdf

e) Anti-corruption advocacy

The Civil Society Organizations (CSOs) in Kenya are another key actor in the advancement of Kenya's anti-corruption agenda. As a collective, the CSOs are governed by the Societies Act (Cap 108) and the Non-Governmental Organizations Coordination Act, 1990. Among these CSOs are NGOs regulated by the NGO-Coordination Board, as well as organizations such as religious institutions which although officially unregulated, may be voluntary members of regulatory umbrella bodies[13] or opt to self-regulate as individual churches.[14]

These CSOs are as diverse in mandate and functions, as they are numerous. To assess their role in combating corruption in Kenya, we have to identify their functions. CSOs play a role in supporting the government's National Anti-Corruption Plan (NACP) and proposed Kenya Integrity Plan (KIP) as non-state actors. Multi-lateral and bilateral partners such as the World Bank, UNODC, GIZ, United Nations Development Programme (UNDP), United States Agency for International Development (USAID) and the Department for International Development (DfID) have been involved in funding anti-corruption initiatives and providing technical assistance (both through training, equipment or consultancy services) related to prevention; detection and surveillance; evidence gathering and investigation; prosecution; punishment; control; asset recovery; witness and victim protection; international regulatory capacity-building and benchmarking; linguistic skills; strategic policy planning and development; preparation of mutual legal assistance; monitoring and evaluation of interventions and institutions; public service management; public financial management; public and private procurement. These services have been helpful both in fighting corruption and economic crimes.

The Government of Kenya invites all non-state actors, including the civil society organizations in Kenya, to contribute to Kenya's anti-corruption efforts through public participation under the government's Governance, Justice, Law and Order Sector (GJLOS) reform programme. In addition to this point of contact, CSOs have institutional linkages with various government ministries, departments and agencies tackling corruption. These include EACC; the Presidency; Ministry of Interior and Coordination of National Government; Ministry of Public Service, Youth and Gender Affairs and its associated Huduma Kenya Programme and E-Citizen Govt Services; the Commission of Administrative Justice; the Directorate of Immigration Services; KRA; Kenya's Vision 2030 Secretariat; the Judiciary; ODPP; and the Public Procurement Regulatory Authority (PPRA). Both civil society organizations and non-state actors support county-level anti-corruption efforts on a discretionary basis, in line with their strategic objectives and those of the counties assisted.

A key challenge facing CSOs fighting corruption in Kenya relates to perceptions regarding their complicity in perpetuating different forms of corruption.

13 National Council of Churches of Kenya (NCCK), Supreme Council of Kenya Muslims, and the Hindu Council of Kenya.

14 http://erepository.uonbi.ac.ke/bitstream/handle/11295/98235/Odiemo_The%20Debate%20for%20and%20Against%20State%20Regulation%20of%20Churches%20in%20Kenya.pdf?sequence=1&isAllowed=y

Allegations of financial impropriety and corruption remain rife in organisations such as churches. This in part contributed to the proposal by the government to enact laws to regulate church activities.

In respect of donor agencies, it is widely perceived that donor funds are corruptly misappropriated and misused by recipients for private gain; promoting the need for donor institutions to adopt stronger due diligence measures prior to the provision of financing, as well as conduct more robust monitoring, evaluation and oversight of expenditures following the disbursement of funds to recipients.

f) Evidence-based research

The Kenya Institute of Public Policy Research and Analysis (KIPPRA) was established in May 1997, but started its operations two in June 1999. In 2007 KIPPRA's establishment was anchored in law when the President assented to the Kenya Institute for Public Policy Research and Analysis Act, 2006. The key mandate of KIPPRA is to build capacity in public policy research and analysis. The basic goal is to support the Government in the process of policy formulation and implementation; and undertaking independent and objective policy research and analysis covering macroeconomic, human resource development, social welfare, environmental, agricultural and rural development, trade and industry, public and private finance, monetary and microeconomic issues on behalf of Government and clients in the public and private sectors; and promoting policy discussion through the organization of symposia, conferences, workshops and other meetings. The Institute is also mandated specifically to undertake public policy research pertaining to governance and its implications to development.

On account of its work pertaining to governance and its implications, KIPPRA is concerned, among other things, with carrying out domestic and foreign policy-related research and analysis on devolution, legal and constitutional reform, public sector reform, economic and corporate governance, land reforms, conflict management and security. Driving this research are the Institute's objectives to strengthen the rule of law, land management, anti-corruption efforts, security and public and corporate governance mechanisms in Kenya.

KIPPRA enjoys extensive institutional linkages because of its critical mandate in advancing robust policy research and analysis. KIPPRA partners closely with government ministries, departments and agencies at both national and county levels, as well as political institutions, international development partners and sector membership organizations in promoting evidence-based policymaking in Kenya. In January 2019, KIPPRA continued its engagements at the county level by partnering with the Kenya County Assemblies Forum (CAF) to launch county-directed capacity building programmes. The programmes focus on an Creating Enabling Environment for the Private Sector (CEEP) and understanding the Public Making Process (PPMP) in Kenya.

KIPPRA plays a distinct role in Kenya's anti-corruption plan. It is the sole government-affiliated institution exclusively dedicated to enhancing public policy formulation and implementation through research and analysis. The

Government's growing emphasis is on promoting good governance and tackling corruption. These are key policy levers for realizing development in Kenya, as indicated in the Kenya Vision 2030 strategic development plan. Government support for KIPPRA is critical to the execution of its mandate.

The work done by KIPPRA can be enhanced through collaboration with other key players such as EACC, ODPP and the Judiciary. These organs have critical information and are key informants.

6.6 Institutional Strengths, Weaknesses, Opportunities and Threats

To qualitatively assess the adequacy of Kenya's institutional framework to tackle corruption, the study did a SWOT analysis on the capacity of the institutions to carry out their mandates related to anti-corruption initiatives.

a) Present and emerging institutional strengths and opportunities

Notwithstanding the varied challenges which require addressing in order to further improve Kenya' institutional framework addressing corruption, an even-handed analysis requires equal identification of existing and emergent institutional opportunities that stand to aid the realization of Kenya's anti-corruption agenda.

The following significant opportunities can enhance the effectiveness of Kenya's institutional framework to address corruption:

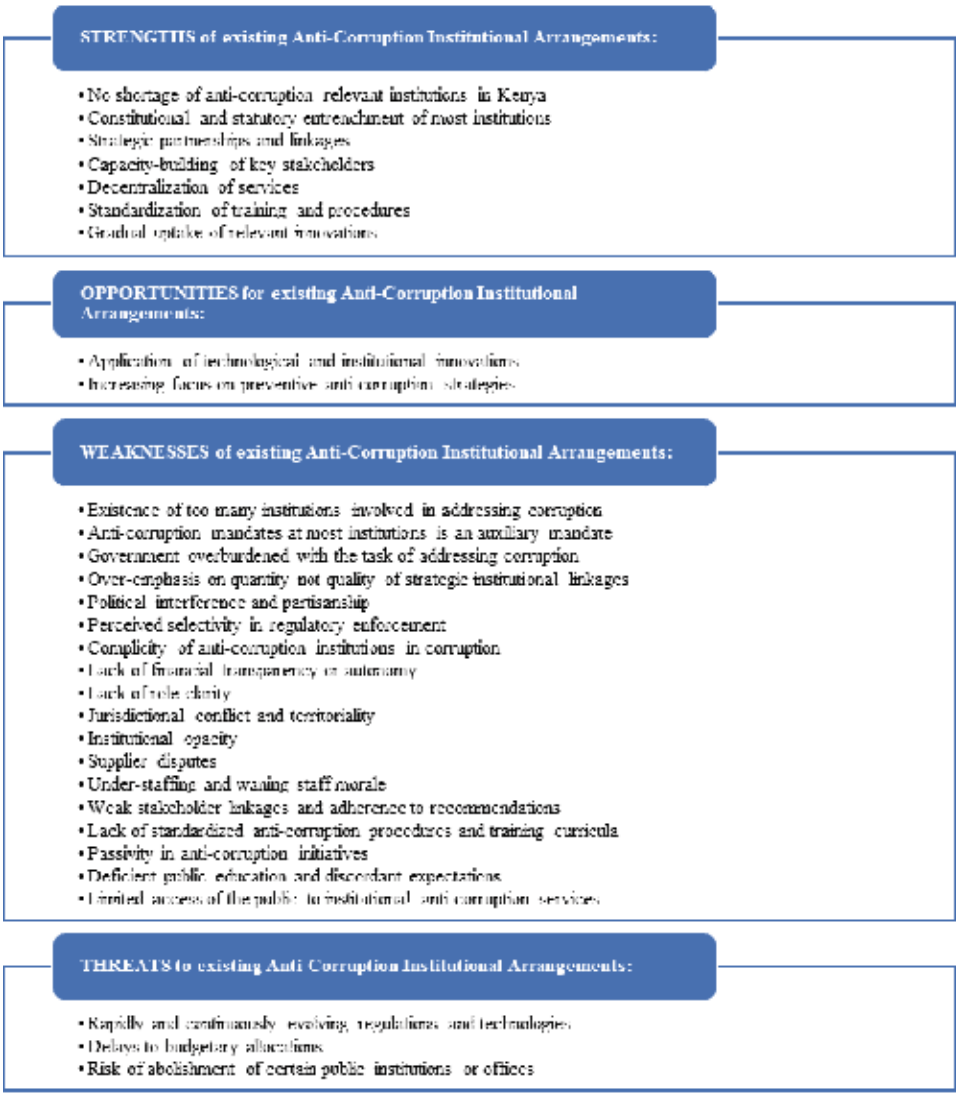
1. ***Uptake of innovations***: Adoption of relevant technologies and innovations by relevant anti-corruption institutions in Kenya. Our analysis points to significant gains made at certain institutions owing to the adoption of new innovations, such as the CMA, KRA, Ministry of Interior and Coordination of National Government and the use by several public complaints agencies of a shared platform (Integrated Public Complaints Referral Mechanism) to, *inter alia*, improve efficiency in reporting, sharing and responding to anti-corruption complaints.
2. ***Constitutional and statutory entrenchment***: The anchoring in statutory law and constitutionally of several institutions relevant to Kenya's anti-corruption efforts continues to be a trend that will greatly benefit the task of fighting corruption, by pre-empting and prevaricating existential legal challenges, as well as entrenching institutional independence. Examples of such institutions are the Office of the Auditor-General, the Office of the Controller of Budget and the Commission on Administrative justice.
3. ***Strategic partnerships and linkages***: The role of strategic partnerships and linkages between key institutions towards strengthening Kenya's corruption response cannot be overstated. Linkages formed through the establishment of an MoU between ODPP and EACC; partnerships between the CAJ and specific Huduma Centres; through multi-sectoral fora such the Kenya Leadership and Integrity Forum; and inter-agency implementation

groups such as the Multi-Agency Task Team on Corruption yield the prospect of overcoming the convoluted layers of bureaucracy that have often beleaguered corruption-fighting in Kenya.

4. ***Capacity-building of key stakeholders***: Along with the aforementioned opportunities are gains to be realized through continued capacity building of anti-corruption personnel, in particular, training targeted towards corruption investigators, prosecutors and researchers, as is currently being undertaken jointly between the ODPP and EACC. The aforementioned collaboration in training may also be partly responsible for rising rates of concurrence (91%) between prosecuting (ODPP) and investigating (EACC) institutions regarding recommendations for prosecution.
5. ***Standardization of training and procedures***: While capacity building remains crucial to fortifying Kenya's institutional framework to address corruption, equally germane to this object is the prospect of standardizing key elements of the institutional training provided and procedures undertaken, so as to ensure fluency between institutions in matters related to addressing corruption.
6. ***Decentralization of services***: Of particular importance is the prospect of leveraging Kenya's decentralization efforts to boost access to key anti-corruption services. Currently, the Office of the Director of Public Prosecutions has been successful in establishing offices in all 47 counties in Kenya, thereby upholding a key constitutional tenet of the decentralization of government in Kenya.

Figure 6.2: Results of the SWOT analysis of Kenya's overarching anti-corruption regime

g) Present and emerging institutional challenges and threats



From the analysis of the 64 key institutions critical to Kenya's efforts to tackle domestic corruption, we found an equally substantive set of residual impediments to, and emergent opportunities for, the progressive realization of their respective anti-corruption mandates. These challenges include:

1. ***Political interference and partisanship***: Several anti-corruption relevant institutions are perceived to be encumbered by political interference

and partisanship. This refers to institutions such as EACC which has consistently been threatened with dissolution by the National Assembly and experienced high turnover among its commissioners. Also alleged is political partisanship by the AG as a head of the State Law Office & Department of Justice; manipulation of agencies such as the Witness Protection Agency; and subjectivity in the conduct of corruption-related investigations and prosecutions by past and existing institutions such as the Kenya Police; CBK, DCI, and Multi-Agency Task Team on Corruption. The result of any such interference is the enfeeblement of the mandated institutions.

2. ***Perceived selectivity in regulatory enforcement***: Selectivity in the enforcement of regulations represents another challenge to anti-corruption efforts in Kenya. In the past, institutions such the Kenya Anti-Corruption Authority (KACA) and Kenya Revenues Authority (KRA) have been accused of differential treatment in their handling of non-compliance, respectively.

3. ***Complicity in corruption***: That still other institutions face allegations of complicity in corruption through perpetrating, purveying and/or facilitating corruption, as well as acting with impunity. Among those invariably cited as complicit include the National and County Assemblies; National Police Service; Kenya Defence Forces; Judiciary; National Land Commission; Ministry of Education, Science and Technology; as well as various Civil Society Organizations (including development partners, donor recipients and religious institutions). Several of these allegations have culminated in legal actions taken against the senior leadership of such institutions.

4. ***Inadequate or delayed funding***: Insufficient and delayed provision of funds owing among other things to the Government's attempts at fiscal consolidation compromises the capacity of several institutions to realize their mandates including institutions such as the Kenya Law Reform Commission; National Treasury; KRA; Office of the Auditor-General; Commission on Revenue Allocation; and Independent Electoral and Boundaries Commission. When asked on the adequacy of their institution's budget allocation for anti-corruption programmes during the Survey on Efficacy of Anti-Corruption Strategies in Kenya, 64% of the respondents affirmed that there is budget allocation in their institution for Anti-Corruption programmes and activities while a comparatively smaller proportion (36%) reported 'no budget' for such activities. Out of those who reported an existing budget in their organization, the survey sought to know how adequate it was; 56% of them were of the opinion that the budget is 'adequate' (somewhat adequate, 12.5%, adequate, 31.3%, and very adequate, 12.5%). In contrast, 44% of the respondents reported that budget is 'inadequate' (very inadequate, 12.5%, and Inadequate 31.3%) for executing anti-corruption programmes and activities in their organization.

5. ***Risk of abolishment***: Certain key institutions remain susceptible to abolishment owing to the founding of such institutions on weak legal bases (e.g. mutable executive orders) rather than on the surer footing of parliamentary legislation. These include the National Anti-Corruption Campaign Steering

Committee; Department of Ethics and Governance; State Corporations Advisory Council; and Inspectorate of State Corporations.

6. ***Lack of role clarity***: Another major challenge identified concerns the lack of clarity in the law regarding the corruption-related mandate of certain institutions. Examples include the corruption-relevant mandates of the NPS and Kenya Defence Forces (KDF) which require both institutions to engage in corruption prevention, although the law remains ambiguous as to whether the prevention concerns corruption within or external to the respective institutions.
7. ***Jurisdictional conflict and territoriality***: Another key impediment to Kenya's anti-corruption efforts concerns the emergence of conflicts between relevant institutions, particularly where instances of overlaps in their mandates arise. More recently, analogous territorial conflicts have been observed between the Competition Authority and the Communication Authority of Kenya; and on matters regarding extradition of corruption suspects, between the Office of Director of Public Prosecutions and State Law Office; while institutions such as the Assets Recovery Agency and Ethics and Anti-Corruption Commission may wind up in conflict over overlapping statutory mandates associated with asset recovery.
8. ***Institutional opacity***: The perceived absence of transparency associated with institutions like the National Intelligence Service, and Multi-Agency Task Team stands in contradistinction to anti-corruption tenets such as transparency and accountability.
9. ***Rapidly evolving regulations and technologies***: The rapid pace of regulatory changes and technological advancements presents an additional challenge to institutions seeking to address corruption in Kenya, both in additional costs in capacity-building and the acquisition of counteractive technologies. This challenge is particularly pronounced for institutions such as EACC, Office of the Director of Public Prosecutions, Anti-Doping Agency of Kenya and Financial Action Task Force.
10. ***ICT-related challenges***: Closely related to evolving technologies are operational challenges facing anti-corruption institutions; challenges which include the lapses in security or operability, irregularities I the procurement of sourced technologies and discontinuation of ICT services or platforms owing to non-payment or delayed payment of technology service-providers
11. ***Under-staffing and waning staff morale***: Both in the past and currently, inadequate staffing and low staff morale have posed challenges to institutional efforts to address corruption in Kenya. Within regard to the adjudication of cases, the Judiciary through its special magistrates courts almost exclusively bears the burden of hearing and determining corruption cases; and undertaking for which the Judiciary seemingly lacks adequate personnel and which likely contributes to delays in the administration of justice. Still within the criminal justice system, a report by the ODPP indicates the challenges the Office faces in retaining prosecutors who otherwise stand

to receive better compensation in private legal practice. Inaction by senior decision-makers towards on-going corruption investigations has also been associated with waning staff morale and mass departures of employees in anti-corruption agencies, as witnessed in respect of the former Department of Ethics and Governance in Kenya.

12. ***Weak stakeholder linkages and non-compliance with oversight recommendations***: While many anti-corruption institutions are concerned with the provision of interventional recommendations, institutions such as the Office of the Auditor-General, Ethics and Anti-Corruption Commission and various Civil Society Organizations appear powerless to enforce and monitor the adoption of such anti-corruption recommendations. This impediment is closely associated with difficulties by institutions such as the Office of the Controller of Budget to solicit the compliance and support of its stakeholders. Reports also suggest that non-compliance with recommendations derives from, among other things, weak communication channels between anti-corruption institutions and their target institutions or stakeholders.

13. ***Unstandardized anti-corruption procedures and training curricula***: Anti-corruption institutions suffer from a lack of common terminology, procedures and training curricula to facilitate fluency and stronger collaboration between organizations. This is evident in inconsistencies in credit reference checks, among other services.

14. ***Passivity in anti-corruption initiatives***: Concerning some institutions, it may be argued that their limited involvement in addressing corruption makes inadequate use of their mandate and relational capital for doing so. This was a particularly salient challenge noted among professional associations and bodies which while having ethical requirements of their members, have seemed reticent in enforcing those requirements and discouraging corruption among their respective members.

15. ***Deficient public education and discordant expectations***: Institutions such as the Presidency have been subjected to public reproach over perceived passivity in respect of corruption. This nevertheless points to inadequacies in public education regarding the precise powers and responsibilities of the presidency in relation to addressing instances of corruption. This has the additional potential to divert the presidency from its own respective anti-corruption mandate and encroach upon the jurisdictions of other key institutions relevant to Kenya's anti-corruption agenda.

16. ***Limited access to institutional anti-corruption services***: Contrary to the spirit of Kenya's current Constitution, the findings of this institutional analysis reveal that the vast majority of anti-corruption relevant institutions are located in Nairobi and lack a sufficient physical presence in the counties. Absent of geographic decentralization, many citizens risk being deprived of essential anti-corruption services.

This is complemented by results from the Survey on Efficacy of Anti-Corruption Strategies in Kenya. According to the Survey results, the major constraints that

organizations face in fighting corruption as reported by majority of the respondents (>70%) include; inadequate budget, participation by staff in corrupt activities, inadequate staff establishment and understaffing, political interference and partisanship, ICT-related challenges, and weak stakeholder linkages as shown in the table below. Notably, inadequate budget and participation by staff in corrupt activities were the major constraints as reported by 79% of the respondents; this is informative to future interventions by relevant anti-corruption institutions in tackling the corruption through specifically focusing on major constraints as highlighted from findings of this survey.

Table 6.2: Constraint organizations faces in fighting corruption

Constraint	Percent
1. Inadequate budget	79
2. Participation by staff in corrupt activities	79
3. Inadequate staff establishment and understaffing	75
4. Political interference and partisanship	71
5. ICT-related challenges	71
6. Weak stakeholder linkages	71
7. Participation by management in corrupt activities	67
8. Lack of clarity regarding the corruption-related mandate	67
9. Passivity in anti-corruption initiatives	67
10. Deficient public education and discordant expectations regarding the powers and responsibilities of anti-corruption institutions	67
11. Insufficient capacity building/training of technical staff	63
12. Insufficient technical expertise on corruption	63
13. Inadequate technology	63
14. Undue influence or coercion	63
15. Apathy	63
16. Inadequate consultation with other organizations	63
17. Complicity in corruption	63
18. Non-compliance with oversight recommendations	63
19. Unclear channels for interagency collaboration and communication	58
20. Risk of abolishment	58
21. Inconsistent legislation establishing the institutions	58
22. Jurisdictional conflict and territoriality	58
23. Weak communication channels between anti-corruption institutions and their target institutions or stakeholders	58
24. Waning staff morale	54
25. Lack of awareness on anti-corruption laws	54

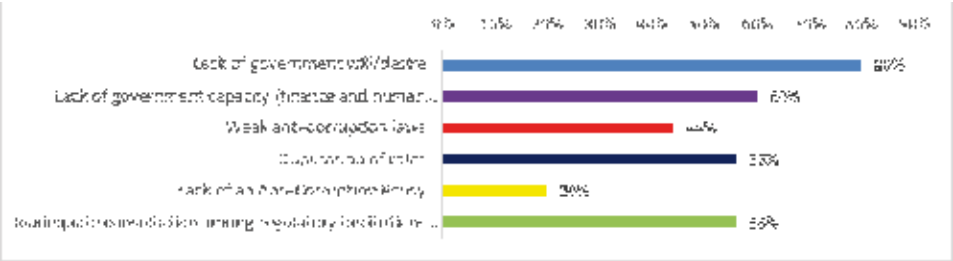
26. Lack of standardized anti-corruption procedures and training curricula	54
27. Inadequate internal sensitization on anti-corruption laws	50
28. Limited access to institutional anti-corruption services	50
29. Lack of a sufficient physical presence in the counties	50
30. Rapidly evolving regulations and technologies	42

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

Government will was perceived as the major challenge in the implementation of anti-corruption initiatives as reported by a significant proportion of the respondents (80%). A comparatively smaller proportion reported Lack of government capacity (finance and human resources), Duplication of roles, and Inadequate consultation among regulatory institutions and anti-corruption institutions representing 60%, 56% and 56% of the respondents respectively. Notably, only a small proportion of the respondents cited lack of anti-corruption policies (20%) and weak anti-corruption laws (44%); this was indicative of the perception of the respondents in that, there exists proper anti-corruption laws and policies however, implementation of them is among the challenges.

Figure 6.3: Challenges in the implementation of Anti-Corruption initiatives

Source: KIPPRA survey on efficacy of anti-corruption institutions in Kenya

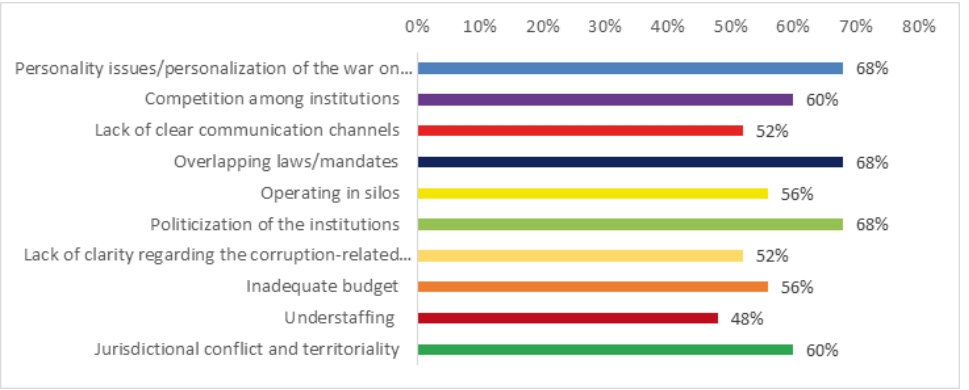


(January-March 2020)

The survey further sought to know from the respondents on any issues that hinder co-operation and coordination between Anti-Corruption Institution; majority of the respondents reported 'personality issues or personalization of the war on corruption' (68%), 'overlapping laws or mandates' (68%) and 'politicization of the institutions' (68%) as shown in the figure below. A comparatively significant proportion reported 'competition among institutions' (60%) and 'Jurisdictional conflict and territoriality' (60%). Notably, only 48% of the respondents reported 'understaffing' as an issue.

Figure 6.4: Issues hindering co-operation and coordination between Anti-Corruption institutions

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



Qualitative findings using open ended questions further show other challenges that exist in the implementation of Anti-Corruption initiatives as reported by the respondents including; Egocentricism by independent institutions, lack of ethics, mindset of Kenyans, poor implementation of roles, etc. as shown in the box below.

Box 6.1: Other challenges exist in the implementation of Anti-Corruption initiatives

Other challenges exist in the implementation of Anti-Corruption initiatives

- Egocentricism by independent institutions
- Lack of ethics
- Making use of data in combating corruption e.g. review of wealth declaration and should be made public, a synchronized government, those who have several wives should declare the wealth of each
- Mindset of Kenyans
- Poor implementation of roles

6.7 Way Forward from Institutional Framework Analysis

Indubitably, Kenya has undertaken many efforts since its earliest recognition and efforts to tackle corruption in 1956, pursuant to Kenya's Prevention of Corruption Ordinance. From the institutional analysis in this section, it is apparent that Kenya's institutional framework to address corruption has both critical strengths and salient challenges. This institutional analysis revealed several key findings regarding the adequacy of these institutional arrangements which are summarized below:

1. ***There is no shortage of anti-corruption relevant institutions in Kenya.*** In respect of the strengths of Kenya's institutional framework to tackle corruption, it must be said that the challenge of corruption has not been neglected in Kenya, as evident in the establishment of at least 56 institutions either directly or indirectly mandated to tackle corruption. The period since the enactment of the Constitution of Kenya, 2010, has witnessed the establishment of the majority of these anti-corruption relevant institutions; with 30 institutions established in the past eight years. This is compared to 26 relevant institutions which came into existence leading up to 2010. Of the anti-corruption relevant institutions established in Kenya over the decades, the overwhelming majority are currently active in status (47), compared to those rendered defunct following the expiry of their mandate, dissolution or disbanding (9).[15] Paradoxically, an emergent challenge may concern whether there may be too many institutions required to address corruption resulting in duplicated efforts, overlapping mandates, over-representation along the continuum of anti-corruption activities, for instance in the provision of anti-corruption related training by EACC, KSG, Civil Society Organizations and the Ministry of Education, Science and Technology and its affiliates. In a similar vein, it is also be valuable to explore whether Kenya can find and strike a more efficient balance of anti-corruption institutions and allocations of resources targeted towards addressing corruption; which brings us to our second conclusion on the respective emphases of Kenya's existing and defunct anti-corruption institutions.

2. ***While Kenya has institutions across the continuum of anti-corruption activities, some aspects of the continuum have seen a stronger emphasis compared to others.*** An analysis of the activities undertaken by Kenya's anti-corruption relevant institutions suggests that Kenya's efforts are not equally distributed along the anti-corruption continuum. In other words, in her efforts to address corruption in the country, Kenya has sought to target very specific areas of susceptibility for strengthening or elimination of corruption opportunities in entirety. Our findings indicate that anti-corruption institutions in Kenya have predominantly focused on oversight and investigative activities, at the expense of interventions concerned with prevention and systems re-design. This has the potential effects of generating institutional gaps or under-lapping institutional anti-corruption mandates. For instance, until the recent establishment of the Multi-Agency Task Team,

15 Both South Africa and Brazil embrace a similar multi-agency model. (See. Pillay, P. (2017) Anti-Corruption Agencies in South Africa and Brazil: Trends and Challenges. Stellenbosch University. Volume 9. Number 8.

Kenya lacked an institutional arrangement tasked with addressing the 'coordinating' anti-corruption efforts; a challenge also previously manifest in Slovenia (OECD, 2008:21, 125). Yet as we consider the quantity, activity status and emphases of Kenya's anti-corruption relevant institutions, it is also befitting to contemplate the legal status of these institutional arrangements.

3. ***But for a few exceptions, Kenya's institutional arrangements to tackle corruption have been and remain largely established by Kenya's various laws***. Only 12 institutional arrangements lack a specific basis in law and by extension remain susceptible to arbitrary disbandment, external and political interference and conflicts of interest. This is evidenced by the fact that among the 12 institutional arrangement not anchored in law, 6 (50%) are no longer operational i.e. Kenya's *Efficiency Monitoring Unit*. For existing institutional arrangement lacking legal bases such as the *Huduma Kenya Programme* and *National Anti-Corruption Campaign and Steering Committee*, the lack of a legal basis presents a threat to their institutional independence and longevity; and as a result, forms an issue worthy of prompt legislative intervention.

4. **The majority of institutions involved in tackling corruption in Kenya do so as part of their broader institutional mandate, not focused exclusively on addressing corruption.** Of the 56 institutions that have been and are critical to Kenya's overall anti-corruption strategy, only 11 are exclusively focused on addressing corruption and its cognate vices. The remaining 45 do so within the context of broader organizational objectives and incentives. This finding that most of these mission-critical institutions focus on matters beyond the purview of addressing corruption, may lend credence to practices in countries such as Singapore and Hong Kong which have vested the powers to, responsibilities of, and resources for addressing corruption in a sole multi-purpose institution in their respective jurisdictions, rather than in several.

5. ***Despite the implication of Kenya's private sector in perpetuating corruption, Kenya's Government bears an inordinate share of the burden in financing Kenya's anti-corruption efforts.*** At least 84% of the institutions involved in tackling corruption rely on public expenditure for financing their operations; 13% do not rely on public funding; and the remaining 3% derive their funding from indeterminable sources. It may be prudent to diversify the sources of funding for tackling corruption to increase funding towards anti-corruption efforts; promote active participation by the private sector in corruption mitigation; dis-incentivise the private sector from indulging in corruption; as well as promote fiscal autonomy of anti-corruption institution and agencies (OECD, 2008). Ironically, an analysis of the adequacy of the funds available for talking corruption was not achievable in this study, owing to the unavailability and unreliability of budgetary information from the anti-corruption relevant institutions sampled in this study.

6. ***The quality of interactions between anti-corruption relevant institutions is of greater consequence to Kenya's anti-corruption***

agenda than the mere existence of such linkages. By dint of existing laws, policies, organizational functions and oversight mechanisms, Kenya's institutional framework to tackle corruption boasts a wide array of linkages between such institutions. In particular, through its Multi-Agency Task Team comprising of key anti-corruption institutions, Kenya has enhanced the coordination of activities along the anti-corruption continuum. Despite efforts to decentralize government in Kenya, it is apparent that the majority of anti-corruption relevant institutions lack direct presence in all counties in Kenya. Still, an even more salient question regarding the coordination of anti-corruption efforts concerns how well these institutions have been at working together. This recognizes the existence of jurisdictional disputes between key agencies and the absence or the failure of existing collaborations to yield significant fruit in Kenya's attempts to address corruption. At this juncture, it is also helpful to note that current efforts to tackle corruption such as through capacity building and training may benefit from standardization of core anti-corruption training curricula to promote cohesive collaboration between anti-corruption institutions.

REFERENCES

Acemoglu, D. and Robinson, J.A. (2006), *Economic origins of dictatorship and democracy*. Cambridge, UK; New York, NY: Cambridge University Press.

Adserà, A., Boix, C. and Payne, M. (2003), "Are you being served? Political accountability and quality of government". *Journal of Law, Economics, and Organization*, 19(2): 445–490.https://doi.org/10.1093/jleo/ewg017.

Africog (2009), Mission Impossible? Implementing the Ndung'u Report. Nairobi: African Centre for Open Governance.

Aghion, P., Alesina, A., Trebbi, F. (2004), "Endogenous political institutions". *Quarterly Journal of Economics*, 119: 565-611.

Ahrend, R. (2002), Press freedom, human capital, and corruption. DELTA Working Paper, 2002-11.

Akqay, S. (2006), "Corruption and human development". *Cato Journal*, Vol. 26, No. 1: 27-46.

Alatas, S.H. (1990), *Corruption: Its nature, causes and functions*, Aldershot: Gower Publishing Company.

Anderson, T.B. (2009), "E-government as an anti-corruption strategy". *Information Economics and Policy*, 21: 201í210.

Andres, A.R. and Ramlogan-Dobson C. (2011), "Is corruption really bad for inequality? Evidence from Latin America". *Journal of Development Studies*, 47:7: 959-976, DOI: 10.1080/00220388.2010.509784.

Ankamah, S.S., Manzoor, E., Khoda S.M. (2018), "Political will and government anti-corruption efforts: What does the evidence say?" *Public Administration Development*, 38:3-14 https://doi.org/10.1002/pad.1815.

Anti-Corruption and Civil Rights Commission - (ACRC) Korea (2009), Anti-corruption annual report 2008. ACRC Seoul.

Apergis, N,, Dincer O.C. and Payne, E.J. (2011), "Live free or bribe: On the casual dynamics between economic freedom and corruption in U.S. States". *European Journal of Political Economy*, 28: 215-226.

Asongu, S. and Nwachukwu, J. (2015), The increamental effect of education on corruption: Evidence of synergy from lifelong learning. Munich Personal RePEc Archive.

Asongu, S.A. and Nwachukwu, J.C. (2016), "The mobile phone in the diffusion of knowledge for institutional quality in Sub-Saharan Africa". *World Development*, 86: 133-147.

Atieno-Odhiambo, E.S. (1971), "Some reflections on African initiatives in early colonial Kenya". *East African Journal*, 8(6): 30-6.

Atkinson, M. (2000), "Political will puts relief". *The Guardian*. London.

Bailard, C.S. (2009), "Mobile phone diffusion and corruption in Africa". Political Communication, 26(3), 333-353.

Bailey, D.H. (1966), "The effects of corruption in a development nation/the western political quarterly.

Baker and McKenzie (2017), Global overview of anti-bribery laws handbook.

Banuri, S., Eckela, C. (2012), The effects of sanctions on bribery: US versus Pakistan. Washington DC: World Bank.

Bardhan, P. (2000). "Corruption and Development", *Journal of Economic Literature*, Vol. (3): 1320-1346.

Bardhan, P. (1997), "Corruption and development: A review of issues". *Journal of Economic Literature*, 35: 1320-1346.

Basu, K. and Cordella, T. (2016), "A symmetric punishment as an instrument of corruption control". *Journal of Public Economic Theory*, 18 (6): 831-856.

Bauhr, M. and Nasiritousi, N. (2011), *Why pay bribes?: Collective action and anticorruption efforts*. Gothenburg: The QoG Institute

Besley, T. (2007), Principled agents? The political economy of good government. Oxford, UK: Oxford University Press.

Blackburn, K., Bose, N. and Emranul Haque, M. (2010), "Endogenous corruption in economic development". *Journal of Economic Studies*, 37(1): 4-25.

Blackburn, K., Bose, N., Haque, M.E. (2006), "The incidence and persistence of corruption in economic development". *Journal of Economic Dynamics Control*, 30: 2447-2467.

Brewer, G.A., Choi Y. and Walker, M.R. (2007), "Accountability, corruption and government effectiveness in Asia: An exploration of World Bank governance indicators". *International Public Management Review*, Vol. 8, Issue 2. Available at http://www.ipmr.net.

Brinkerhoff, D.W. (2000), "Assessing political will for anti-corruption efforts: An analytical framework". *Public Administrationand Development*, 20(3): 239-53.

Brinkerhoff, D.W. (2015), "Building political will for HIV response: An operational model and strategy options". *International Journal of Health Planning and Management*.

Brunetti, A., Weder, B. (2003), "A free press is bad news for corruption". *Journal of Public Economics*, 87: 1801-1824.

Burite, J. and Gridneff, I. (2015), "Corruption, lack of political will for reform weaken Kenya's ability to fight terrorists". *Mail and Gardian Africa*. Retrieved from http://mgafrica.com/article/2018 11 07 corruption lack of political will for reform weaken Kenya's ability to fight terrorists.

Caiden, G.E. (1997), "Undermining good governance: Corruption and democracy". *Asia Journal of Political Science*, 5(2): 1-22.

Carden, A., Verdon, L.L. (2010), "When is corruption a substitute for economic freedom?" *Law and Development Review*, 3, 40-63.

Carson, L.D. and Prado, M.M. (2016), "Using institutional multiplicity to address corruption as a collective action problem: Lessons from the Brazilian case". *The Quarterly Review of Economics and Finance*, 62: 56-65.

Chang, Erik, Miriam Golden and Seth Hill (2007), "Electoral consequences of political corruption: The survival of politicians charged with malfeasance in the postwar Italian Chamber of Deputies." Paper presented at the 103rd Annual Meeting of the American Political Science Association, August, Chicago, IL.

Cherono, S. Mukinda, F. Odunga, D. (2017), Sh 18m found at home as land chiefs seized in raid. Daily Nation. Retrieved August 2, 2019, from https://www.nation.co.ke/news/EACC-officers-seize-Sh18m-in-NLC-raids/1056-3914598-cusbxb/index.html.

Chowdhury, S.K. (2004), "The effect of democracy and press freedom on corruption: An empirical test". *Economic Letters*, 85: 93-101.

Cieslik, A. and Goczek L. (2017), "Control of corruption, international investment and economic growth: Evidence from panel data". *World Development*, 103: 323-335.

Cyrus, Kinyungu (2006), MPs are most corrupt, *Standard* (Nairobi), 6 December. Available at http://allafrica.com/stories/200612061243.html.

De, Sousa (2010), "Anti-corruption agencies: Between empowerment and irrelevance". *Crime Law Society Change*, 52.

Debski, J., Jetter M., Mosle S. and Stadelmann D. (2018), "Gender and corruption: The neglected role of culture". *European Journal of Economics*, xxx: 1-12

Dizaji, S.F., Farzanegan, M.R., Naghavi, A. (2016), "Political institutions and government spending behavior: Theory and evidence from Iran". *International Tax and Public Finance*, 23: 522-549.

Doig, A. (1995), "Good government and sustainable anti-corruption strategies: A role for independent anti-corruption agencies?" *Public Administration and Development*, 15(2): 151-165.

Doig, A., Watt, D. and Williams, R. (2007), "Why do developing country anticorruption commissions fail to deal with corruption? Understanding the three dilemmas of organisational development, performance expectation, and donor and government cycles". *Public Administration and Development*, 27(3): 251-259.

Doig, Alan and Stephen Riley (1998), "Corruption and anti-corruption strategies: Issues and case studies from developing countries". In G. Shabbir Cheema and Jean Bonvin 9eds), *Corruption and integrity improvement initiatives in developing countries*. Paris: OECD.

Dreher, A. and Gassebner, M. (2013), "Greasing the wheels? The impact of regulations and corruption on firm entry". *Public Choice*, 155(3e4): 413e432.

Dutta, N. and Roy S. (2016), "The interactive impact of press freedom and media reach on corruption". Economic Modelling, 58: 227-236.

Elbahnasawy, N.E. and Fevier C. F. (2012), "The determinants of corruption; cross-country-panel-data analysis". *Developing Economies*, 50, No. 4 (December 2012): 311-33.

Eric, Ngumbi (2019), Viability of lifestyle audits as an anti-corruption strategy in Kenya: Critical assessment of the policy, legal and administrative framework, 2019

Ethics and Anti-Corruption Commission (2018), National Ethics and Corruption Survey Report 2017. Nairobi.

Farooq, A., Shahbaz M., Arouri M., and Teulon F. (2013), "Does corruption impedes economic growth in Pakistan?" *Economic Modelling*, 35: 622-633.

Freille, S., Haque E.M. and Kneller, R. (2007), "A contribution of empirics of press freedom and corruption". *European Journal of Political Economy*, 23: 838-862.

Gephart, M. (2009), Contextualizing conceptions of corruption: Challenges for the international anti-corruption campaign. GIGA Research Programme, No. 115.

Graeff, P. and Mehlkop, G. (2003), "The impact of economic freedom on corruption: Different patterns for rich and poor countries". *European Journal of Political Economy*, 19: 605-620.

Gullup Survey (2014), Less than half in Africa confident in their judiciary.

Guriev, S. (2004), "Red tape and corruption". *Journal of Development Economics*, 73: 489-504.

He, Z. (2000), "Corruption and anti-corruption in reform China". *Communist and Post-Communist Studies*, 33: 243-270.

Hiren, Sarkar and M. Aynul Hasan (2001), "Impact of corruption on the efficiency of investment: Evidence from cross country analysis". *Asia-Pacific Development Journal*, Vol. 8, No. 2.

Hope, K. (2000), "Small steps towards telecoms liberalisation". *Financial Times*. London, p.18.

http://www.icdc.co.ke/index.php/about-us/publications/mwongozo-code-of-governance.Accessed on 30.10.2018

Huntington, S.P. (1968), "Political order in changing societies". New Haven: Yale University Press.

Ilado, P. (2018), NYS hit by 10 billion scandal https://www.the-star.co.ke/news/2018/05/12/nys- hit-by-fresh-sh10-billion-scandal_c1757639 retreaved on november 12, 2018.

Institute for Education in Democracy Catholic Justice and Peace Commission, and National Council of Churches of Kenya (1997), Report on the 1997 General Elections in Kenya, 29–30 December 1997. Nairobi: IED, the CJPC and NCCK.

Integrity and Anti-Corruption Committee (2003), An Anatomy of Corruption in Kenyan Judiciary, IACC (Nairobi).

Isopi (2008), Aid and corruption: Do donors use development assistance to provide the "Right Incentives"?

Jin-Wook Choi (2018), "Corruption control and prevention in the Korean government: Achievements and challenges from an institutional perspective". Asian Education and Development Studies, Vol. 7, Issue 3: 303-314, https://doi.org/10.1108/AEDS-11-2017-0111.

Johnston, M. (1986), "The political consequences of corruption: A reassessment". Comp. Polit. 18: 459-477.

Jon, S.T. Quah (2017), "Learning from Singapore's effective anti-corruption strategy: Policy recommendations for South Korea". *Asian Education and Development Studies*, Vol. 6 Issue: 1: 17-29, https://doi.org/10.1108/AEDS-07-2016-0058.

Jong-Sung, Y. and Khagram, S. (2005), "A comparative study of inequality and corruption". American Sociological Review, 70 (1): 136-157.

Kalenborn, C. and Lessmann, C. (2012), "The impact of democracy and press freedom on corruption: Conditionality matters". CESifo Working Paper, No. 3917, Centre for Economic Studies and Ifo Institute (CESifo), Munich.

Kanyam, D.A., Kostandini, G. and Ferreira, S. (2017), "The mobile phone revolution: Have mobile phones and the Internet reduced corruption in Sub-Saharan Africa?" *World Development,* Vol. 99: 271-284.

Kanyinga, K. (2014), "Kenya: Democracy and political participation". Open Society Initiative for Eastern Africa. Nairobi.

Karanja, S. (2016), Tribunal ends Sh 200m bribery probe against Judge Tunoi. *Daily Nation*. Retrieved April, 2019, from https://www.nation.co.ke/news/Tribunal-ends-Sh200m-bribery-probe Tunoi/1056-3269652-f3eflaz/index.html Kenya.

Kariuki, K. (2011), "A faltering fight on graft withers investor optimism". *The Nairobi Law Monthly*, 2(10): 60-61.

Kato, A., Sato, T. (2015), "Greasing the wheels? The effect of corruption in regulated manufacturing sectors of India". Canadian Journal of Development Studies, 36: 459-483.

Katumanga, M. and Omosa, M. (2007), "Leadership and governance in Kenya", in Peter Wanyande, Mary Omosa and Chweya Ludeki (eds), Governance and transition politics in Kenya, University of Nairobi Press, 55-78.

Kaufman, Daniel, Aart Kraay and Massimo Mastruzzi (2007), "Governance matters VI: Governance indicators for 1996-2006." World Bank Policy Research Working Paper No. 4280. http://wwwwds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2007/07/10/000016406_20070710125923/Rendered/PDF/wps4280.pdf.

Kaufmann, D. (1997), "Corruption the facts". Foreign Policy, Summer (107): 114-31.

Kaufmann, D., Wei, S.J. (1999), Does 'grease money' speed up the wheels of commerce? (No. w7093). National Bureau of Economic Research.

Keefer, P., Knack, S. (2000), "Polarization, politics, and property rights". *Public Choice*, 111: 127-154.

Kenya Anti-Corruption Commission (2008), Annual Report 2007-2008.

Kenya Anti-Corruption Commission (2006), National Corruption Perception Survey 2005. Nairobi: Kenya Anti-Corruption Commission.

Kenya National Commission of Human Rights and Kenya Human Rights Commission (2006), 'Still Behaving Badly: Second Periodic Report of the Election-Monitoring Reports'. Nairobi: Kenya Human Rights Commission.

Kenya National Commission on Human Rights – KNCHR (2017). A human rights account of the 2017PoliticalPartiesPrimaries.http://www.knchr.org/Portals/0/OccasionalReports/Party%20Nominations%20%20Report%20-%20KNCHR.pdf?ver=2017-05-15-110816-540.

Kenyatta, U. (2014), Speech by his Excellency Hon. Uhuru Kenyatta, during the official launch of the Ethics and Anti-Corruption Commission Strategic Plan 2013–2018. Kenyatta International Conference Centre, Nairobi. Retrieved November 13, 2018, from http://www.scribd.com/doc/213069109/President-Uhuru-Kenyattas-Speech-During-the-Official-Launch-of-the-Ethics-and-Anti-corruption-Commission- Strategic-Plan-2013–2018.

Kenyatta, U. (2015), Statement by His Excellency on a National Call to Action Against Corruption. State House, Nairobi. Retrieved November 12, 2018, from http://www.president.go.ke/2015/11/23/statement-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-andcommander-in-chief-of-the-defence-forces-of-the-republic-of-kenya-on-a-nationalcall-to-action-against-corruption-state-house.

Kenyatta, U. (2019), Speech by his Excellency Hon. Uhuru Kenyatta, during the 8th Presidential Round Table Forum at State House Nairobi. Retrieved January 18, 2019, from http://www.president.go.ke/2018/05/10/we-must-face-corruption-head-on- president-kenyatta.

Kibwana, K., Wanjala, S. and Okech-Owiti (1996), "The anatomy of corruption in Kenya: Legal, political and socio-economic perspectives". Nairobi: Claripress.

Klitgaard, R. (1984), "Managing the fight against corruption: A case study". *Public Administration and Development*, 4(1): 77-98.

Klitgaard, R.E. (1988), "Controlling corruption". Berkeley, CA: University of California Press.Retrieved from http://public.eblib.com/choice/ publicfullrecord.aspx?p=837316.

Kpundeh, S. (2004), "Process interventions versus structural reforms: Institutionalizing anticorruption reforms in Africa". *Building State Capacity in Africa: New Approaches, Emerging Lessons*, 257-282.

Kpundeh, S. and Dininio, P. (2006), "Political will". In F. Stapenhurst, N. Johnston and R. Pellizo (Eds), *The role of parliament in curbing corruption*. Washington, DC: World Bank.

Kpundeh, Sahr J. (2004), "Building State capacity in Africa". Washington, DC: World Bank Publications.

Krolikowski, A., Fu, X. and Hope, R. (2013), Wireless water: Improving urban water provision through mobile finance innovations.

LaFree, G. and Morris, N. (2004), "Corruption as a global social problem", in G. Ritzer (ed.), *Handbook of social problems: A comparative international perspective*. Thousand Oaks, CA: Sage.

Leff, N.H. (1964), "Economic development through bureaucratic corruption". *American Behavioral Scientist*, 8(3): 8e14.

Leite, Carlos and Jens Weidmann (1999), "Does mother nature corrupt? Natural resources, corruption, and economic growth" International Monetary Fund, African and Research Departments, Working Paper 99/85. Washington, D.C.: IMF.

Little, A.W. (2011), "Education policy reform in Sri Lanka: The double-edged sword of political will". *Journal of Education Policy*, 26(4): 499-512. https://doi.org/10.1080/02680939.2011.555005.

Lui, F.T. (1985), "An equilibrium queuing model of bribery". *Journal of Political Economy*, 93(4): 760e781.

Marquette, H. and Peiffer, C. (2015), "Corruption and collective action". Birmingham: Developmental Leadership Programme.

Marrin, M. (2000), "Labour's schools policy is just window dressing". *The Daily Telegraph*. London, p. 30.

Mars Group Kenya Media (2004), Bribery a thriving vice in parliament. Retrieved June 21, 2019, fro http://www.marsgroupkenya.org/multimedia/? StoryID =80726&p=State+House&page=382.

Martin Mutua and Andrew Teyie (2004), Shame: MPs for hire, *Standard* (Nairobi), 18 November, available at http://allafrica.com/stories/200411180875.html.

Meon, P. and Weill, L. (2010), "Is corruption an efficient grease?" *World Development*, 38: 244-259. Olken, B.A..

Miriri, D. (2016), Third of Kenyan budget lost to corruption: Anti-graft chief. *Reuters*. Retrieved February 11, 2019 from https://www.reuters.com/article/us-kenya-corruption/third-of-kenyan-budget-lost-to-corruption-anti-graft-chief idUSKCN0WC1H8

Mogeni, D. (2009), Why corruption persists in Kenya. *Daily Nation*. Retrieved July 12, 2019, from http://www.nation.co.ke/oped/Opinion/-/440808/525272/-/42volp/-/index.html

Moore, R.T. (2000), Political will need to take action on healthcare system. The Boston Herald. Boston, p. 28.

Mugo, Njeru (2005), MPs in 'Most Corrupt' League, *Daily Nation*, 10 December, available at http://allafrica.com/stories/200512100099.html.

Mulinge, M.M. and Lesetedi, G. N. (2001), "Corruption in Sub-Saharan Africa: Towards a more holistic approach", *African Journal of Political Science*, 7(1): 51-78.

Munyae, M.M and Mulinge, M.M. (1999), "The centrality of a historical perspective to the analysis of social problems in Sub-Sahran Africa: A tale from two case studies". *Journal of Social Development in Africa*, 14(2): 51-70.

Mwangi, O.G. (2008), "Political corruption, party financing and democracy in Kenya". *Journal of Modern African Studies*, 46: 267-285.

Myint, U. (2000), "Corruption: Causes, consequences and cures". *Asia-Pacific Development Journal*, Vol. 7, No. 2: 33-58.

National Election Monitoring Unit (1993), The multiparty general elections in Kenya, 29 December 1992. Nairobi: NEMU.

National Land Commission – NLC (2016), Annual Report 2015/2016. Nairobi: National Land Commission.

Neudorfer, N.S., Theuerkauf, U.G. (2014), "Buying war not peace: The influence of corruption on the risk of ethnic war". Comp. Political Stud. 47: 1856-1886.

Ng, V. (2000), "Johor Strait clean-up exercise can work with political will, commitment". *New Straits Times*. Malaysia, p. 2.

Ngirachu, J. and Wanzala, O. (2013), "JSC sends Gladys Shollei packing over Sh2 billion scandal". Daily Nation. Retrieved August 2, 2019, from https://www.nation.co.ke/news/JSC-sends-Gladys-Shollei-packing/1056-2038778-1tgorrz/index.html.

NHS (2015), NHS calls for political will from new government. Retrieved 2 December 2019 from http://nhsconfed.org/news/2015/05/nhs-calls-for political-will-from-new-government.

Njagi. J. (2016), Counties most corrupt, shows EACC report as billions lost. Retrieved February 15, from https://www.nation.co.ke/news/1056-3443220-5goyhqz/index.html.

Njeri, Rugene (2009), Bribery rampant in Kenya's Parliament, *Sunday Nation* (Nairobi), May 16, 2009, available at http://africanewsonline.blogspot.com/2009/05/bribery-rampant-inkenyas-parliament.html.

Njonjo Land Commission 1999

Norris, P., eds. (1999). Critical citizens: Global support for democratic governance. Oxford: Oxford University Press.

Orinde, H. (2018), NLC boss Swazuri and 6 others arrested over SGR compensations Read more at: Https://www.standardmedia.co.ke/article/2001291494/nlc-boss-swazuri- and-6-others-arrested-over-sgr-compensations. The Standard. Retrieved August 02, 2019, fromhttps://www.standardmedia.co.ke/article/2001291494/nlc-boss swazuri-and- 6-others-arrested-over-sgr-compensations.

Oyugi, W. (1994), "The uneasy alliance: Party state relations in Kenya". In: W.O. Oyugi (ed.), *Politics and administration in East Africa*. Nairobi: East African Educational Publishers.

Pagliccia, N. and Pérez, A.Á. (2012), "The Cuban experience in public health: Does political will have a role? *International Journal of Health Services*, 42(1): 77–94. https://doi.org/10.2190/HS.42.1.h.

Pellegrinni, L. and Gerlagh, R. (2004), "Corruption's effect on growth and its transmission channels". *Kyklos*, Vol. 57, Issue 3: 429-456.

Persson, A., Rothstein, B. and Teorrell, J. (2013), "Why anticorruption reforms fail: Systemic corruption as a collective action problem". *Governance: An International Journal of Policy, Administration, and Institutions*, 26(3): 449-471.

Pharr, S. and Putnam, R, eds. (2000), Disaffected democracies: What's troubling the trilateral countries? New York: Cambridge University Press.

Polybius (1991), The histories (5th edn). In W. Ebenstein and A.O. Ebenstein (eds), Great political thinkers: Plato to the present, Orlando, Florida: Harcourt Brace Jovanovich publishers (pp. 130-138).

Post, L.A., Raile, A.N., Raile, E.D. (2010), "Defining political will". *Politics and Policy*, 38 (4): 653-76.

Quah, J.S.T. (2009), "Governance and corruption: Exploring the connection". *American Journal of Chinese Studies*, 16(2): 119-135.

Quah, Jon S.T. (2013), "Curbing corruption in Singapore: The importance of political will, expertise, enforcement, and context.

Report of the Commission of Inquiry into Post-election violence (2008) (Kenya), available at http://www.dialoguekenya.org/docs/PEVReport1.pdf [hereinafter WAKIREPORT].

Report of the Judicial Commission of Inquiry into the Goldenberg Affair 78 (2005) (Kenya), availableathttp://www.tikenya.org/documents/Goldenberg%20 Report. Pdf [hereinafter GOLDENBERG AFFAIR].

Republic of Kenya (2004), Report of Commission of Inquiry into the Illegal/ Irregular Allocation of Public Land (Ndung'u Report). Nairobi: Government Printer.

Republic of Kenya (2006), Governance strategy for building a prosperous Kenya.

Republic of Kenya (2007), Revised scheme of service for administrative officers. Nairobi: Ministry of State for Public Service.

Republic of Kenya (2009), Report of the National Task Force on Police Reforms (The Ransley Report). Nairobi: Republic of Kenya.

Richardson, G. (2006), "The influence of culture on fiscal corruption: Evidence across countries". In M. Steward (Ed.), *Tax law and Political Institutions*. Annandale: Federation Press.

Riley, Stephen P. (1998), "The political economy of anti-corruption strategies in Africa". *European Journal of Development Research*, 10 (1): 129-159.

Rose-Ackerman, S. (1978), "Corruption: A study in political economy". New York: Academic Press.

Rose-Ackerman, S. (1999), "Corruption and government: Causes, consequences and reform". Cambridge: Cambridge University Press.

Rose-Ackerman, S. (1999), *Corruption and government: Causes, consequences and reform*. Cambridge: Cambridge University Press.

Rugene, N. (2009), Bribery in Kenya's parliament. *Daily Nation*. Retrieved 12 June 2019, from http://www.nation.co.ke/News/-/1056/599016/-/ u6adu9/ /index.html.

Sadiawati, D. (2013), "National strategy for corruption prevention and eradication / National strategy on CPE 2012-2025; 2012-2014". Regional Meeting on Anti-Corruption Strategies, 21–22 October 2013, Kuala Lumpur, Malaysia.

Saha, S. and Gounder, R. (2012), "Corruption and economic development nexus: Variations across income levels in a non-linear framework". *Economic Modelling*, 31: 70-79.

Schacter, M. (2005), "A framework for evaluating institutions of accountability". In A. Shah (Ed.), *Fiscal Management*, 229–245). Washington, DC: World Bank.

Schütte, S.A. (2012), "Against the odds: Anti-corruption reform in Indonesia". *Public Administration and Development*, 32(1): 38-48.

Seleim A. and Bontis N. (2009), "The relationship between culture and corruption: A cross- national study". *Journal of Intellectual Capital*, Vol.10, No. 1: 165-184.

Senior, I. (2006), *Corruption the world's big C: Cases, causes, consequences, cures*. London: Institute of Economic Affairs.

Serra, Danila. (2006), "Empirical determinants of corruption: A sensitivity analysis". *Public Choice,* 126, No. 1-2: 225–56.

Sichombo, B., Muya, M., Shakantu, W., Kaliba C. (2009), "The need for technical auditing in the Zambian construction industry". *International Journal of Project Management*, 27: 821-832.

Siddiquee, N.A. (2010), "Combating corruption and managing integrity in Malaysia: A critical overview of recent strategies and initiatives". *Public Organization Review*, 10(2): 153-171. doi:10.1007/s11115-009-0102-y.

Siddiquee, N.A. (2011), "Approaches to fighting corruption and managing integrity in Malaysia: A critical perspective". *Journal of Administrative Science*, 8(1): 47-74.

Singh, G. (2006), Audit of construction projects, <http://www.auditnet.org/articles/GS200608.htm>; 2006 [building and infrastructure].

Stapenhurst, R., Johnston, N. and Pellizo, R. (2006), *The role of parliament in curbing corruption*. Washington, D.C: World Bank.

Sturges, P. (2010), "Corruption, transparency and a role for libraries". In: Belan-Simic, A. and Sapro-Ficovic, M. (eds). *Library Professional Ethics and Civil Society Ethical Norms*. Zabreg, CR: Croatian Library Association.

Sulemana, I. and Kpienbaareh D. (2018), "An empirical examination of the relationship between income inequality and corruption in Africa". *Economic Analysis and Policy*, https://doi.org/10.1016/j.e.p.

Sung, H. (2003), "Fairer sex or fairer system? Gender and corruption revisited". *Social Forces*, Vol. 82, No. 2: 703-723.

Swamy, A., Knack S., Lee, Y., Azfar, O. (2001). "Gender and corruption". *Journal of Development Economics*, 64: 25-55.

Tanzi, V. and Davoodi, H. (1998), "Corruption, public investment, and growth". In H. Shibata and T. Ihori (Eds.), *The welfare state, public investment, and growth*, 41-60. Tokyo: Springer Japan. Retrieved from http://www. springerlink.com/index/10.1007/978-4-431- 67939-4_4.

Tatarko A. and Mironova A. (2016), Values and attitudes towards corruption: A cross-cultural study in four European countries. National Research University Higher School of Economics.

The Constitution of Kenya 2010.

Throup, D. and Hornsby, C. (1993), *Multiparty politics in Kenya*. Nairobi: East African Educational Publishers.

Transparency International–Kenya (2015), The East African bribery index analysis (2010-2014). Nairobi Author

Transparency International–Kenya (2010), The East African bribery index 2010. Nairobi: Transparency International.

Transparency International (2018), Corruption Perceptions Index 2017, Transparency International.

Transparency International (2018), Corruption Perception Index 2018

Truex, R. (2010), "Corruption, attitudes, and education: Survey evidence from Nepal". *World Development*, Vol. 39, No. 1133-1142.

United Nations Development Programme (2014), Mobile phones helping tofight corruption in Papua New Guinea.

Van Rijckeghem, C. and Weder, B. (2001), "Bureaucratic corruption and the rate of temptation: Do wages in the civil service affect corruption, and by how much?" *Journal of Development Economics*, 65(2), 307-331. https://doi. org/10.1016/S0304-3878(01)00139-0.

Winnie, Mitullah (2005), *Kenya's democratization: Gains or loses? Appraising the pos-KANU state of affairs*. Nairobi: Claripress.

World Economic Forum (2018), Global Competitive Index 2017-2018. Geneva: World Economic Forum.

Wraith, R. and Simpkins, E. (1963), *Corruption in developing countries*. London: George Allen and Unwin.

Yeboah-Assiamah E, Alesu-Dordzi S. (2015). "The calculus of corruption: A paradox of 'strong' corruption amidst 'strong' systems and institutions in developing administrative systems". *Journal of Public Affairs*.

Yeboah-Assiamah, E. and Alesu-Dordzi, S. (2016), "The calculus of corruption: A paradox of 'strong' corruption amidst 'strong' systems and institutions in developing administrative systems". *Journal of Public Affairs*, 16(2): 203-216.

Appendices

Appendix Table 1: Explanation of variables in empirical analysis of factors influencing levels of perceived corruption in countries

Variable in Model	Full Variable Name	Source	Definition
Corr_score	Corruption Score	World Bank - World Governance Indicators	Control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.
		Mo Ibrahim - Ibrahim Index of African Governance	**'Corruption in Government and Public Officials'** focus on corruption in the public and private sectors. Some of the corrupt practices that are captured include: cronyism; whether key individuals have an undue or distorting influence over appointments or contracts, and whether enforcement agencies exist and are independent; degree to which public officials are involved in corrupt practices, such as misuse of public office for private benefit, accepting bribes, and dispensing favours and patronage and private gain; the length of time that the regime/government has been in power; the number of officials that are appointed rather than elected; and the frequency of reports/rumours of bribery are all taken into account. **'Corruption and Bureaucracy'** assesses the intrusiveness of bureaucracy; the amount of red tape; and the likelihood of encountering corrupt public officials and other groups. **'Corruption Investigation'** looks at the extent to which allegations of corruption in the public sector and the executive are investigated by an independent body; and the extent to which the public are satisfied with how the government is handling fighting corruption.
		Transparency International – Corruption Perceptions Index	The Corruption Perceptions Index measures the perceived levels of public sector corruption as determined by expert assessments and opinion surveys, on a number of corrupt behaviours in the public sector: Bribery; Diversion of public funds; Use of public office for private gain; Nepotism in the civil service; State capture. CPI also looks at the mechanisms available to prevent corruption in a country: The government's ability to enforce integrity mechanisms; The effective prosecution of corrupt officials; Red tape and excessive bureaucratic burden; The existence of adequate laws on financial disclosure, conflict of interest prevention and access to information.
Goveff	Government Effectiveness	WB - World Governance Indicators	Government effectiveness captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.
Pstby	Political Stability	WB - World Governance Indicators	Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood of political instability and/or politically motivated violence, including terrorism.

Rqlty	Regulatory Quality	WB - World Governance Indicators	Regulatory quality captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.
Rlaw	Rule of Law	World Bank - World Governance Indicators	Rule of law captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.
Vacctblty	Voice and Accountability	World Bank - World Governance Indicators	Voice and accountability captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.
Indjud	Independence of Judiciary	Mo Ibrahim - Ibrahim Index of African Governance	This indicator captures the independence of the judiciary from the influence of external actors; whether the judiciary has the ability and autonomy to interpret and review existing laws, legislation and policy; and the integrity of the process of appointing and removing national-level judges. It consists of four sub-indicators.
Accgrvtoff	Accountability of Government Public Officers	Mo Ibrahim - Ibrahim Index of African Governance	This indicator captures the extent of executive corruption and the extent to which the executive and public employees can be held to account by the electorate, legislative and judiciary. It consists of three sub-indicators.
Sanct	Sanctions for abuse of Office	Mo Ibrahim - Ibrahim Index of African Governance	This indicator assesses the extent to which public office holders who abuse their positions are prosecuted or penalized. It assesses whether public servants and politicians are held accountable by legal prosecution and public contempt when they break the law and engage in corrupt practices. It also includes conflicts of interest and ethical misconduct, focusing on the extent to which the rule of law is undermined by political corruption.
Freeexp	Freedom of Expression	Mo Ibrahim - Ibrahim Index of African Governance	This indicator captures the extent to which citizens can express opinions freely and the existence of citizen self-censorship.
Mediafre	Media Freedom	Mo Ibrahim - Ibrahim Index of African Governance	This indicator captures the extent to which organizations can express opinions freely; the degree of print, broadcast and internet freedom; whether the media is representative of a wide array of political perspectives; and the existence of media censorship.
Satpovred	Satisfaction with Poverty Reduction	Mo Ibrahim - Ibrahim Index of African Governance	This indicator assesses the extent to which the public are satisfied with how the government is handling narrowing the gaps between rich and poor.

Appendix Table 2

Legislative Instrument	Date of Assent /Ratification	Status	Subsidiary Legislation (Regulations, Rules etc)	Evolution of the Focus of the Legislation on Corruption
Prevention of Corruption Act, 1956	***13th August 1956***	Repealed	None	This Act was directed towards public servants, public officers, the Government and public bodies and towards corrupt practices in the public sector by or with public servants, public officers, the Government and public bodies. It prescribed actions and offences that amount to corruption including Corruption in office, Corrupt transactions with agents and public servants obtaining advantage without consideration; and prescribes penalties therefor however these were narrow in scope. It established the then Kenya Anti-Corruption Authority whose primary mandate was to investigate, and subject to the directions of the Attorney-General, to prosecute for offences under the Act and other offences involving corrupt transactions. The establishment of the then Kenya Anti-Corruption Authority came about by the enactment of S.11B of Cap.65. This was done vide Legal Notice Number 10 of 1997. The functions of the Authority were set out in S.11B(3) of the Prevention of Corruption Act. These were: (a) to take necessary measures for the prevention of corruption in the public, parastatal and private sectors. (b) To investigate, and subject to the directions of the Attorney General, to prosecute for offences under this Act and other offences involving corrupt transactions; and (c) To advise the Government and the parastatal organizations on ways and means of preventing corruption; (d) To inquire and investigate the extent of liability of any public officer in the lots of any public funds and to institute Civil proceedings against the officer and any other person involved in the transaction which resulted in the loss for the recovery of such loss; (e) To investigate any conduct of a public officer which is connected with or conducive to corrupt practices and to make suitable recommendation thereon; (f) To undertake such further or other investigations as may be directed by the Attorney General. (g) To enlist members of the public in fighting corruption by the use of education and outreach programmes.

					When S.11B was inserted into Cap.65 the provisions of S.26 of the Constitution remained unamended. Under S.26 of the 1963 Constitution the Attorney General was the principal legal adviser to the Government of Kenya. The KACA was declared unconstitutional in Gachiengo vs Republic [2000] 1 EA 67 as the Court held that the KACA could not undertake prosecution which was at the time the function of the Attorney General. The subsequent anti-corruption commissions have since then not had any prosecutorial powers or functions.
United Nations Convention Against Corruption, 2003	***9th December 2003***	Ratified and partially domesticated	N/A		This Convention applies to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with the Convention.
Anti-Corruption and Economic Crimes Act, 2003	***30t April 2003***	In force	1. Anti-Corruption and Economic Crimes Regulations, 2003 2. Anti-Corruption and Economic Crimes (Amnesty and Restitution) Regulations, 2011		Provides for the investigation, prosecution, adjudication and punishment for corruption and economic crime offences. It expands the list of offences contemplated by the Prevention of Corruption Act 1956 which it repealed. It provides for the establishment of special magistrates to hear and determines corruption and economic crimes; definition of corruption offences and penalties; compensation and recovery of improper benefits; and procedure of recovery of unexplained assets.
The Public Officer Ethics Act, 2003	***30th April 2003***	In force	Public Officer Ethics Regulations, 2003 Public Officer Ethics (Management, Verification, and Access to Financial Declarations) Regulations, 2011 Various Codes of Conduct and Ethics; and Procedures for the Administration of Part IV of the Act		Specifies the General Code of Conduct and Ethics for public officers and prescribes permitted and prohibited standards and conduct by public officers on aspects such as professionalism, nepotism, impartiality, conflict of interest, ethics, conduct in private affairs, financial probity and requirements to provide Declaration of Income, Assets and Liabilities. This Act focused heavily on public officers and the public sector.
The Public Audit Act, 2003	***31st December 2003***	Repealed	Various Exchequer and Audit Regulations		This Act was enacted to provide for the audit of government, state corporations and local authorities, to provide for economy, efficiency and effectiveness examinations, to provide for certain matters relating to the Controller and Auditor-General and the Kenya National Audit Office, to establish the Kenya National Audit Commission. This Act provided for the functions and powers of the Office of the Auditor-General and is focused on expenditure of public funds.

				Public funds (which are usually in substantial amounts) once disbursed to public entities require management, control and oversight of the expenditure to assess whether the funds were utilized for the purposes for which they were intended and whether they were utilized judiciously, efficiently and lawfully. This Act has been repealed by the Public Audit Act 2015 which sought to bring the functions of the Auditor General in line with the Constitution 2010 and to align the functions under Public Audit Act with the institutional, regulatory and legal structures under the Constitution 2010.
The Public Procurement and Disposal Act	***26th October 2005***	Repealed however the Act still applies to contracts entered into prior to the coming into force of the Public Procurement and Asset Disposal Act, 2015; Regulations 2006 still in force	The Public Procurement and Disposal Regulations, 2006 (operational and applicable to the Public Procurement and Asset Disposal Act)	This Act was repealed by the Public Procurement and Asset Disposal Act 2015 which introduced new requirements on the value of the tender security; new procurement methods; requirements on tender evaluation process; and preference and reservation schemes.
Witness Protection Act, 2006	***2006 (Amended in 2010 and 2016)***	In force	Witness Protection Regulations, 2008 (*Revoked*) Witness Protection Regulations, 2011 Witness Protection Rules, 2015	The Kenya's Witness Protection Agency is established under the Witness Protection Act, 2006 (Cap 79 Laws of Kenya) as amended by the Witness Protection (Amendment) Act, 2010 and the Witness Protection (Amendment) Act, 2016. It provides the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies. The Amendment Act amends the definition of witnesses.
African Union Convention on Preventing and Combating Corruption, 2007	***3rd February 2007***	Ratified and partially domesticated	N/A	Kenya ratified this Convention on 3rd February 2007 and it prescribes certain acts of corruption and related offences including solicitation or acceptance by a public official or any other person, of any goods of monetary value or other benefit such as a gift, favour, promise or advantage for himself or other person or entity in exchange for any act or omission in the performance of his public functions and illicit enrichment.
The Proceeds of Crime and Anti-Money Laundering Act, 2009	***31st December 2009***	In force (Amended in 2017)	The Proceeds of Crime and Anti-Money Laundering Regulations, 2013	The Proceeds of Crime and Anti-Money Laundering Act, 2009 and the Proceeds of Crime and Anti-Money Laundering (Amendment) Act, 2017 focus on the offence of money laundering and prescribes measures for combating the offence, to provide for the identification,

				tracing, freezing, seizure and confiscation of the proceeds of crime. It also establishes an Asset Recovery Agency and Financial Reporting Centre which assist in the identification and tracing of the proceeds of crime and the combating of money laundering and the financing of terrorism.
The Constitution of Kenya, 2010	***27th August 2010***	In force	N/A	Prescribes National Values including patriotism, national unity, integrity, transparency, accountability, good governance and sustainable development. Article 232 prescribes Principles of governance and Values of the Public Service. Chapter Six prescribes standards and requirements for leadership and integrity. Chapter Twelve prescribes the principles of prudent public finance management.
The Elections Act, 2011	***27th August 2011***	In force	1.Elections (Registration of Voters) Regulations, 2012 2.Elections (General) Regulations, 2012 3.Rules of Procedure on Settlement Disputes 4.Elections (Technology) Regulations, 2017 5.Elections (Party Primaries and Party Lists) Regulations, 2017 6.Elections (Voter Education) Regulations, 2017 7.Elections (Parliamentary and County Elections) Petitions Rules, 2017	This Act provides for the conduct of elections to the office of the President, the National Assembly, the Senate, county governor and county assembly; to provide for the conduct of referenda; to provide for election dispute resolution. It prescribes requirements, standards and qualifications for those who are running for public office or seeking appointment to a public office.
The Commission on Administration of Justice Act, 2011	***27th August 2011***	In force	The Commission on Administration of Justice Regulations, 2013	This Act establishes the Commission on Administrative Justice (CAJ) (commonly referred to as "the Office of the Ombudsman") and its principal function is to conduct investigations into complaints of abuse of power, unfair treatment, manifest injustice, or unlawful, oppressive, unfair or unresponsive official conduct perpetuated by public officers; and inquiries into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude by public officers or bodies.

The Ethics and Anti-Corruption Commission Act, 2011	***5th September 2011***	In force	The Leadership and Integrity Regulations, 2015	This Act principally provides for the establishment of the Ethics and Anti-Corruption Commission, its functions and powers, and procedures for nomination and appointment of Commissioners (Members), Secretary and staff
The Mutual Legal Assistance Act, 2011	***11th November 2011***	In force	None	This Act was enacted to regulate and facilitate the processing of incoming or outgoing requests for assistance and is relevant in prosecution and extradition of persons suspected or incriminated in corruption.
The Public Finance Management Act, 2012	***24th July 2012***	In force	The Public Finance Management (County Governments) Regulations, 2015 The Public Finance Management (National Government) Regulations, 2015	The Public Finance Management Act 2012 ("the PFM Act") was enacted to provide for the effective management of public finances by the national and county governments.
The Leadership and Integrity Act, 2012	***27th August 2012***	In force	Leadership and Integrity Regulations, 2015	This Act was enacted pursuant to the requirements of Article 80 of the Constitution, to provide for procedures and mechanisms for effective implementation of Chapter Six of the Constitution on Leadership and Integrity. It has been operationalized by the Leadership and Integrity Regulations, 2015.
The Kenya Defence Forces Act, 2012	***27th August 2012***	In force	Kenya Defence Forces (Internal Grievances Mechanism) Rules, 2017 Kenya Defence Forces (General) Regulations, 2017	The Defence Forces shall in fulfilling its mandate, observe and uphold the Bill of rights, values and principles under Article 10(2), 232(1) and 238 (2) of the Constitution and shall strive for the highest standards of professionalism and discipline amongst its members; prevent corruption and promote and practice transparency and accountability.

			Kenya Defence Forces (Execution of Sentence of Death), 2017 Kenya Defence Forces (Imprisonment) Regulations, 2017 (Among others)	
Executive Order No. 6 of March 2015 on Ethics and Integrity in Public Service.	***6th March, 2015***	In force	N/A	The Executive order has the following directives to be followed: (i) All officers to get in touch with the office of the president should they receive any pressure to engage in any unethical, corrupt or illegal conduct, regardless of the position or status of the person pressuring them to do so. (iv) All Public servants, irrespective of their station, must understand that no one will be spared in the fight to eliminate corruption. (v) All public servants to serve with integrity and in an ethical manner in the course of duty. (vi) Every accounting or responsible officer shall be held personally liable for any use or movement of public monies contrary to the law, and steps to prosecute or recover any loss occasioned, shall be strictly applied. 4. A state officer shall abide by Leadership and Integrity Code for State officers in the Ministry; and 5. A public officer shall abide by the Code of Conduct and Ethics of the Ministry. 6. A state or a public officer shall abide by Mwongozo: The Code of Governance for State Corporations where applicable.
The Public Service (Values and Principles) Act, 2015	***14th May 2015***	In force	None	Operationalizes Article 232 of the Constitution on values and principles of the Public Service including maintaining high standards of professional ethics by being honest, displaying high standards of integrity in that officer's dealings, executing functions in a transparent and accountable manner, demonstrating respect towards others, being objective, patriotic and observing the rule of law. Public officers are required to use public resources in an efficient, effective and economic manner.

The Fair Administrative Action Act, 2015	***15th June 2015***	In force	None The Commission on Administration of Justice Regulations, 2013 may apply for the procedural aspects	Prescribes conduct that amounts to fair or unfair administrative action and applies to applies to all state and non-state agencies. Article 47 of the Constitution guarantees the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
The Public Procurement and Asset Disposal Act, 2015	***18th December 2015***	In force	None Relies on the Public Procurement and Disposal Regulations 2006	Establishes procedures for efficient public procurement, prescribes improper procurement processes that would likely hamper free competition, transparency, openness, integrity, economy and fairness. The County Treasury is responsible for the implementation of the Act at the county level. While the repealed Act was silent on the value of the tender security, the new Act now specifies that tender security in any tender shall not exceed 2% of the tender as valued by the procuring entity. 20% of procurement at the County level is reserved for County residents. Kenyan citizens (or entities in which Kenyan citizens own at least 51% shares) are automatically be entitled to an additional 20% of their total score in certain situations. In addition to retaining the procurement methods under the repealed Act (i.e. Open Tendering, Restricted Tendering, Direct Procurement, Request for Proposals, Request for Quotations and Low Value Procurement) the new methods under the new Act include: two-stage tendering; design competition; electronic reverse auction; force account; competitive negotiations; and framework agreements. This new Act introduced changes in the evaluation process whereby the tender evaluation committee, may, after tender evaluation, but prior to the award of the tender conduct due diligence to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract. Further, all procurement function in Kenya must be handled by qualified procurement professionals who will be required to give an opinion. However, the Act is silent on the timelines. The Act is also not express whether a bidder can be disqualified based on such due diligence or opinion. It is also not clear what the due diligence will entail, particularly because it is done after evaluation, and how it reconciles with the provision that a successful tender can be the tender with the lowest evaluated price.

				Other changes introduced include a requirement that all contracts of a value exceeding five (5) billion shillings must be cleared by the Attorney-General before they are signed. Under the new Act, and unless otherwise provided in the particular contract, public entities will be required to pay interest on any overdue amounts while the contractor will be liable to liquidated damages for delayed performance.
The Public Audit Act, 2015	***18th December 2015***	In force	None Relies on PFM Regulations	Provides for the functions and powers of the Office of the Auditor-General to *inter alia* undertake audit of public expenditure in state organs and public entities to confirm whether public funds have been utilized in a lawful, cost-effective and efficient manner that prevents wastage of public funds
The Access to Information Act, 2016	***21st September 2016***	In force	None	Section 4 of the Act provides that every citizen has the right of access to information held by the State and another person and where that information is required for the exercise or protection of any right or fundamental freedom.
The Witness Protection (Amendment) Act, 2016	***23rd December 2016***	In force	Witness Protection Regulations, 2011 Witness Protection Rules, 2015	This Act provides a new definition of witness as a person who has made a statement or has given or agreed to give evidence in relation to an offence or criminal proceedings in Kenya or outside Kenya and requires protection based on an existing threat or risk. A person is a protected person under the Act if that person qualifies for protection by virtue of being related to a witness; on account of a testimony given by a witness; or for any other reason which the Director may consider sufficient. This does not cover imminent or impending threats or risks or reasonable suspicion of threat, danger or risk. Similarly, it is not clear if this extends to protection of whistleblowers in the private sector. In Sweden, a Swedish government official report has proposed new legislation to strengthen whistleblowing protection in the private sector for employees working in publicly funded activities and services: health, education and welfare.[1]
The Bribery Act, 2016	***23rd December 2016***	In force	None	The Act provides general bribery offences that include giving a bribe, receiving a bribe, bribery of foreign public official and function and activities that relate to a bribe and shifts its focus to the private sector.

[1] Swedish Government Official Report SOU 2013:79. Stärkt meddelarskydd för privatanställda i offentligt finansierad verksamhet http://www.regeringen.se/content/1/c6/22/92/58/66ada80c.pd

				This is the first Act dealing with bribery comprehensively in the private sector.
The Proceeds of Crime and Anti-Money Laundering (Amendment) Act	***3rd March 2017***	In force	The Proceeds of Crime and Anti-Money Laundering Regulations, 2013	The Proceeds of Crime and Anti-Money Laundering (Amendment Act) amends the structure of the Assets Recovery Agency. Section 53 of the Proceeds of Crime and Anti-Money Laundering Act is amended by establishing the Assets Recovery Agency as a body corporate. This is a restructuring of the Assets Recovery Agency. Under the Proceeds of Crime and Anti-Money Laundering Act 2009 the Assets Recovery Agency was a semi-autonomous body under the office of the Attorney-General and the Attorney-General had power to appoint the Director of the Agency. The Amendment Act has replaced the position of Director under the Proceeds of Crime and Anti-Money Laundering Act 2009 with that of a Director General. It also provides that notwithstanding any provisions in any other written law, all cases of recovery of the proceeds of crime or benefits accruing from any predicate offence in money laundering, shall be handled by the Assets Recovery Agency.
The National Ethics and Anti-Corruption Policy. Sessional Paper No.2 of 2018	***2018***	Approved	None	The overall objective of this National Ethics and Anti-Corruption Policy is to reduce levels and prevalence of corruption and unethical practices in Kenya by providing a comprehensive, coordinated and integrated framework for the fight against corruption and promotion of ethics.
The Finance Act, 2018	***21st September 2018***	In force	None	Section 84 amends the Proceeds of Crime and Anti-Money Laundering Act, 2009 by creating additional due diligence obligations on reporting institutions.

Appendix Table 3: Institutions fighting corruption

FOCUS OF CONTINUUM	NO. (Active)	CORE MANDATE	ANCILLARY MANDATE
Policy and Legal Framework	19 (16)	• Kenya Law Reform Commission (KLRC) • Financial Reporting Centre (FRC) • Parliament (National Assembly & Senate) • State Law Office and Department of Justice • Presidency (Office of the President) • The National Treasury • Kenya Institute for Public Policy Research and Analysis (KIPPRA) • Competition Authority of Kenya (CA) • National Council on Administration of Justice • Mutual Legal Assistance Central Authority • Financial Action Task Force (FATF) • CSOs - IGOs, NGOs and FBOs • Taskforce on the review of the legal, policy and institutional framework for fighting corruption in Kenya (Expiry of Term) • Ministry of Justice, National Cohesion and Constitutional Affairs (Functions transferred) • Department of Ethics and Governance (Functions transferred) • Ministry of Interior and Coordination of Government	• National Anti-Corruption Campaign Steering Committee (NACCSC) • Office of the Director of Public Prosecutions (ODPP) • National Intelligence Service (NIS)
Compliance / Standard-setting / Accounting Standards / Regulatory or Civilian Oversight	25 (24)	• Capital Markets Authority (CMA) • Kenya Revenue Authority (KRA) • Higher Education Loans Management Board • Public Procurement Regulatory Authority • Insurance Regulatory Authority (IRA) • Sacco Societies Regulatory Authority (SASRA) • Financial Reporting Centre (FRC) • Independent Electoral and Boundaries Commission • Teachers Service Commission (TSC) • Central Bank of Kenya (CBK) • Commission on Revenue Allocation (CRA) • National Land Commission (NLC) • Competition Authority of Kenya (CA) • The National Treasury • Financial Action Task Force (FATF) • Presidency (Office of the President)	• Multi-Agency (Task) Team (MAT)

		• Parliament (National Assembly and Senate) • State Corporations Advisory Council (SCAC) • Public Service Commission (PSC) • National Council on Administration of Justice (NCAJ) • The Independent Policing Oversight Authority (IPOA) • Judicial Service Commission (JSC) • Ministry of Interior and Coordination of National Government • Department of Ethics and Governance (Functions transferred)	
Vetting/Screening/ Recruiting / Dismissal	9 ***Independent Electoral and Boundaries Commission (IEBC) - missing in relation to corruption/ethics***	• Multi-Agency Task Team (MAT) on Corruption • Credit Reference Bureaus (CRBs) • National Intelligence Service (NIS) • Public Service Commission (PSC) • Parliament (National Assembly & Senate) • Presidency (Office of the President) • Judicial Service Commission (JSC)	• Higher Education Loans Board (HELB) • Ethics and Anti-Corruption Commission (EACC)
Auditing / Accounting / Monitoring & Evaluation	9 (8)	• State Corporations Advisory Committee (SCAC) • Office of the Auditor General (Formerly, KENAO) • Office of the Controller of Budget (OCB) • National Council on Administration of Justice • Financial Action Task Force (FATF) • The Independent Policing Oversight Authority (IPOA) • Private Accounting and Audit Firms (i.e. PwC, Deloitte, KPMG and EY) • Anti-Doping Agency of Kenya (ADAK) • The Efficiency Monitoring Unit (Functions transferred)	-
Reporting / Complaints Handling	17 (15)	• Financial Reporting Centre (FRC) • Presidency (Office of the President) • Credit Reference Bureaus (CRBs) • Ethics and Anti-Corruption Commission (EACC) • Commission on Administrative Justice (CAJ) • Ministry of Justice, National Cohesion and Constitutional Affairs (Defunct) • The Efficiency Monitoring Unit (Defunct) • Judicial Service Commission (JSC) • The Independent Policing Oversight Authority (IPOA) • Anti-Doping Agency of Kenya (ADAK)	• Kenya Anti-Corruption Commission • State Law Office & Department of Justice • Office of the Director of Public Prosecutions • Teacher Service Commission • Central Bank of Kenya • Office of the Controller of Budget (OCOB) • CSOs - IGOs, NGOs and FBOs
Investigations & Apprehension	25 (18)	• Office of the Inspector of State Corporations (ISC) • Capital Markets Authority (CMA) • Assets Recovery Agency (ARA) • The National Police Service (NPS) • Commission on Administrative Justice (CAJ)	• Public Procurement Regulatory Authority (formerly, PPOA) • Office of the Director of Public Prosecutions (ODPP) • Mutual Legal Assistance Central Authority • Insurance Regulatory Authority (IRA)

		• National Land Commission (NLC) • Ethics and Anti-Corruption Commission (EACC) • Competition Authority of Kenya (CA) • Directorate of Criminal Investigations (DCI) • National Intelligence Service (NIS) • Multi-Agency (Task) Team (MAT) • The Independent Policing Oversight Authority (IPOA) • Anti-Doping Agency of Kenya (ADAK) • Private Forensic Accounting and Litigation Support Firms (i.e. PwC, KPMG and EY) • The Kenya Police (Defunct) • Kenya Anti-Corruption Commission (Defunct) • Commission on Illegal/Irregular Allocation of Public Land - Ndung'u Commission (Defunct) • Anti-Corruption Police Unit (Defunct) • Kenya Anti-Corruption Authority (Defunct) • Anti-Corruption Police Squad (Defunct) • The Efficiency Monitoring Unit (Defunct)	
Cross-Border Collaboration / Mutual Legal Assistance	3 (3)	• Mutual Legal Assistance Central Authority • Ministry of Foreign Affairs (MFA) • Financial Reporting Centre (FRC)	-
Witness & Whistle-blower Protection	2 (2)	• The President (Office of the President) • Witness Protection Agency	-
Prosecution / Institution of Legal Proceedings (Criminal/Civil)	8 (6)	• Office of the Director of Public Prosecutions • Mutual Legal Assistance Central Authority • Multi-Agency (Task) Team (MAT) • Ethics and Anti-Corruption Commission (EACC) • Anti-Corruption Police Unit (Defunct) • Kenya Anti-Corruption Authority (Defunct)	• Capital Markets Authority (CMA) • The National Treasury
Adjudication & Sentencing (Criminal, Civil, Administrative)	3 (3)	• Judiciary: *Court of the Special Magistrate (Anti-Corruption Courts)* and *Judicial and Quasi-judicial Tribunals* (mostly supervised by the High Court) e.g. Political Parties Disputes Tribunal; Sports Disputes Tribunal; Public Private Partnership Petition Committee; Competition Tribunal; Standards Tribunal; Legal Education Appeals Board Tribunal; and the State Corporations Appeals Tribunal • Public Procurement Regulatory Authority (formerly, PPOA)	• Capital Markets Tribunal at the Capital Markets Authority

Asset Recovery & Surcharging / Asset Management & Custodianship / Asset Disposal	7 (6)	• Assets Recovery Agency (ARA) • National Land Commission (NLC) • Ethics and Anti-Corruption Commission (EACC) • Multi-Agency (Task) Team (MAT) • Kenya Anti-Corruption Commission (Defunct)	• Office of the Director of Public Prosecutions (ODPP) • Mutual Legal Assistance Central Authority
Restitution /Compensation	4 (4)	• Ethics and Anti-Corruption Commission (EACC) • Witness Protection Agency (WPA) • Multi-Agency (Task) Team (MAT)	• The Judiciary
Prevention	5 (3)	• Ethics and Anti-Corruption Commission (EACC) • Kenya Defence Forces (KDF) • Multi-Agency (Task) Team (MAT) • Kenya Anti-Corruption Authority (Defunct) • Anti-Corruption Police Unit (Defunct)	• The National Police Service (NPS)
Civic Education	8 (6)	• National Anti-Corruption Campaign Steering Committee (NACCSC) • Ethics and Anti-Corruption Commission (EACC) • IGOs, NGOs, CSOs, FBOs • Kenya Anti-Corruption Authority (KACA) (Functions transferred)	• Commission on Administrative Justice (CAJ) / Ombudsman's Office • Competition Authority of Kenya (CA) • Multi-Agency (Task) Team (MATT) • Anti-Corruption Police Unit (ACPU) (Functions transferred)
Training / Capacity Building	8 (8)	• Ethics and Anti-Corruption Commission (EACC) • Ministry of Education, Science and Technology • Kenya School of Government (KSG) • CSOs - IGOs, NGOs and FBOs • Judicial Service Commission (JSC)	• State Law Office and Department of Justice • Office of the Director of Public Prosecutions (ODPP) • Financial Action Task Force (FATF)
Ethics (Code of Conduct)	8 (7)	• Association of Professional Societies in East Africa • National Anti-Corruption Campaign Steering Committee • Ethics and Anti-Corruption Commission (EACC) • Public Service Commission (PSC) • Department of Ethics and Governance (Functions transferred)	• Commission on Administrative Justice (CAJ) • Independent Electoral and Boundaries Commission (IEBC)
Systems Re-Design	6 (6)	• The National Treasury • Huduma Kenya Programme (and Host Ministry)	-

Advisory	18 (13)	• Kenya Law Reform Commission (KLRC) • State Corporations Advisory Committee (SCAC) • State Law Office and Department of Justice • Commission on Revenue Allocation (CRA) • Competition Authority of Kenya (CA) • Ethics and Anti-Corruption Commission (EACC) • Witness Protection Agency (WPA) • National Intelligence Service (NIS) • Multi-Agency (Task) Team (MAT) • Financial Action Task Force (FATF) • CSOs - IGOs, NGOs and FBOs • Judicial Service Commission (JSC) • Taskforce on the review of the legal, policy and institutional framework for fighting corruption in Kenya (Defunct) • Department of Ethics and Governance (Defunct) • Kenya Anti-Corruption Authority (Defunct) • Ministry of Justice, National Cohesion and Constitutional Affairs (Defunct)	• Anti-Corruption Police Unit (Defunct)
Advocacy	11 (9)	• National Anti-Corruption Campaign Steering Committee • Ethics and Anti-Corruption Commission • CSOs - IGOs, NGOs and FBOs • Anti-Doping Agency of Kenya (ADAK)	• The Efficiency Monitoring Unit (EMU) (Functions transferred) • Ministry of Justice, National Cohesion & Constitutional Affairs (Functions transferred) • Parliament (National Assembly & Senate) • Commission on Administrative Justice (CAJ) • Presidency (Office of the President)
Research (Evidence-based)	10 (8)	• Ethics and Anti-Corruption Commission (EACC) • Kenya Institute for Public Policy Research and Analysis (KIPPRA) • Kenya National Bureau of Statistics (KNBS) • CSOs - IGOs, NGOs and FBOs • The Independent Policing Oversight Authority (IPOA) • Taskforce on the review of the legal, policy and institutional framework for fighting corruption in Kenya (Defunct)	• The Efficiency Monitoring Unit (Defunct) • Competition Authority of Kenya (CA)

Appendix Table 4: Institutions involved in fight on corruption

Name of Institution	Specific Organizational Mandate
Policy and law making	
Kenya Law Reform Commission (KLRC)	• Reviewing Kenya's legislative framework to facilitate systematic development and reform of her laws. Includes efforts to integrate, unify and codify the law; expunge anomalous sections of the law; seek the repeal of obsolete and unnecessary enactments; as well as the simplification and modernization of Kenya's legislative framework, as pertinent.
Financial Reporting Centre (FRC)	• Developing AML/CFT regulations and policies to provide guidance to support the implementation of POCAMLA (Kenya's Proceeds of Crime and anti-money Laundering Acts and Regulations). This is against a backdrop in which corruption through illicit financial flows (IFFs) account for losses of up to 25% of Africa's total gross domestic product.
Parliament (National Assembly & Senate)	• Enactment of Kenya's anti-corruption legislations. Also involves considering, debating and approving national and county Bills.
State Law Office and Department of Justice	• Spearheading policy, legal and institutional reforms; Advising government on the drafting of relevant legislation and implementation of critical reforms to the government's Governance, Justice, Law and Order sector
Presidency (Office of the President)	• Assenting to anti-corruption Bills; Instituting executive orders to boost Kenya's anti-corruption agenda
The National Treasury	• Formulating financial and economic policies on behalf of the Government; formulating, implementing, monitoring and promoting macro-economic policies involving expenditure and revenue, including liaising with other national government entities in respect of economic and financial policies that facilitate social and economic development; and developing policy for the establishment, management, operation and winding up of public funds.
Kenya Institute for Public Policy Research and Analysis (KIPPRA)	• Undertaking public policy research pertaining to governance and its implications to development, including as related to strengthening the rule of law, land management, anti-corruption efforts, security and public and corporate governance mechanisms in Kenya. • Supporting the Government in the process of policy formulation and implementation; undertaking independent and objective multi-sectoral policy research and analysis; Collating and analysing policy-relevant data; building capacities in public policy; developing and maintaining a repository of research resources on public policy matters accessible to various institutions; disseminating its research to policy implementing Government agencies; acting as a nexus for multi-stakeholder communication on policy matters; promoting policy discussion through the organisation of various fora.
Competition Authority of Kenya (CA)	• Studying government policies, procedures and programmes, legislation and proposals for legislation so as to assess their effects on competition and consumer welfare and publicise the results of such studies;
Capital Markets Authority of Kenya (CMA)	• Formulate rules, regulations and guidelines governing, among other things, the listing and de-listing of securities on a securities exchange; the keeping and proper maintenance of books, records, accounts and audits by all persons approved or licenced by the Authority and regular reporting by such persons to the Authority of their affairs. Regulations include the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations 2011 and Capital Markets (Conduct of Business) (Market Intermediaries) Regulations 2011, which seek to curb financial and economic crimes tantamount or analogous to forms of corruption.
National Council on Administration of Justice	• Deliberation and policy formulation on cross-cutting issues that affect the administration; contributing to legal and policy reform affecting the administration of justice; and implementing, monitoring, evaluating and reviewing strategies for the administration of justice;
Mutual Legal Assistance Central Authority	• Ensuring that requests for legal assistance conform to the requirements of law and Kenya's international obligations; Negotiating and agreeing on conditions related to requests for legal assistance, as well as to ensuring compliance with those conditions.
Financial Action Task Force (FATF)	• the mandate of the Financial Action Task Force concerns policy making; developing and refining its recommendations which are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction;
Ministry of Interior and Coordination of Government	• Development of policy on training of security personnel (i.e. a corruption-sensitive sector)
Public Procurement Regulatory Authority (Formerly, Public Procurement Oversight Authority)	• Providing policy development in respect of the practice of public procurement and disposal in Kenya

Various Civil Society Organisations i.e. IGOs, NGOs and FBOs	• Strategic policy planning and development
Taskforce on the review of the legal, policy and institutional framework for fighting corruption in Kenya (inactive)[2]	• Reviewing and evaluating all existing anti-corruption laws and policies; making recommendations pertaining to policy and structural reforms; preparing a presidential report on the necessary legal, policy and institutional reforms necessary for effective fight against corruption.
Ministry of Justice, National Cohesion and Constitutional Affairs[3]	• Providing policy support to the legal and justice sector; determine and develop legal policy in Kenya on administration of justice, constitutional matters, law reform, anti-corruption strategies, integrity and ethics, legal education, political parties, human rights, national cohesion, legal aid and advisory services and elections.
Department of Ethics and Governance[4]	• Provided leadership in legal and policy formation
National Anti-Corruption Campaign Steering Committee (NACCSC) - ancillary mandate	• Supporting anti-corruption policy making
Office of the Director of Public Prosecutions (ODPP) - ancillary mandate	• Supporting the development of Kenya's draft national policy on anti-corruption; Formulating and reviewing policies related to public prosecution.
National Intelligence Service (NIS) - ancillary mandate	• Making policy recommendations to the President, National Security Council and responsible Cabinet Secretary concerning security intelligence.
National Land Commission (NLC)	• Provide for investigation and adjudication of claims arising out of historical land injustices
Ethics and Anti-corruption Commission (EACC)	• While policy support does not fall under the statutory mandate of the EACC, the EACC has in the past generated policy briefs to inform the government's efforts to tackle corruption
National Anti-Corruption Campaign Steering Committee	• Cooperates with the EACC to inform policy making
Candidate vetting, screening, recruiting and dismissal	
Public Service Commission (PSC)	• Appointing persons to hold or act in specific public offices, and confirming appointments thereto; exercising disciplinary control over and removing persons holding or acting in those offices; developing human resources in the public service; and hearing and determining disputes and appeals on recruitment outcomes by the County Public Service Boards
Parliament (National Assembly & Senate)	• Critical to the appointment and defenestration of persons in particular positions of senior leadership and responsibility in the public sector, among other things, in light of their suitability of character
Presidency (Office of the President)	• Involved in the nomination, appointment and removal of persons from positions of seniority in the government, taking into account relevant allegations, investigations and/or findings of corruption or impropriety made such persons
Judiciary (i.e. Judicial Service Commission)	• Makes recommendations for the appointment of judges
Higher Education Loans Board (HELB)	• Bears an ancillary mandate of providing clearances for persons seeking election, nomination or appointment to elective, state and public offices
Ethics & Anti-Corruption Commission (EACC)	• Similarly, bears an ancillary mandate of providing Anti-Corruption clearance certificates to persons seeking employment within Kenya's public sector
National Intelligence Service (NIS)	• Provides confidential security reports on persons: seeking to hold positions requiring vetting; those seeking to be registered as citizens of Kenya; or foreign institutions seeking authorization to undertake any activity in the Republic which may have a bearing on national security
Independent Electoral and Boundaries Commission (IEBC)	• In addition to overseeing the registration of party candidates for elections, IEBC also enforces its regulations which include ethical requirements - a candidate shall obtain and submit a self-declaration form as prescribed under the Leadership and Integrity Act, 2012
Credit Reference Bureaus (CRBs)	• Providing credit scoring services
Multi-Agency Task Team (MAT)	• Undertaking lifestyle audits of persons seeking public or political office in Kenya
Auditing, Accounting and M&E	
State Corporations Advisory Committee (SCAC)	• Examining management or consultancy agreements made or proposed to be made by a state corporation with any other party or person; examining proposals by state corporations to acquire interests in any business or to enter into joint ventures with other bodies or persons or to undertake new business or otherwise expand the scope of the activities;
Office of the Auditor General (Formerly, KENAO)	• Undertaking audit activities in state organs and public entities to confirm the legality and efficacy of public expenditures; confirming that all reasonable precautions have been taken to safeguard and ensure legal compliance in the collection of revenue and the acquisition, receipt, issuance and proper use of assets and liabilities; issuing audit reports specific to the audited public

[2] Its term expired.
[3] Its functions were taken up by a successor ministry
[4] Its functions were taken up by a successor department

	institutions. May improve detection of instances indicating abuses of power, asset misappropriation, procurement malpractices, general wastage and nepotism, among other forms of corruption. Also provides assurance on the effectiveness of internal controls, risk management and overall governance at national and county government; and satisfaction as to the use of public funds for intended, authorized and legitimate purposes.
Office of the Controller of Budget (OCB)	• Authorizing, monitoring and evaluating public expenditures to ensure fiscal prudence and efficiency in public expenditure. This includes authorising withdrawals from the various government funds (e.g. Equalization, Consolidated and County Revenue funds) which legally require its authorization; and periodically reviewing the formats of requisitions and approvals of withdrawals of funds.
National Council on Administration of Justice	• Monitoring, evaluating and reviewing strategies for the administration of justice.
Financial Action Task Force (FATF)	• Monitoring implementation of its recommendations among member countries and organisations; identifying and analysing vulnerabilities and existing threats to the integrity of the international financial system stemming from its abuse; identifying high-risk, non co-operative jurisdictions and those with strategic deficiencies in their national regimes.
Ethics and Anti-Corruption Commission (EACC)	• Monitoring practices and procedures used by public bodies in the detection and prevention of corrupt practices
The Independent Policing Oversight Authority (IPOA)	• Monitoring complaints related to police misconduct
Anti-Doping Agency of Kenya (ADAK)	• Monitoring of athletes in respect of anti-doping rule violations
The Efficiency Monitoring Unit (Functions transferred)	• Ensure prudence in the use and management of government resources, including those of development partners by: generating monitoring reports to facilitate prosecutions, disciplinary actions, dispute resolution, recovery and surcharge in the public sector; gathering evidence through analysis of financial and cost management records; conducting value-for-money and reviewing existing public revenue collection procedures and practices to suggest more efficient ways of maximizing collection; monitoring government policy implementation and compliance with constitutional reporting requirements among constitutional commissions and independent offices; assessing the efficiency and effectiveness of management systems, capacities and the implementation of programmes/projects in National and County Governments. Authenticating reports and allegations of corruption, declarations of income and the assets and liabilities of government officers.
Private Accounting and Audit Firms (i.e. PricewaterhouseCoopers, Ernst & Young, KPMG, Deloitte)	• Solicited by public, private and charity sector institutions to provide accounting and audit services.
Reporting and complaint handling	
Financial Reporting Centre (FRC)	• Receives, assesses and interprets information on suspicious transactions and other reports provided by reporting institutions; shares intelligence with the appropriate law enforcement authorities or other supervisory bodies for further handling; and to create and maintain a database of all reports of suspicious transactions, related Government information and such other materials; compelling reporting institutions to produce additional documents or other relevant information; ensure compliance with AML/CFT reporting obligations as prescribed in Kenya's Proceeds of Crime and Anti-Money Laundering Act
Presidency (Office of the President)	• Providing annual reports on national anti-corruption efforts, through the issuance of an Annual Report or State of the Union Address to the nation on measures taken and progress achieved in the realisation of the national values, which include good governance, integrity, transparency, and accountability.
Credit Reference Bureaus (CRBs)	• Exchanging customer information including information on non-performing loans or credit defaulting; late payments; Commercially, the credit reference bureaus have relationships with information providers or sources, which include, but are not restricted to, the companies registry; registrar of business entities; business and trade licensing authorities; land registries; tax authorities; county government entities; court registries in respect of information on judgments on debts, insolvency or bankruptcy proceedings or winding up orders; registrar of names; registrar of persons and customers seeking credit reference checks.
Ethics and Anti-Corruption Commission (EACC)	• Handling of complaints regarding corruption in the public sector; Filing and submitting quarterly reports to the DPP on the action taken on the status of investigative matters
National Anti-Corruption Campaign Steering Committee (NACCSC)	• Shares with the Ethics and Anti-Corruption Commission (EACC) for further action, any information garnered from its campaigns that reveal the occurrence of corruption-related offenses
Commission on Administrative Justice (CAJ)	• Addressing complaints of maladministration in the public sector including related to the abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;

	inquires into allegations of delays, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service; assists public sector institutions in establishing and building complaints handling capacities.
Ministry of Justice, National Cohesion and Constitutional Affairs (Functions transferred)	• Handle public complaints through the Public Complaints Standing Committee (Ombudsman)
Efficiency Monitoring Unit (Functions transferred)	• Addressing corruption complaints that had been directed to the attention of the Presidency
Judiciary (via Judicial Service Commission)	• Receive and address complaints against registrars, magistrates, other judicial officers and other staff of the Judiciary
The Independent Policing Oversight Authority (IPOA)	• Receiving and handling complaints related to police misconduct
Anti-Doping Agency of Kenya (ADA)	• Receiving and handling complaints related to anti-doping rule violations
Kenya Anti-Corruption Commission	• Reporting findings of investigations to the DPP, including quarterly reports forwarded to the DPP, Attorney General and Kenya Gazette
State Law Office & Department of Justice	• Coordinate reporting obligations to international human rights treaty bodies to which Kenya is a member or on any matter which member States are required to report;
Office of the Director of Public Prosecutions	• Prepare and submit to the National Assembly and President, an annual report on actions taken and the status of the prosecution of corruption cases investigated and submitted by EACC;
Office of the Inspectorate of State Corporations (ISC)	• Reporting to the Government on all matters affecting the effective management of state corporations, including reporting the misapplication of public funds by state corporations to the Auditor-General
Competition Authority of Kenya (CA)	• Receives and investigates complaints from legal or natural persons and consumer bodies.
Teacher Service Commission	• Receiving and retaining financial declarations
Central Bank of Kenya	• Disclosure of specified information referred to by relevant regulators, authorities or law enforcement agencies
Office of the Controller of Budget (OCOB)	• Submits annual and periodic reports on budget implementation to the Executive, Parliament and the County Assemblies; receives annual accounts from the National Treasury showing the financial position of the government at the end of the year and submits
CSOs - IGOs, NGOs and FBOs	• Reporting on the prevalence of corruption; providing technical support for a shared electronic reporting platform - the Integrated Public Complaints Referral Mechanism (IPCRM) forum - which it co-founded in 2012 as part of an Inter-Agency Co-ordination Committee consisting also of the Kenya National Commission on Human Rights (KNCHR); National Cohesion and Integration Commission (NCIC); National Anti-Corruption Campaign Steering Committee (NACCSC); Commission on Administrative Justice (CAJ); Transparency International (TI-Kenya); and the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ)
Investigation and apprehension	
Office of the Inspector of State Corporations (ISC)	• Conducting investigations into the affairs of state corporations in Kenya
Capital Markets Authority (CMA)	• Investigations of allegations of various market abuses
Assets Recovery Agency (ARA)	• Conducting investigations for the purposes of tracing assets and proceeds of crime
The National Police Service (NPS)	• Investigating economic crimes through its anti-fraud intelligence units, embedded in various other institutions; evidence gathering; apprehending suspected offenders and producing both suspects and evidence in court
Commission on Administrative Justice (CAJ)	• Investigates allegations of maladministration across the public sector
National Land Commission (NLC)	• Initiating investigations into present or historical land injustices based on complaints received or suo moto; making recommendations for appropriate redress; summoning witnesses for the purposes of its investigations; with investigations ranging across matters related to public land grabbing, fraudulent land transactions, encroachments, blocking and encroachments on riparian areas
Ethics and Anti-Corruption Commission (EACC)	• Principal investigative institution in respect of economic and corruption-related offences
Competition Authority of Kenya (CA)	• Investigates impediments and complaints related to competition and is required to publish the results of such investigations
Directorate of Criminal Investigations (DCI)	• Principal branch of the police responsible for collecting and providing criminal intelligence; undertaking investigations into serious crimes including homicide, narcotics crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crimes and cyber-crime, among other violations; co-operates with the EACC regarding the investigation of corruption and economic crimes during which the DCI specifically provides support related to the use of

	intelligence-led policing capabilities and forensic technologies; also responsible for the apprehension of suspects
National Intelligence Service (NIS)	• Intelligence gathering, analysis, transmission and regulation among relevant State agencies; collecting, assessing and sharing intelligence at the request of any State department or organ, agency or public entity, including Kenya's anti-corruption agencies; obtaining intelligence regarding the activities, capabilities and intentions of foreign people or organizations
Multi-Agency (Task) Team (MAT)	• Investigation of corruption and economic crime in Kenya; also concerned with addressing associated offences and forms of organized crime such as terrorism, trafficking, smuggling, poaching, money-laundering; as well as with dismantling criminal cartels and syndicates
The Independent Policing Oversight Authority (IPOA)	• Investigating complaints related to police misconduct
Anti-Doping Agency of Kenya (ADAK)	• Upholding the integrity of sport through intelligence gathering and investigation of Anti-Doping Rules Violations (ADRVs)
The Kenya Police (Functions transferred)	• Specific investigative powers related to addressing corruption; apprehending suspects and offenders
Kenya Anti-Corruption Commission (Functions transferred)	• Commencing and undertaking investigations into corruption, for which it possessed the necessary powers, related to warrant-seeking, searching of premises, confiscation of travel documents, suspect apprehension and detention, as well as all the powers, privileges and immunities of police officers; reserved the power to refrain from instituting or continuing an ongoing investigation, upon consultations with the Attorney General and responsible Minister
Commission on Illegal/Irregular Allocation of Public Land - Ndung'u Commission (Term expired)	• Inquiring into the allocation of public lands or lands dedicated for research for public benefit to private individuals or corporations; collating all related evidence available from ministry-based committees or other sources; cataloguing all unlawfully or irregularly allocated public land, including transactions and utility information pertaining to the allocations; recommend criminal investigations and any other measures against persons involved in the unlawful or irregular allocation of such lands
Anti-Corruption Police Unit (Functions transferred)	• Investigation of corruption
Kenya Anti-Corruption Authority (Functions transferred)	• Investigation of corruption-related offences, all officers of KACA having been conferred with police powers above the rank of Assistant Superintendent of Police, including all police officer powers
Anti-Corruption Police Squad (Functions transferred)	• Possessed powers of investigation and apprehension of suspects of corruption-related offences, with a focus on improprieties by public officers and public service seekers alike
Efficiency Monitoring Unit (Functions transferred)	• Performance of various investigations to provide evidence-based reports to facilitate rapid decision-making by the President on allegations of corruption, impropriety and inefficiency in government
Public Procurement Regulatory Authority (formerly, PPOA)	• Exercising powers of investigation in respect of suspected breaches of the law.
Office of the Director of Public Prosecutions (ODPP)	• Directing that investigations be conducted by an investigative agency; giving directions to investigating agencies over the investigation of corruption and economic crime matters; reviewing recommendations of the EACC, to ensure that persons who deserve prosecution are prosecuted;
Mutual Legal Assistance Central Authority	• Identifying and locating persons for evidential purposes; examining witnesses; facilitating the voluntary attendance of witnesses or potential witnesses in a requesting state; effecting a temporary transfer of persons in custody to appear as a witness; executing searches and seizures; examining objects and sites; facilitating access to relevant documents and records; providing information, evidentiary items and expert evaluations; and facilitating the adducing of remote evidence; intercepting telecommunications; conducting covert electronic surveillance
Insurance Regulatory Authority (IRA)	• Providing investigative assistance to other regulatory bodies; its Insurance Fraud Investigation Unit benefits from investigative support from the Directorate of Criminal Investigations with which it signed a Memorandum of Understanding to strengthen the operations
Private Forensic Accounting and Litigation Support Firms (i.e. PricewaterhouseCoopers, Ernst & Young, KPMG, Deloitte and several Law Firms)	• Solicited by public, private and charity sector institutions to provide or strengthen investigative capacities through the provision of forensic auditing and/or forensic technology solutions to support.
Mutual legal assistance	
Mutual Legal Assistance Central Authority	• Supports the provision of international mutual legal assistance in criminal matters. This involves identifying and locating persons for evidential purposes; examining witnesses; facilitating the voluntary attendance of witnesses or

	potential witnesses in a requesting state; effecting a temporary transfer of persons in custody to appear as a witness; effecting service of judicial documents; executing searches and seizures; examining objects and sites; facilitating access to relevant documents and records; providing information, evidentiary items and expert evaluations; and facilitating the adducing of remote evidence; transmits and receives requests for legal assistance and executing or arranging for the execution of such requests; assess the conformity of requests for cross-border legal assistance to the requirements of law and Kenya's international obligations; document certification and authentication in response to a request for legal assistance; facilitating the orderly and rapid disposition of requests for legal assistance; negotiating, agreeing and enforcing the conditions as well as to ensuring compliance with those conditions; arranging for or authorizing the transmission of evidentiary material to a requesting state
Ministry of Foreign Affairs (MFA)	• Coordinating protocol matters for efficient diplomatic engagement on criminal and extradition matters; and assisting the Office of the Attorney General and Mutual Legal Assistance Central Authority in negotiating and drafting of treaties related to extradition of persons suspected of engaging in corruption, and witnesses thereto
Financial Reporting Centre (FRC)	• Sharing intelligence with the appropriate law enforcement authorities or other supervisory bodies for further handling, having also signed memoranda of understanding with the Central Bank of Kenya, Insurance Regulatory Authority, Capital Markets Authority and EACC, in relation to matters of mutual interest; offers similar assistance to foreign agencies such as foreign law enforcement agencies, international supervisory bodies and inter-governmental bodies on the basis of mutual agreement and principles of reciprocity
Kenya Leadership Integrity Forum (KLIF)	• Diversity of its stakeholders and the informal nature of its framework, both of which facilitate the lower the costs of anti-corruption initiatives through the sharing of resources and realization of public participation and inclusiveness in the development of Anti-Corruption Action Plans, in accordance with Kenya's Constitution
Multi-Agency (Task) Team on Corruption (MATT)	• Coordination and cooperation of key anti-corruption actors in Kenya's Criminal Justice System
Insurance Regulatory Authority (IRA)	• Providing (investigative) assistance to other regulatory bodies
Witness and Whistle-blower protection	
Witness Protection Agency	• Providing 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; Determining the criteria for admission to and removal from the witness protection programme, as well as the nature of protective measures required; Has power to acquire, store, maintain and control firearms and ammunition and electronic or other necessary equipment to achieve its objective of protection, with its officers having been conferred with the powers, privileges and immunities of police officers; Establishing and maintaining a witness protection programme; possibly drawing upon the tools of physical and armed protection, relocation, change of identity or other measures necessary to ensure the safety of a protected person.
The President	• Constitutionally required to ensure that public officers who discharge their duties diligently and stand up against corruption are protected against any forms of reprisals, victimisation or discrimination, as envisaged under Article 236 of the Constitution; and ensure the protection of human rights and fundamental freedoms and the rule of law
CSOs - IGOs, NGOs and FBOs	• Protection of witnesses and victims of crime
Prosecution	
Office of the Director of Public Prosecutions	• Functions as Kenya's national prosecutorial authority; commencing and undertaking any criminal proceedings against any persons before any court; taking over and continuing any criminal proceedings commenced in any court (besides court martials) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; prosecute corruption and economic crime cases investigated by EACC; undertake applications, revisions and appeals in appropriate cases, on criminal matters related to corruption and economic crime
Mutual Legal Assistance Central Authority	• Examining witnesses; facilitating the voluntary attendance of witnesses or potential witnesses in a requesting state; effecting a temporary transfer of persons in custody to appear as a witness; effecting service of judicial documents; executing searches and seizures; examining objects and sites; facilitating access to relevant documents and records; providing information, evidentiary items and expert evaluations; and facilitating the adducing of remote evidence
Ethics and Anti-Corruption Commission (EACC)	• Making prosecutorial recommendations to the Office of the Director of Public Prosecutions, with statistics indicating that the DPP was in concurrence with over 90% of the EACC's recommendations for prosecution

Kenya Anti-Corruption Authority (Functions transferred)	• Upon the delegation of prosecutorial powers from the Director of Public Prosecutions, KACA had the authority to autonomously prosecute corruption offences valued at less than KES 10,000; instituting of civil proceedings
Anti-Corruption Police Unit (Functions transferred)	• Criminal prosecution of corruption cases (subject to the directions of the Attorney-General); instituting of civil proceedings
Capital Markets Authority (CMA)	• The Attorney-General may, on the request of the Authority, appoint any officer of the Authority or advocate of the High Court to be a public prosecutor for the purposes of capital market offences
The National Treasury	• Instituting civil proceedings against relevant public officers, for the recovery of damages for loss arising from corrupt practices
Sanctions	
Judiciary	• **Courts:** Manages judicial services and upholds judicial independence and impartiality; facilitates the conduct of judicial processes without discrimination and in deference to the tenets of expedition, fairness, accessibility, justice, gender and social equity. In respect of corruption cases this is achieved through the Court of the Special Magistrate (Anti-Corruption Courts) through which the Judiciary presides over, hears and determines corruption and economic crime cases; administration and dispensation of justice; • **Tribunals:** Facilitates dispute resolution through Judicial and Quasi-judicial Tribunals (mostly supervised by the High Court) e.g. Political Parties Disputes Tribunal, Sports Disputes Tribunal, Public Private Partnership Petition Committee, Competition Tribunal, Standards Tribunal, Legal Education Appeals Board Tribunal and the State Corporations Appeals Tribunal
Public Procurement Regulatory Authority	• Sanctioning and recommending administrative actions for breaches of the law, including related to use of corrupt or fraudulent practice, collusion and the existence of conflicts of interest
Capital Markets (Authority) Tribunal	• Arbitrates relevant administrative or civil proceedings, including hearing and determining corruption related enforcement actions and appeals
Association of Professional Societies in East Africa (APSEA) and Professional Associations	• Hearing allegations of professional misconduct; Revocation of professional licenses; imposition of fines and penalties;
Assets recovery	
Assets Recovery Agency (ARA)	• Freezing suspected proceeds from further use; confiscating proceeds of all crime; realizing properties; and valuing confiscated properties; empowered to seek prohibition orders against further dealings with a property; seek forfeiture orders of all or some properties to the Government; pursuant to the 2017 Proceeds of Crime and Anti-Money Laundering Amendment Act, exclusively responsible for the handling of all cases of recovery of the proceeds of crime or benefits accruing from any predicate offence in money laundering
National Land Commission (NLC)	• Managing public land on behalf of the national and county governments; ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations; recovery of land including through the revocation of titles; on behalf of, and with the consent of the national and county governments, alienate public land
Ethics and Anti-Corruption Commission (EACC)	• Recovering assets
Kenya Anti-Corruption Commission (Functions transferred)	• Recovering assets, including through authorizing the valuation of suspected properties and with the necessary court approval, appointing a receiver, having the powers to manage, control and possess suspected properties. Subsequently, these recovered funds would be surrendered to a Consolidated Fund while assets relinquished into the custody of the Permanent Secretary to Kenya's Treasury
Office of the Director of Public Prosecutions (ODPP)	• Also involved in asset tracing, recovery and forfeiture
Mutual Legal Assistance Central Authority	• Recovering and disposing of assets
Restitution and compensation	
Ethics and Anti-Corruption Commission (EACC)	• Providing restitution to relevant persons
Witness Protection Agency (WPA)	• Providing restitution and compensation to victims of crimes or their families, through a Victims Compensation Fund
Multi-Agency (Task) Team (MAT)	• Engages in compensation and restitution by virtue of its constitutive agencies
The Judiciary (ancillary)	• Administering justice and assuage motivations towards corruption through the award of compensation or damages
Prevention	
Ethics and Anti-Corruption Commission (EACC)	• Prevention of corruption forms a part of its expansive mandate, although precisely what constitutes prevention is not set out in law
Multi-Agency (Task) Team (MAT)	• Engages in preventative efforts through its constitutive agencies
Kenya Anti-Corruption Authority (Functions transferred)	• Among its explicated duties is corruption prevention, in facilitation of which its officers were conferred with police powers above the rank of Assistant Superintendent of Police, including all police officers powers

Anti-Corruption Police Unit (Functions transferred)	• Among its explicated duties is corruption prevention pursuant to its obligation to enforce the Prevention of Corruption Act
The National Police Service (NPS)	• The 2010 Constitution requires the NPS "prevent corruption and promote and practice transparency and accountability", which suggests that an explicit function of the NPS is to prevent corruption that is internal and/or external to the institution
Kenya Defence Forces (KDF)	• Pursuant to the Kenya Defence Forces Act, the Kenya Defence Forces are similarly mandated to "prevent corruption and promote and practice transparency and accountability". As above, it is unclear whether this mandate for prevention concerns corruption within or external to the Kenya Defence Forces.
Civic education	
National Anti-Corruption Campaign Steering Committee (NACCSC)	• Seeks to effect changes in cultural attitudes towards corruption, in favour of the exercise of transparency and accountability in the management of public affairs; its mandate focuses on the broader public in contrast to the public service; undertaking mass public education campaigns; launching systematic campaigns aimed at sensitization, awareness creation and imparting a deeper understanding of corruption; makes use of wide-reaching mass media including radio and television
Ethics and Anti-Corruption Commission (EACC)	• Promoting public education concerning corruption
IGOs, NGOs, CSOs, FBOs	• Providing civic education (i.e. Transparency International)
Kenya Anti-Corruption Authority (KACA) (Functions transferred)	• Engagement in public education and outreach
Commission on Administrative Justice (CAJ) / Ombudsman's Office	• Through public awareness initiatives it promotes policies and administrative procedures on matters relating to administrative justice
Competition Authority of Kenya (CA)	• Promoting public knowledge, awareness and understanding and making available to consumers information and guidelines relating to the obligations of persons under the Act and the rights and remedies available to consumers under the Act, as well as regarding the duties, functions and activities of the Competition Authority
Anti-Corruption Police Unit (ACPU) (Functions transferred)	• Provision of relevant civic education
Training and capacity building	
Ethics and Anti-Corruption Commission (EACC)	• Conducted joint training programmes targeting investigators and prosecutors of corruption and economic crime cases; offering training to other public institutions including the training of public sector Integrity Assurance Officers (IAOs) through the Public Service Integrity Programme (PSIP); also involved in training government officers in general on corruption-related issues
Ministry of Education, Science and Technology	• Concerned with developing and overseeing the provision of long term education and training on leadership and integrity to all public officers, all levels of the education system and the public, in accordance with the provision of Chapter 6 of the 2010 Constitution of Kenya and s.53 of the Leadership and Integrity Act, 2012; domestic tertiary educational institutions, which are overseen by the Commission for Higher Education and funded both publicly and privately, have been active in supporting ongoing efforts to provide formal and informal basic training related to governance, ethics and anti-corruption, aimed both at public officers and citizens - among these are the University of Nairobi (UoN), Kenyatta University (KU), Strathmore University, Egerton University, Njoro, Jomo Kenyatta University of Agriculture and Technology (JKUAT), Masinde Muliro University of Science and Technology (MMUST), and Mount Kenya University (MKU)
Kenya School of Government (KSG)	• Provides professional education programmes targeted at public officers, on leadership and integrity education; providing programmes that promote a culture of decency, honesty, hard work, transparency and accountability among public servants, as well as fostering in its employees an appreciation of the purposes, national values and principles of governance as set out in relevant sections of the Constitution, policies, laws and regulations
CSOs - IGOs, NGOs and FBOs	• Providing training services related to prevention, detection and surveillance, evidence gathering and investigation, prosecution, punishment, control, asset recovery, witness and victim protection, international regulatory capacity-building and benchmarking, linguistic skills, strategic policy planning and development, preparation of mutual legal assistance, monitoring and evaluation of interventions and institutions, public service management, public financial management, public and private procurement as applied both to corruption and broader forms of economic crime
Judiciary (Judicial Service Commission)	• Preparing and implementing programmes for the continuing education and training of judges and judicial officers

State Law Office and Department of Justice	• Supporting the strengthening of legal sector institutions including through capacity building
Office of the Director of Public Prosecutions (ODPP)	• Involved in jointly conducted training programmes with the EACC targeted at investigators and prosecutors of corruption and economic crime cases
Financial Action Task Force (FATF)	• Strengthening the capacity of FATF-style regional bodies (FSRBs) to assess and monitor their member countries
Social ethics building	
Association of Professional Societies in East Africa	• Seeks to set the tone of professional ethics by prescribing or creating professional codes of conduct for adoption by member professional bodies
National Anti-Corruption Campaign Steering Committee	• Striving to foster a cultural renaissance among the public that has zero tolerance for corruption
Ethics and Anti-Corruption Commission (EACC)	• Setting and promotion of behavioural standards and best practices, as well as in the development of the Mwongozo code of ethics for State Officers
Public Service Commission (PSC)	• Issuing, disseminating and enforcing compliance with Public (Service) Officer Code of Conduct and Ethics; reviewing and making recommendations to the national government regarding the code of conduct
Department of Ethics and Governance (Functions transferred)	• Gathered information on ethical matters within the public sector
Commission on Administrative Justice (CAJ)	• Provides support in the review of codes of conduct
Independent Electoral and Boundaries Commission (IEBC)	• Facilitating the development of codes of conduct for candidates and parties
System re-designs	
The National Treasury	• Tasked with designing and prescribing an efficient financial management system for the national and county governments
Huduma Kenya Programme (and Host Ministry)	• By offering single points of contact for acquisition of basic government services such as applications for the acquisition or renewal of identification, social security and registration documents, as well as incorporating the use of digital interfaces to facilitate rendering of basic government services, the Huduma Programme minimizes personal contact between citizens and public officers, which had previously been a source of bribes and facilitation fees
Public Service Commission (GHRIS)	• Creation of an integrated government human resource services platform to increase accountability in the release of payments to government employees
National Land Commission (NLC)	• Digitization of lands registry and minimize personal contact with officers
Kenya Revenue Authority (KRA)	• Digitization of Kenya's tax collection system to remove loopholes and reduce personal contact with officers
Ministry of Interior and Coordination of National Government (i.e. NIIMS)	• Development and custodian of a mass biometric registration system to enable tracking of services and simplify tracing of persons and suspects
Rewards and remuneration	
Salaries and Remuneration Commission (SRC)	• Addressing pernicious incentives towards rent-seeking in the public sector, through the regular review and application of public officer remuneration; sets and regularly reviews the remuneration and benefits of all State and public officers; advises the national and county governments on the remuneration and benefits of all other public officers
The National Treasury	• Remunerating the staff at Kenya's anti-corruption agencies, among other concerns
Parliament	• Involved in approving the budgets of anti-corruption agencies such as the EACC, as well as other relevant public institutions
Office of the Controller of Budget (OCOB)	• Overseeing the implementation of the budgets of the national and county governments by authorising withdrawals from public funds, including the Consolidated Fund from which the funds for numerous government institutions and their staff are derived
The President (Office of the President)	• Stripping and revoking an award of (national) honour to any recipient who is convicted of corruption or an economic crime or is in breach of the provisions of Chapter Six of the Constitution, LIA or the Public Officer Ethics Act, 2003 (POEA) or a person who has been dismissed from a State office or public office for want of integrity, vide Section 10(c) of the National Honours Act, 2013; conversely, issuing honours to individuals of ethical professionals of great distinction
Independent Policing Oversight Authority (IPOA)	• Acknowledging and rewarding ethical policing conduct through its Outstanding Police Service Award (OPSA) whish is co-hosted with the National Police Service and several Civil Society Organisations
National Police Service (NPS)	• Co-hosts the Outstanding Police Service Awards (OPSA) in conjunction with IPOA and members of the Civil Society community
CSOs - IGOs, NGOs and FBOs	• Co-hosts the Outstanding Police Service Awards (OPSA) in conjunction with IPOA and the National Police Service (NPS)
Association of Professionals in East Africa (including its constituent professional associations)	• Home to several professional associations with rewarding schemes to promote professional ethics including the Law Society of Kenya which issues various legal awards including an award for the Lawyer of the year who receives the award for

	among other criteria, having 'demonstrated the highest standards of professional competence, ethics and integrity'; and the Institute Of Certified Public Accountants Of Kenya (ICPAK) which alongside the Capital Markets Authority (CMA) co-hosts the annual Financial Reporting (FiRe) Award for Excellence, which showcases best practice disclosures among Kenyan companies
Capital Markets Authority (CMA)	• Co-hosts the Financial Reporting (FiRe) Award for best practices in company disclosure, including meeting requirements in fostering sound corporate governance practices
Advisory	
Kenya Law Reform Commission (KLRC)	• Provision of technical legal advice to government agencies on the review of laws under their charge
State Corporations Advisory Committee (SCAC)	• Advising the President on the establishment, reorganization or dissolution of state corporations; examining management or consultancy agreements made or proposed to be made by a state corporation with any other party or person and advise thereon; advise on the appointment, removal or transfer of officers and staff of state corporations, the secondment of public officers to state corporations and the terms and conditions of any appointment, removal, transfer or secondment
State Law Office and Department of Justice	• Acts as principal legal adviser to the Government MDAs, State Corporations and Constitutional Commissions on legislative and other legal matters, and on all matters relating to the Constitution, international law, human rights, consumer protection and legal aid
Commission on Revenue Allocation (CRA)	• Proffers advice and makes further recommendations on prudential financial management and fiscal responsibility at both levels of government;
Competition Authority of Kenya (CA)	• Advises the government on matters relating to competition and consumer welfare; participates in deliberations and proceedings of government, government commissions, regulatory authorities and other bodies in relation to competition and consumer welfare; makes representations to government, government commissions, regulatory authorities and other bodies on matters relating to competition and consumer welfare
Ethics and Anti-Corruption Commission (EACC)	• Provision of advice to persons seeking information regarding any matters within the statutory functions of Kenya's Ethics and Anti-Corruption Commission
Witness Protection Agency (WPA)	• Advising the Government or any other relevant persons on the adoption of strategies and measures on witness protection
National Intelligence Service (NIS)	• Advising the President and Government of any threat or potential threat to national security; making policy recommendations to the President, National Security Council and responsible Cabinet Secretary concerning security intelligence; and advising county governments on appropriate security and intelligence matters
Multi-Agency (Task) Team (MAT)	• Advising the President on corruption-related matters facilitated by its function of being answerable to the President
CSOs - IGOs, NGOs and FBOs	• Provision of consultancy services to Kenya's anti-corruption agencies related to prevention, detection and surveillance, evidence gathering and investigation, prosecution, punishment, control, asset recovery, witness and victim protection, preparation of mutual legal assistance, monitoring and evaluation of interventions and institutions, public service management, public financial management, and public and private procurement
Judiciary (via the Judicial Service Commission)	• Advising the national government on improving the efficiency of the administration of justice
Taskforce on the review of the legal, policy and institutional framework for fighting corruption in Kenya (Term expired)	• Making recommendations pertaining anti-corruption reforms to be reported to the President
Department of Ethics and Governance (Functions transferred)	• Acted as the lead advisor to the President on Governance and Ethics matters
Kenya Anti-Corruption Authority (Functions transferred)	• Involved in government advisory
Ministry of Justice, National Cohesion and Constitutional Affairs (Functions transferred)	• Provided legal advisory services to the government
Anti-Corruption Police Unit (Functions transferred)	• Involved in the provision of anti-corruption advisory services
Advocacy	
National Anti-Corruption Campaign Steering Committee	• Garnering public support for existing anti-corruption agencies
Ethics and Anti-Corruption Commission	• Raising public awareness and promoting public education concerning corruption
CSOs - IGOs, NGOs and FBOs	• Creation of anti-corruption campaigns and messages targeted at the public
Anti-Doping Agency of Kenya (ADAK)	• Tackling sports cheating through values-based sensitization and awareness campaigns

The Efficiency Monitoring Unit (EMU) (Functions transferred)	• Advocated for the promotion of good corporate governance in government
Ministry of Justice, National Cohesion & Constitutional Affairs (Functions transferred)	• Championed and facilitated sectoral reforms related to the dispensation of justice
Parliament (National Assembly & Senate)	• In so far as Parliament is intended to represent the desires of the electorate, its members engage in open deliberations and advocacy regarding issues related to corruption
Commission on Administrative Justice (CAJ)	• Promoting public awareness of policies and administrative procedures on matters relating to administrative justice
Presidency (Office of the President)	• Issuing repeated and re-emphasized public statements and support for anti-corruption efforts in all required reports to Parliament, public holiday addresses; publicly endorsing and participating in activities of anti-corruption-relevant institutions; publicly supporting the ban of foreign companies found guilty of corruption and economic crime from operating in Kenya; mainstreaming the fight against corruption and economic crime by requiring the political leadership to speak about the ills of corruption and the need to combat the vice on National days at public event
Association of Professional Societies in East Africa (APSEA)	• Advancing and advocating for the highest professional standards and ethics in the public interest through training, roundtables and conferences on professional integrity. The range of tools at APSEA's disposal to tackle corruption, include regulating the conduct of members of professional bodies; engaging in anti-corruption related advocacy and lobbying with political representatives in Kenya; and through its critical role as a participant in high-profile national anti-corruption for a such as the Kenya Leadership Integrity Forum or Kenya Integrity Forum (KIF)
Research	
Ethics and Anti-Corruption Commission (EACC)	• While not a statutory function, EACC currently undertakes research on emerging trends of corruption and unethical practices, ways to develop and review Kenya's existing anti-corruption curriculum, and seeks to act as a resource centre on ethics, integrity, leadership and anti-corruption which is to be achieved through its recently launched its National Integrity Academy
Kenya Institute for Public Policy Research and Analysis (KIPPRA)	• Conducts data-driven policy research and analysis on anti-corruption matters, economic, public and corporate governance affairs, legal and constitutional reform, rule of law, public sector reform and land management issues in Kenya
Kenya National Bureau of Statistics (KNBS)	• Production of country-wide official household level data on costs and methods of procuring justice in Kenya
CSOs - IGOs, NGOs and FBOs	• Production of independent research and statistics on corruption-related phenomena
The Independent Policing Oversight Authority (IPOA)	• Conducting research to inform the policy direction which the National Police Service can take to inform better and quality democratic policing
Taskforce on the review of the legal, policy and institutional framework for fighting corruption in Kenya (Term expired)	• Reviewed Kenya's legal, policy and institutional framework for fighting corruption and prepared an associated presidential report on necessary anti-corruption reforms
The Efficiency Monitoring Unit (Functions transferred)	• Mandated to undertake research for the promotion of good corporate governance in government; provided evidence-based reports to facilitate rapid decision-making by the President in relation to government inefficiencies and allegations of impropriety
Competition Authority of Kenya (CA)	• Carrying out research and studies into matters relating to competition and the protection of the interests of consumers

Kenya Institute for Public Policy Research and Analysis
Bishops Garden Towers, Bishops Road
P.O. Box 56445-00200, Nairobi, Kenya
Tel: +254 20 4936000; +254 20 2719933/4
Fax: +254 20 2719951
Email: admin@kippra.or.ke
Website: http://www.kippra.org

ISBN 978 9966 058 69 3