

Beyond laws: Fighting corruption on multiple fronts needed

By Isaiah Mwongela Mbiti

Despite the numerous legislations that Kenya has enacted, corruption still remains rampant in Kenya.

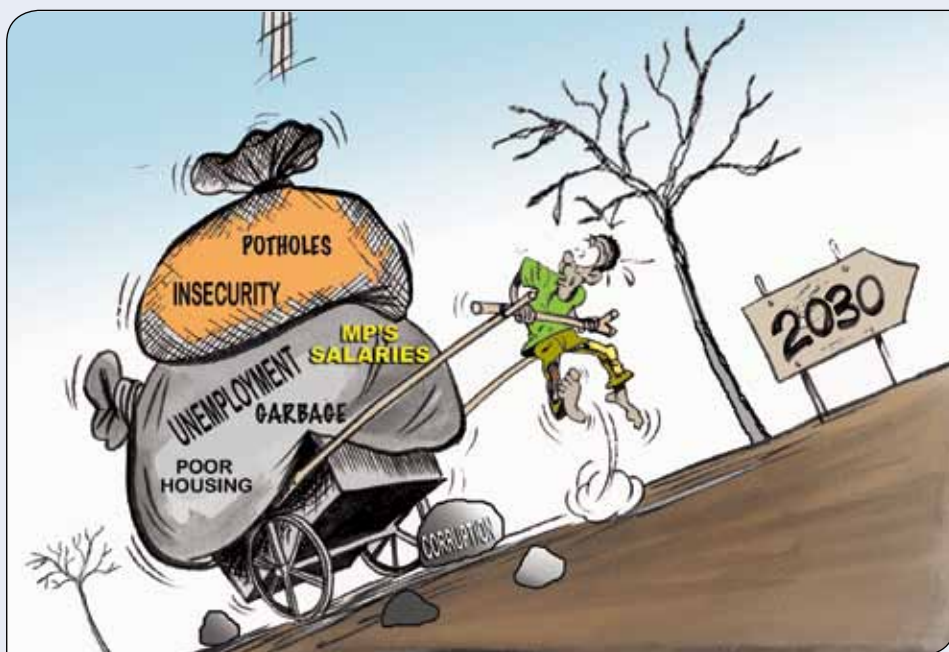
The Global Corruption Barometer (GCB) 2013 conducted by Transparency International shows that over 61% of Kenyans surveyed think that corruption is a serious problem in the country.

Further, in the Corruption Perception Index of 2012, Kenya scored 27 out of 100 on a scale where 0 is very corrupt and 100 is least corrupt.

Kenya has been grappling with corruption since independence and in recognition of this enormous challenge, the National Rainbow Coalition (NARC) government that assumed power after the 2002 General election demonstrated the political will to fight corruption by pushing for establishment of an anticorruption legal framework.

National Anti-corruption laws

In 2003, the Anti-Corruption and Economic Crimes Act, No 3 of 2003 (ACECA) and the Public Officer Ethics Act, No 4 of 2003 (POEA) were enacted. Later, the Public Procurement and Disposal Act was passed in 2005, the Proceeds of



Crime and Anti-money Laundering Act in 2009, and the Ethics and Anticorruption Commission Act (EACCA) and Leadership and Integrity Act after promulgation of the Constitution of Kenya, 2010.

It is amazing the number of legislations in place to curb corruption and yet, corruption still remains arguably the greatest challenge to Kenya's social economic development in Kenya. The ACECA was intended to be the substantive anti-corruption legislation and sought to implement the United Nations Convention Against Corruption. The anti-corruption legal regime is however shared across several pieces of legislation in significant quantities save for the Ethics and Anticorruption Commission Act. This state of affairs makes the anticorruption legal environment too complex not only for the public but also for enforcement agencies and legal practitioners.

Is the Anti-Corruption and Economic Crimes Act therefore, a sufficient substantive anti-corruption law? What are its weaknesses and is there need for consolidation of all the substance in the anti-corruption legislations?

Elements of unconstitutionality in the Anti-Corruption and Economic Crimes Act,

Section 26 of the ACECA, gives the Ethics

and Anti-Corruption Commission powers to require a person suspected of corruption or an economic crime to furnish, within a reasonable time specified in the notice, a written statement of the suspect's property detailing how the same were acquired failure to which the suspect will be guilty of an offence punishable with a fine of Ksh. 300, 000 or 3 years in jail or both.

As if that is not enough the Act under section 30 further confirms that the information obtained in this manner can be used in evidence by the prosecution against the person. This is against the principles of natural justice and contrary to the Constitution of Kenya.

The right to a fair hearing is one of the basic principles of natural justice which was exemplified by Lord Denning in the Canadian Supreme Court as; *'...know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them....'*

Whoever is to adjudicate must not hear evidence or receive representations from one side behind the back of the other....'

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Quote of the Month

"Merely lamenting about widespread corruption will never address the scourge. Being responsible and well informed citizens, it is our duty to our nation and future generations to take individual and collective steps to stop corruption in our society." - Samuel Kimeu, Transparency International Kenya Executive Director.

Fighting corruption on multiple fronts needed

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This right has been broken down under Article 50 of the Constitution of Kenya to include right to refuse to give self-incriminating evidence.

Further, section 26 is inconsistent with the provisions of article 31 of the constitution which provides for the right to privacy. It states; 'Every person has the right to privacy, which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed'.

The burden of proof

Secondly, the Act provides for recovery of unexplained assets from a person suspected to have been involved in a corrupt conduct. Section 55 (2) requires the person to explain the disproportion of his property that may have been identified by the EACC in the course of its investigation. The burden of proof is on the commission to prove that the assets that they label unexplained were actually obtained through means that would actually amount to an act of corruption or economic crime. However the section has the effect of shifting the burden of proof to the suspected person which is against the basic principles of law that 'he who alleges must prove' acquiring the suspect's property under this principle would therefore amount to arbitrarily denying the person his right to own property which would be unconstitutional.

Innocent until proven guilty

Thirdly, the provisions of section 58 of the Act are even more far-fetched. It states that where the accused person is proved to have done that act, the person shall be presumed to have done that act corruptly unless the contrary is proved. This commonly referred to as the presumption of corruption.

The conventional principle of law of presumption of innocence till proved guilty is negated to presumption of guilt, and then the accused person is required to prove otherwise. Presumption of innocence is a fundamental element of the right to a fair trial. Right to a fair trial is one of the rights under the constitution of Kenya that are an absolute right. Article 25 of the constitution lists a number of rights that shall not be limited under whatever circumstance and this includes the right to a fair trial.

Due to the Presumption of Innocence, a person cannot be compelled to confess guilt or give evidence against him/her. It is for the state to produce evidence of guilt, not for the defendant to prove innocence. In general, therefore, a suspect's silence should not be used as evidence of guilt. Because of the serious consequences of conviction, the state must prove guilt to a high standard 'beyond reasonable doubt'. If doubt remains, the accused must be given the benefit of the doubt and cleared. Section 58 of the Anti-Corruption and Economic Crimes Act is

therefore inconsistent with the constitution and hence void to the extent of the inconsistency.

Corporate criminal liability

Unlike in other jurisdictions, the ACECA imposed liability only on natural persons and lacked the element of corporate liability that is a vital part of anti-corruption enforcement in other jurisdictions. This lack of an effective anti-corruption law regarding corporate criminal liability has created compliance difficulties for both domestic and international companies operating in Kenya, given the potential for corruption in private and public sector transactions.

Significantly, the anti-corruption law should establish civil liability of entities for the bribery of public officials. As noted above, under the current law only individuals can be prosecuted for corruption. A new anti-corruption law therefore should impose judicial and administrative sanctions on corporate entities that engage in corruption while doing business in Kenya, and this should apply to both Kenyan and non-Kenyan officials.

Way forward

In consideration of the above, there is need to amend the Anti-Corruption and Economic Crimes Act to enable it to conform to the Constitution, include other relevant provisions relating to corporate liability and other best practices.

The Anti-Corruption and Economic Crimes Act ought to be amended so as to consolidate the Laws relating to the Anti-Corruption agenda. Currently, Anti-corruption laws come across as uncoordinated. The EACC simply sets up the institutional framework, leaving the legal framework to be determined by separate pieces of legislation such as the Leadership and Integrity Act, the Anti-Corruption and Economic Crimes Act as well as the Public Officer Ethics Act just to name a few. The consolidation here may mean the enactment of a new comprehensive and coordinated legal framework.

The writer is a former intern at the Advocacy and Legal Advisory Centre (ALAC) Eldoret.

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Constitution of Kenya, 2010, Article 40(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description.

Article 25 Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited—

(c) the right to a fair trial

The Constitution: 3 years on, electoral reforms recorded in Kenya

By Collins Baswony

As Kenya commemorated the third anniversary since the Constitution of Kenya, 2010 was promulgated; the quest for a reformed electoral process remained alive. The post-election violence that followed the disputed 2007/2008 General Elections was partly attributed to poor management of the elections by the then electoral management body, the Electoral Commission of Kenya (ECK). Indeed, many Kenyans recall when the ECK Chair was asked who won the presidential election that year, he said he didn't know.

In the years that followed the 2007 election, extensive reforms to the Kenyan electoral process commenced after recommendations of the Independent Review Committee (IREC) popularly referred to as the Kriegler Commission¹.

As a result, the first elections held under the 2010 Constitution held in March 2013 was significantly different as compared to the 2007 elections conducted by the Electoral Commission of Kenya (ECK). Handled by reformed institutions, chiefly the Independent Electoral and Boundaries Commission (IEBC) and the Judiciary.

Exit ECK enter IEBC

The Constitution rang significant changes to the electoral management body mandated to administer elections in Kenya.

One of the reasons as to why the results of the 2007 election were not considered credible was because of the way some members of the commission were appointed².

'The general elections held on March 4, 2013 was no doubt dogged by controversy, most notably the procurement of the electronic voter registration and identification kits ...'



IEBC, was significantly different in terms of composition as compared to ECK. Commissioners to the IEBC were appointed through a competitive process conducted in the full glare of the public. This boosted the confidence of members of the public in the IEBC³. Prior to the 2007 elections, Commissioners were appointed unilaterally by the President, a few months to the elections, denting the confidence of the public as well as other stakeholders in the electoral process.

Following their appointment in November 2011, IEBC Commissioners, will serve for a non-renewable term of 6 years. Further, their terms are not to coincide with elections.

Unlike ECK, IEBC is a Constitutional Commission.

IEBC also introduced electronic voter registration and identification systems in an attempt to stem challenges with the integrity of the voter registration and identification, which the Independent Review Committee (IREC) raised as an issue affecting the 2007 elections.

Finally, IEBC also instituted an array of changes

in how results are tallied, transmitted and announced from a manual and difficult to verify system to an electronic system. By doing so, the commission attempted to resolve the problems that dogged the highly criticised ECK's vote tallying and results transmission system applied in 2007.

Electoral dispute resolution

In both 2007 and 2013, the losing presidential candidate contested the outcome of the election. The marked difference was that, in 2007, the aggrieved candidate refused to go to the Courts citing a lack of confidence in the Courts. In 2013 the candidate resorted to the Supreme Court adhering to the electoral dispute resolution mechanisms provided by the Constitution.

Unlike in 2007, by 2013, the Constitution had introduced extensive reforms in the Judiciary, and the public's confidence in the Judiciary was at an all-time high⁴. The Constitution also provided that a President elect cannot be sworn in before the poll dispute is resolved, a departure from 2007 when the President was sworn in barely hours after the declaration of the election results.

Additionally, the Constitution made extensive changes to how a president is elected. A candidate has to win over 50% + 1 of the total vote and win majority of votes in at least 24 of the 47 Counties. If that threshold is not met, then there should be a run off. This is unlike the former Constitution that did not provide for that.

The general elections held on March 4, 2013 was no doubt dogged by controversy, most notably the procurement of the electronic voter registration and identification kits, data transmission and tallying facilities, including the servers..

There is more work to be done but the Constitution of Kenya, 2010 has no doubt improved Kenya's electoral process.

The writer is the Deputy Communication Officer at TI-Kenya

¹www.kas.de/wf/doc/kas_16094-1522-2-30.pdf

²<http://www.freedomhouse.org/report/countries-crossroads/2012/kenya>

³<https://www.facebook.com/DailyNation/posts/10151285192904497>

⁴www.infotrakresearch.com/downloads/Judiciary_perception_survey.pdf

TI-Kenya injects accountability into humanitarian assistance

By Caleb Mbalukha

It was very interesting to sit amongst the villagers of Kabulokor in Turkana County during a community Baraza in June 2013. As I disaggregated those in attendance by age, I noticed a number of able bodied women who had brought along with them empty sacks from previous food distribution exercises just in case we had brought food for distribution.

The delicate manner, in which these sacks were handled by their owners, could only be compared to that given to a life vest by sailors in a shipwrecked vessel in the high seas. It was equally sad to watch several children who for their age were noticeably too aware of the stark reality surrounding them.

Within the gathering, there were mothers with infants who had blank stares of uncertainty and despair, who attempted to keep up with the proceedings of the Baraza. Within this mix and match of community members, what stood out was the near absence of young men and women and the considerable number of lactating mothers, elderly men and women who had availed themselves for this meeting.

This being a public gathering where prior mobilisation had been done, natural selection, this was a congregation of the most vulnerable members of this community and indeed the real beneficiaries of Humanitarian Assistance of the past, present and sadly even the future.

These were the individuals to whom every donor shilling mattered most, whether it managed to get to serve its intended purpose or it got "lost" along the way.

This mission was also used to conduct a baseline survey so as to enable TI-Kenya gain knowledge of the community members' understanding of Humanitarian Assistance in their locality.

During one interview where the respondent was an octogenarian, it was humbling to observe the tenacity she exhibited as she tried to listen, understand and respond to the enumerator notwithstanding her diminished sense of hearing due to her advanced age. In my mind she was not doing this just for herself but it was to compensate for the many other previous opportunities she had been missed out.

It could also have been for the sake of little children in her community for whom she wished a better deal than what she had been given. As



TI-Kenya's Humanitarian Aid Integrity Program Officer with children at a community Baraza in Kabulokor, Turkana County.

we got down to introduce the Humanitarian Aid Integrity Program and discuss issues pertaining to corruption in humanitarian assistance, the faces of the community members lit up with hope.

This was an indication that such an intervention was long overdue, a case in point being when we repeatedly sensitised the community that Humanitarian Aid was a right and not a privilege - a message that sharply contradicted the prevailing notion that Humanitarian Assistance was a privilege for select beneficiaries.

By putting across to those who attended the baraza that through the intervention, TI-Kenya intends to initiate, in partnership with them, what was not going to result in the empty sacks they had carried along to the baraza being filled with food items instantly, but to strengthen their capacity to effectively hold organisations providing Humanitarian Assistance and other service providers in their location to account for their past, present and future activities.

We explained to the participants that Humanitarian Aid Integrity Program is not just another Food based intervention to bring instant food items to their tables but one that is non-food in nature, with a long term effect that will lead

to better service delivery by both government and Non-Governmental Organisations. During subsequent visits to other locations in Wajir and West Pokot Counties, the above scenario was replayed.

In the coming year, TI-Kenya in collaboration with its partner organisations Turkana Women Advocacy and Development Organisation, Wajir Paralegal Network and SIKOM Peace Network will conduct monthly community Barazas in 14 sub locations in Turkana, West Pokot and Wajir counties respectively to empower citizens to identify and act against cases of corruption in Humanitarian Assistance.

140 Social Auditors selected by their communities shall also be trained and supported to hold service providers to account for the interventions they are implementing within the communities of the Turkana, West Pokot and Wajir Counties. The Humanitarian Aid Integrity Program will also pilot a referral system for complaints handling at county level to ensure a multipronged approach to promoting accountability together with community capacity building and social auditing.

Program Officer Humanitarian Aid Integrity Program (HAIP)

TI-Kenya injects accountability into humanitarian assistance

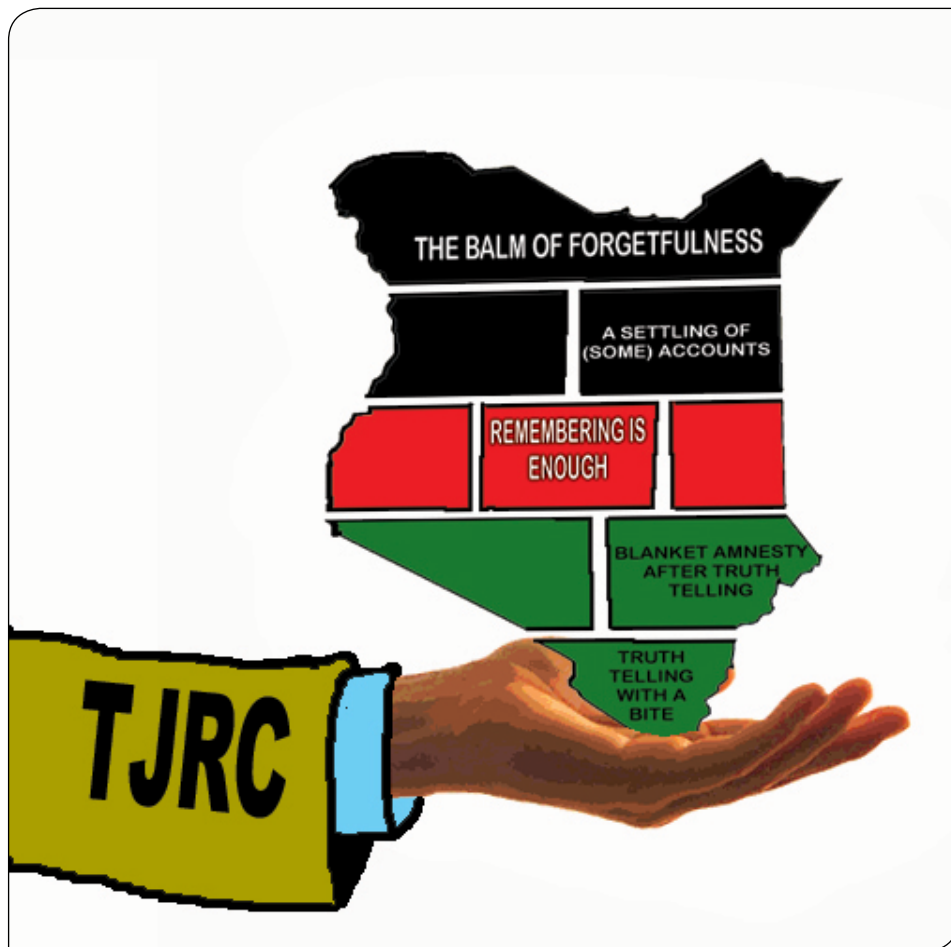
The TJRC report on corruption

By Dalmas Okendo, Ivy Muriungi and Oyesanmi Alonge

On May 21, 2013, the Truth, Justice and Reconciliation Commission (TJRC) handed its report to President Uhuru Kenyatta. Established to investigate and recommend measures to redress past human rights abuses in Kenya, among the findings of the Commission in as far as corruption is concerned include:

1. Corruption is endemic in Kenya despite of the fact that there has been a growing public awareness of the consequences of corruption, its negative and destructive effects on the economy and development, and the need to eliminate corruption.
2. There is a direct link between corruption and gross violation of human rights-Individuals have been killed, tortured and subjected to other violations of human rights because of their efforts to combat corruption.
3. Corruption has a disproportionate impact on vulnerable groups such as the poor, minorities and indigenous people, women, children, persons with disabilities, people living with HIV/AIDS, refugees and internally displaced persons, and prisoners. Members of these groups are more and are less able to defend themselves.
4. Poor people are affected by corruption because it diverts resources from investment in infrastructure that is crucial to lift them out of poverty. Corruption undermines the quality of public services on which the poor depend particularly to meet their basic needs. Minority and indigenous people suffer effects of corruption when they are displaced by, for example, corruptly approved infrastructure developments.

The Commission highlighted a number of grand corruption cases that had remained unresolved for many years. It does not unearth any new evidence or information about the cases and instead opted to recommend that the EACC commences or hastens investigations into the cases. It further recommends that appropriate criminal and or civil sanctions must thereafter be taken against the perpetrators of grand corruption and economic crimes. Although not perfect, these and the other recommendations of



the TJRC provides veritable bedrock for waging a ravaging revolution against corruption.

The most apparent and fundamental function of a truth commission is sanctioned fact-finding. Although, on a cursory look, it would appear that the TJRC did not adequately find the truth with regard to the individual cases of corruption, it revealed truth about the general nature of corruption in Kenya, and dropped strong messages that should captivate and steer to action, stakeholders in the anticorruption crusade.

The TJRC painted corruption as a moral crime

committed by the elite against ordinary citizens. It noted that, historically, grand corruption has denied the Kenyan state the resources to provide social services to people at the margins of society. Despite the ubiquity of grand corruption in Kenya, the Commission noted, that the elite continue to perpetrate corruption with impunity; and, no serious prosecution of corruption has taken place in Kenya. These sharp statements by the TJRC call for a comprehensive attack on corruption in Kenya.

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First, Kenya must formulate a **National Anticorruption Policy** which provides a comprehensive strategy for fighting corruption. Experience has shown that piecemeal or incremental anticorruption approaches often do not work. Most countries that have recorded success in their anticorruption efforts have embraced a comprehensive approach. A National Anti-Corruption Policy offers an exciting opportunity to design strategies to attack corruption in all its complexities and multiplicities.

Second, **free access to information** is an anticorruption strategy. Corrupt transactions are planned and consummated in secret, and, in most instances, the only evidence is the money that changes hands. It is difficult to trace such a hidden transfer of assets. The ability of the public to freely access public information can not only help uncover hidden transactions, but can also have a deterrent effect by placing public officials in apprehension of public monitoring. The enactment of a Freedom of Information Act is, therefore, a necessary pre-condition for a successful fight against corruption in Kenya.

Third, shame is a social control mechanism, and accordingly, a **name and shame mechanism** is gradually becoming an international anticorruption instrument. It is a mechanism through which the information of persons convicted of corruption is well-circulated to the public. It can serve to promote corruption as a shameful practice in Kenya. Currently, corruption does not attract public shame in the same ways as other criminal acts such as armed robbery; corrupt persons are seen as icons in society. If corruption is to abate in Kenya, persons indicted of corruption must be stripped of good reputation.

Fourth, **public participation** is an anticorruption strategy. In most countries, such as Georgia and Botswana, where anticorruption initiatives have worked the people truly wanted the reforms. It is important to educate the public not merely that corruption is a crime, but also that corruption has insidious effects on the livelihood of ordinary citizens. Educating the public will enable Kenya to promote a general anticorruption norm and a culture of intolerance for corruption. Botswana is one country in the African region that has used public education to successfully combat corruption. Kenya can borrow from Botswana.

Fifth, the TJRC recommended the criminalization of offences in the United Nations Convention Against Corruption that have not yet been criminalized in Kenya. Such offenses

include illicit enrichment, bribery of foreign government officials and money laundering. **Illicit enrichment**, in particular, would be very key in efforts to combat corruption in Kenya. Forty-seven jurisdictions in the world now criminalize illicit enrichment.

Illicit enrichment legislations require a public official, with significant increase in his/her assets that he or she cannot reasonably explain in relation to his/her lawful income, to prove the otherwise legal source of such increase. Illicit enrichment can help mitigate the problem of inadequate evidence in corruption prosecution. The report of the TJRC reveals that a number of corruption cases go unprosecuted because of lack of evidence. Those who engage in corruption are often powerful people who can manipulate, hide and even destroy material pieces of evidence. Illicit enrichment will help mitigate the problem of evidence gathering in corruption cases by placing a minor burden on the corrupt public official to produce the legal source of his/her wealth.

Finally, toothless laws do not mitigate corruption. Faithful enforcement of tough anticorruption laws is what counts. The TJRC report emphasized

the importance of strengthening the Ethics and Anticorruption Commission (EACC). As it currently is, the EACC remains a very weak institution. Two legal provisions are important to the strengthening of special anticorruption agencies: prosecutorial power and investigative power. The EACC does not have prosecutorial power. In order to succeed, anticorruption agencies without prosecutorial power, usually have enhanced investigative power. Enhanced investigative power means that an agency enjoys all the privileges, powers and immunities of the police. Hong Kong's ICAC is the model for enhanced investigative power. Such power includes the power to arrest, search and seize without warrant, to force the surrender of travel documents, to summon for interrogation, and to freeze bank accounts. Although the EACC has some form of investigative power, such powers are too easily restrained by judicial actions.

In conclusion, silence is a major hindrance to fundamental change. There has been a culture of silence around the TJRC report. The report has not received the attention it deserves in public discourses. The media and civil societies must break this culture of silence.



Kenyans want an operation smile: Unleash the scalpels on the corrupt

By Dalmas Okendo

More than 100 days have lapsed since the Jubilee Coalition took over the mantle of leadership. The honeymoon ended and Kenyans expect no more political campaign rhetoric but action. There have been mixed feelings about the performance of the coalition so far. But the recently released report of the Global Corruption Barometer (GCB) is testament of the fact that runaway corruption in Kenya still stinks to the highest heavens.

According to the survey, three in five Kenyans believe that corruption is a problem in the public sector. And like every survey has shown the Police service tops the list of public institutions perceived to be corrupt with a score of 4.8 on a scale of 1 to 5, where 1 means not corrupt at all while 5 means extremely corrupt. Second on the list is Parliament (4.0) followed by the judiciary (3.6) and political parties (3.5) while health and medical services (3.2) close out the top 5 list.

A similar proportion believes that in order to get anything done in public service you

have to have personal contacts in a particular service delivery institution. Even with the new Constitution and an independent national anti-corruption commission, 46% of the respondents in the GCB felt that the government's efforts at curbing corruption are either ineffective or very ineffective.

Some people have argued that Kenya is constantly ranked poorly because Kenyans are very negative. Ranked among the most highly taxed citizens of the globe, Kenyans have reasons to want quality and efficient services and good governance. What is there for Kenyans to be positive about: when the GCB report shows that an average of 53% of people had been asked to pay a bribe to the police? When another average of 30% of the people who had come in contact with the judicial systems had been asked to pay a bribe? When counties are busy budgeting for entertainment, luxury cars for their executives and assemblies, fighting against pornography and the like?

Corruption has continued to impact Kenya in many ways including undermining service delivery, democracy, and the rule of law, increasing the rate of unemployment, slow economic growth, poverty, insecurity and low investor confidence. Similarly the country's development framework, Vision 2030, on the other hand has also identified corruption as one of the challenges that should be addressed in order to realize the targeted development goals. While the impact of corruption is particularly tragic in the case of the poorest people in developing countries, fighting Corruption is a global problem that affects all countries, all sectors and all sections of the society. It is found in both rich and poor countries, albeit in different forms and magnitude. It is evident that corruption has also contributed to instability, poverty and the eruption of civil wars over resources in a number of countries.

This gloomy situation ensues against a backdrop of a very clear and strong resolve by Kenyans when they adopted and

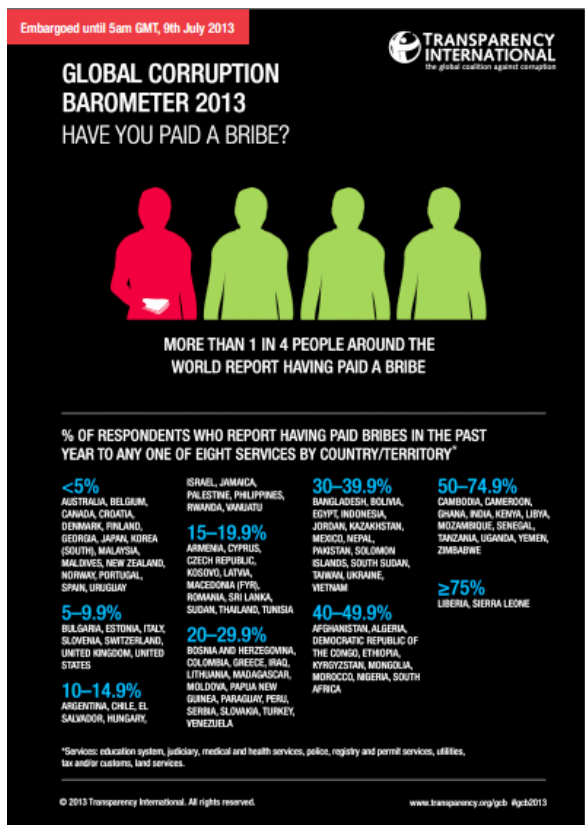


enacted the Constitution in 2010. This resolve is summarized in the preamble of the new Constitution. It is corroborated by the number of people who braced the beatings of weather to overwhelmingly vote for the Constitution in the August 2010 referendum.

Kenyans are waiting for the time when those entrusted with the machineries of the state will take more decisive and unflattering steps to uproot corruption from within our borders; The time when it shall dawn on us that the magnitude of corruption in our country is a dishonour to those who heroically struggled to bring freedom and justice to our land; when it shall dawn on us that we not boast of freedom and justice when Kenyans have to live everyday with the monster of corruption, and to suffer its injustices; we shall know for certainty that the new threat to our collective quest for peaceful coexistence and unity is really corruption and bad governance and not so much our ethnic, cultural or religious diversities; we shall realize that the environment which is our heritage is suffocated with massive degradation because of the insatiable appetites of a few corrupt individuals abating unsustainable selfish practices to the detriment of present and future generations; we shall appreciate the reality that the well-being of individuals, families and indeed the nation is threatened by runaway corruption; that the government Kenyans aspired for, a government based on the essential values of human rights, equality, freedom, cannot be fully attained if the problem of corruption is not addressed.

The government must give Kenyans reasons to be positive, reasons not to be enticed into mechanical pronouncements like, "I am proud to be Kenyan."

The writer is TI-Kenya's Head of Programmes



TI-Kenya takes integrity message to schools

Transparency International Kenya (TI-Kenya) staff visited schools in Nakuru, Trans Nzoia and Kwale Counties where integrity clubs were established in the month of August with the aim of strengthening existing integrity clubs.

The schools visited in Trans Nzoia County include Goseta Boys High School, Lessos primary and Kesegon primary while in Nakuru the schools visited were Jacaranda Primary School, Green Hill High School and Rurii Primary School. In Kwale County the team from TI-Kenya visited Simanya, Msambweni and Makamini Primary Schools as well as Mivumoni and Vigurungani Secondary Schools.

During the school visits there were activities such as planting of trees, placing placards with integrity messages at strategic points in the school compounds and issuing of integrity badges to club members.



Members of the integrity club at Jacaranda primary during the tree planting exercise



Dalmas Okendo of TI Kenya addressing students at Jacaranda Primary in Nakuru



Students watching as the placard are placed on the school compound



The integrity champion of the month receiving a badge





Students at Green hill high school cheering on as one of them receives a badge



Dalmas Okendo of TI Kenya giving a presentation during the forum in Nakuru

TI-Kenya holds education sector County stakeholders' fora

TI-Kenya convened education sector stakeholders' fora in Nakuru, Trans Nzoia and Kwale Counties.

The stakeholders' forum aimed at promoting understanding of the implications that devolution has on service delivery in the education sector with the ultimate goal of enhancing transparency, accountability and public participation in the sector.

In Trans Nzoia County, the stakeholders' forum was held at a hotel in Kitale town and was attended by 117 participants from the County. Amongst those attended included representatives from the Education Ministry led by the County Director of Education, Mr. Joseph Wamocho, the County Teachers' Service Commission Director, Mr. Samuel Marigat, the County Executive Committee member in charge of Education and ICT, Dr. Isaac Kogo, and District Education Officers from Districts within Trans Nzoia County.

Others who attended included representatives from the Provincial Administration including chiefs and sub-chiefs, representatives from Civil Society Organizations such as human rights organisations, Uwezo Kenya, the Trans Nzoia County Education Network (TCEN) and Elimu Yetu Coalition.

The Nakuru County stakeholders' forum was held at a hotel in Nakuru town and was attended by a total of 96 participants. In attendance were the County Director of Education Mr. Mathews Aboka, a representative from the TSC office, District Education Officers, District Quality Assurance Officers, Elimu Yetu Coalition members, school heads and teachers.

A total of 89 participants attended the Kwale County Stakeholders held at a hotel in Kwale County. Among those who attended included the County Governor Mr. Salim Mvurya, four County Assembly Members, County Executive Committee Member in charge of Education, Mr. Mangale Munga, and the Kwale county commissioner Mr. Achoki Evans among others.



One of the participants during the plenary session in the forum in Nakuru.



Dr. Kogo the cabinet secretary education Trans Nzoia County giving opening remarks



Richard Maina of TI Kenya during the forum in Trans Nzoia.



Mr. Marigat the County director TSC Trans Nzoia giving a presentation during the forum



Mr. Wamocho County director of education Trans Nzoia giving feedback after the plenary session.

Advocacy and Legal Advisory Center (ALAC) Western News

Chairperson reinstated after ALAC's intervention

Mr. Ochieng*, a resident of Kisumu County was irregularly removed from his position as chairperson of the local health centre's stakeholders committee in Muhoroni Constituency by the nurse in charge.

He attributed his tribulations to the fact that he was seen as a person with disability and therefore unable to serve as chairperson. Not knowing what to do after his efforts to have the decision overturned, Isaiah accepted his fate until he got

information from Nam Lolwe FMA local radio station about the Advocacy & Legal Advisory Centre.

Ochieng attended a legal aid clinic organised in his Constituency by Transparency International Kenya to make an attempt to pursue justice one more time. He considered his removal as amounting to discrimination and corruption by the nurse by being denied his allowances accruing by virtue of the position which he

was elected to hold. His case was taken up by the Western ALAC office; a demand letter was written to the nurse in charge and copied to the District Medical Officer of Health (DMOH). Upon receiving the letter the officer followed up with the nurse. A letter was written to Isaiah and currently he is awaiting reinstatement as the chair of the committee.

*Not his real name

ALAC Western helps dismissed Siaya school employee get his dues

For over 10 years, Mr. Omondi (Not his real name) worked at a Secondary School in Siaya County as an accountant. Given his tough stance on sticking to financial procedures, he encountered problems with the school administration which led to his demotion from the position of an accountant to that of a grounds man in 2010. However, Omondi rejected the position rendering him jobless. His efforts to get assistance from the labour offices proved fruitless.

Prior to the launch of ALAC Western, Omondi got information on the event and attended the launch at car wash grounds in Kisumu held on July 12, 2013 where he heard about the work of ALAC officers. Later he met with ALAC western officers who listened to his case, took up the matter and advised him appropriately. He was then guided through the process and followed up with the labour office in Kisumu.

Upon the intervention of ALAC Western, the Labour office for the first time summoned the school administration who for the first time also responded. An agreement was reached to settle Omondi's dues totalling Kshs. 181,000 and all parties signed the agreement. Omondi is now a happy man and he is currently awaiting the full settlement to be effected by this month (September).



For free assistance:
 Visit: ALAC Western at RIAT along Kisumu-Kakamega Road
 Call toll free on 0800-720-721 or SMS 22129 or call Mobile number: 0716900227

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Anti-corruption reforms overdue

By Dalmas Owino Okendo

Over the years studies and opinion polls have identified corruption as one of the greatest concerns for Kenyans. In the Global Corruption Perception Index, Kenya has continued to rank low: In 2011, Kenya was ranked 154 out of 182 countries surveyed with a score of 2.2 out of a possible 10.0. In July 2013, Transparency International released the Global Corruption Barometer (GCB) report according to which 3 in 5 Kenyans believed that corruption is a problem in the public sector with the Police service topping the list of public institutions perceived to be corrupt with a score of 4.8 on a scale of 1 to 5, where 1 means not corrupt at all while 5 means extremely corrupt. It was followed by Parliament (4.0), Judiciary (3.6), political parties (3.5) while health and medical services (3.2) in that order.

While the question many technocrats ask is why Kenya is perpetually ranked poorly. Some have taken the myopic argument that this happens because Kenyans are generally very negative. But what is there for Kenyans to be positive about when the GCB report shows that an average of 53% of people had been asked to pay a bribe to the police? When another average of 30% of the people who had come in contact with the judicial systems had been asked to pay a bribe? When counties are busy budgeting for fighting pornography, entertainment, luxury cars for their executives and assemblies? The most hard-line technocrats think such rankings are distortions of facts by civil society organizations.

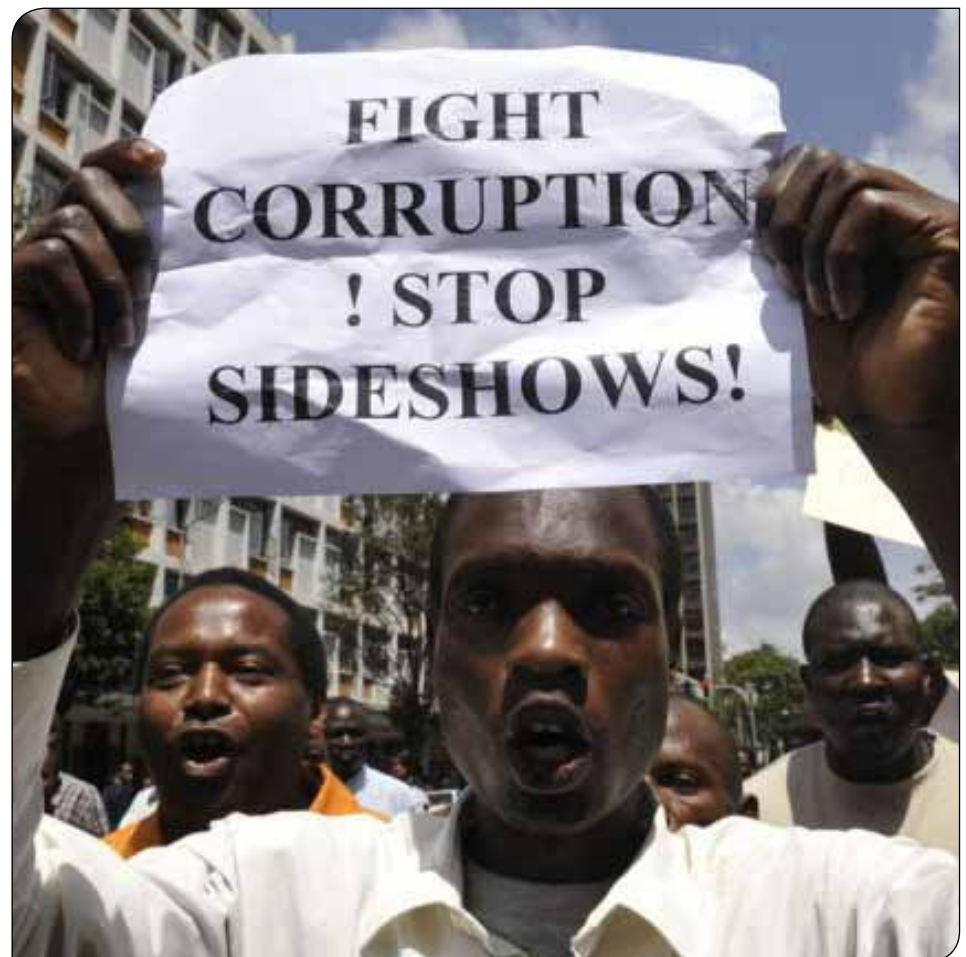
On Monday, Transparency International released the findings of an opinion poll in which, among other things, they had sought to map the public assessment on performance of the Government on anti-corruption. Once again, this was found to be dismal with close to 90% of the respondents rating government performance as either poor or average while only 8% rated the same as 'good'. Instead of lamenting about the poor ratings, the question we should be asking is whether or not we have done enough to uproot graft within our borders. But if we think we have done/are doing enough why are the Ken Ren, Goldenberg, Anglo Leasing and Triton saga still mysteries? It is estimated that Kenya loses between 25% to 30% of its annual budget to corruption, especially through procurements, and wasteful spending of public funds. Based on this year's budget estimates, this stands at approximately 480B. Why would we lose such colossal amounts of money if the Government was doing enough to uproot graft?

Why would the Jubilee Government rate so poorly on anticorruption yet it had the most colorful provisions on anti-corruption in its manifesto? The implication is clear that the effort so far has not been felt or very little has been done to buttress the expressed commitment. When the focus of the Executive and the Legislature have diverted to the ICC cases and VAT, Kenyans desperately wait to see concrete steps taken to actualize the Jubilee promise: To "clean up government" by introducing the toughest anticorruption laws in the world; Give the Ethics and Anti-Corruption Commission (EACC) the power to prosecute corruption cases as happens in other African countries; Set up local anti-corruption boards at county level with the power to refer cases to the EACC or to the Director of Public Prosecutions; Ban anyone convicted on corruption charges from working in Government, in any public sector job; Enact the necessary legislation so that Kenyan

companies found guilty of corrupt practices will be liable to have their assets frozen by the courts; Ban foreign companies found guilty of corrupt practices from operating in Kenya; Introduce an automatic freeze on the assets of anyone indicted on corruption charges (with appropriate judicial approval); Introduce the automatic suspension of any official indicted on corruption charges; and, put an end to Parliamentary immunity from corruption charges.

Kenya is presently being reviewed by Papua New Guinea and Cape Verde on the status of implementation of the United Nations Convention Against Corruption (UNCAC). Perhaps this provides an opportunity for thorough national reflections to re-set the anticorruption reform agenda.

Head of Programmes, Transparency International Kenya

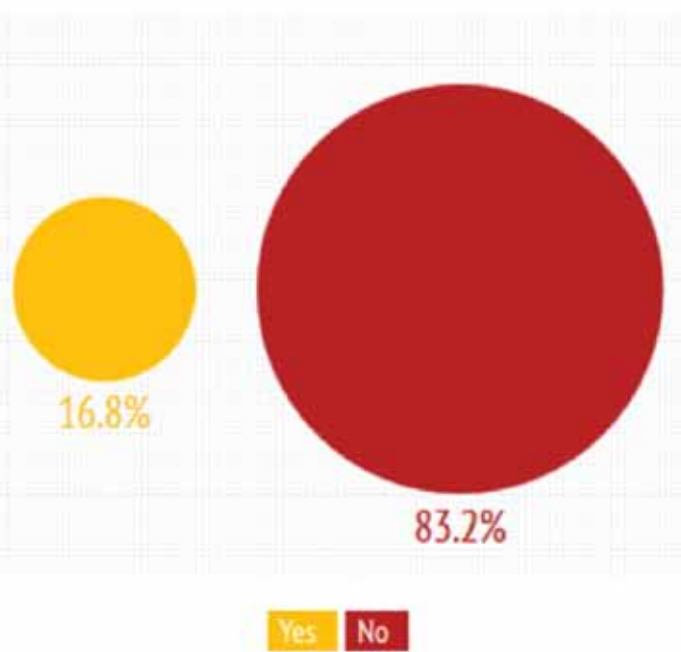


Towards hazy horizons: An opinion poll on implementation of devolution and governance reforms in Kenya

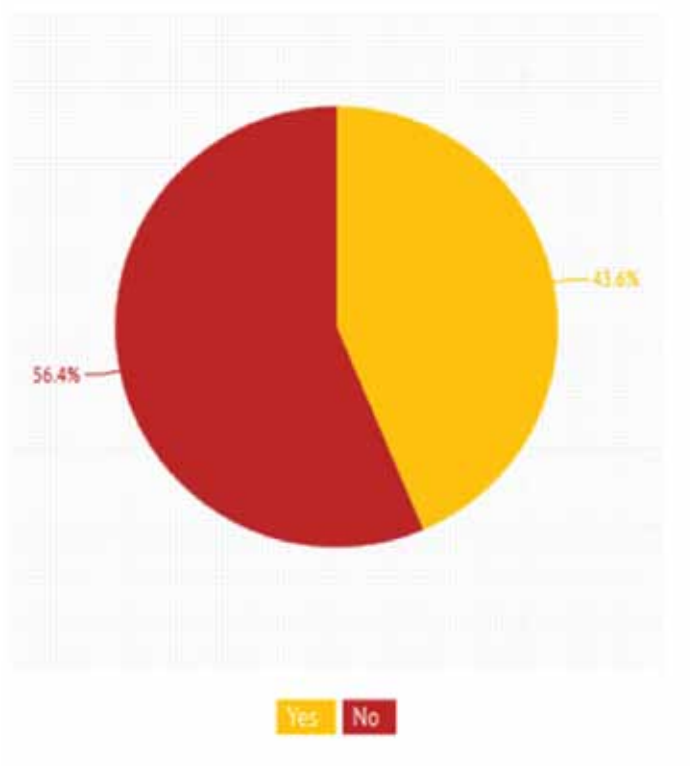
A survey by Transparency International Kenya reveals that only 17 per cent of Kenyans are aware of the amounts of money disbursed to their County Governments. The poll was conducted between August 6 and August 25, 2013.

Of these 17 per cent, less than half of the respondents (44 per cent) know where to get information on the funds disbursed to the Counties for both recurrent and development expenditure.

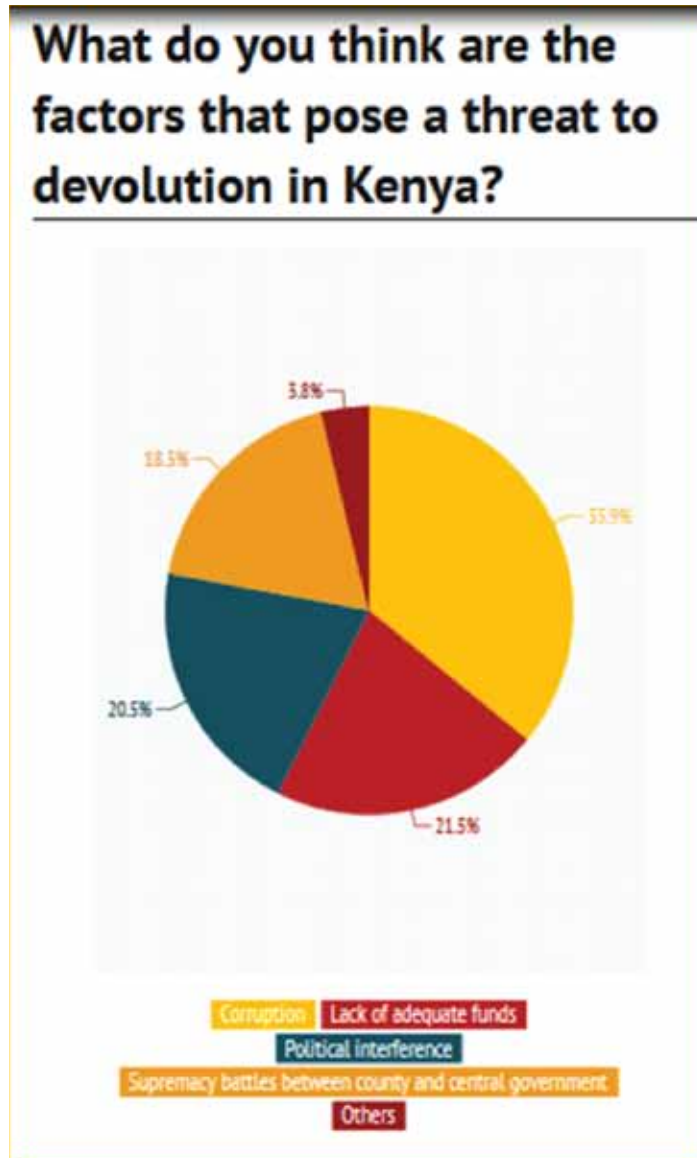
Do you know approximately how much money was allocated to your county by the National Government this year?



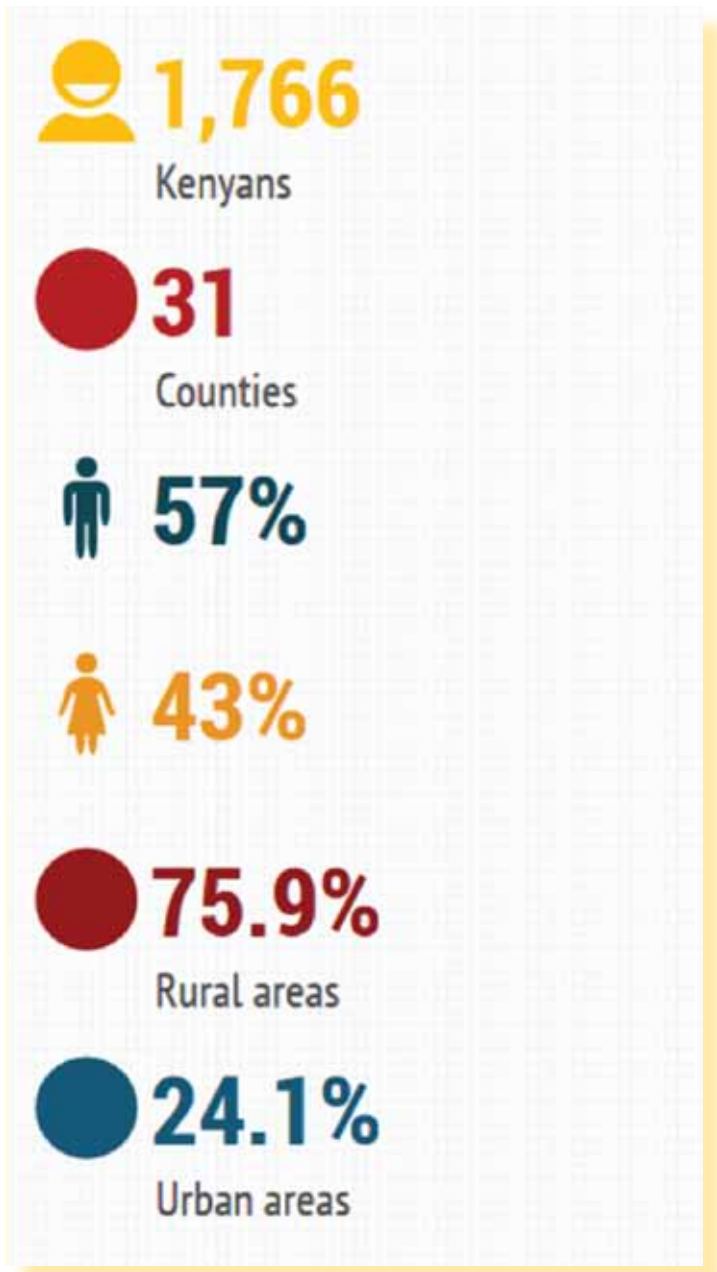
Do you know where to get information if you wanted to know about funds disbursed to your county?



According to the report titled: Towards hazy horizons: An opinion poll on implementation of devolution and governance reforms in Kenya, corruption was rated as the highest risk to devolution standing at 36 per cent of the respondents. Insufficiency of funds and political interference were also rated high with slightly more than 20% of the respondents mentioning these. Notable among the identified threats are the perceived supremacy wars between the two levels of government.



The survey was conducted among 1,766 Kenyans picked across 31 counties and eight regions. Across the regions, Rift Valley accounted for the largest number of respondents with about 28% of the total while North Eastern accounted for the lowest number at 4.1 % respondents.



The survey respondents were mainly between 18-49 year olds with an almost equal split between 18-29 and 30-49 years age brackets. Only 10% of the sample was picked from Kenyans above 50 years. The two demographic groups were purposely sampled as a reflection of the national population. The group is also likely to be more impacted by success or otherwise of such critical issues like improved governance into the future.

Even though respondents believed priorities of the national government were good, 37.1% of them viewed them as unrealistic as compared to only 30.5% respondents who thought county governments' priorities were unrealistic. Further, about a sixth of the respondents view the development priorities to be out of touch with the needs of citizens at both county and national level.

Rating of Government priorities

Launching the report, Transparency International Kenya (TI-Kenya's) Executive Director Mr. Samuel Kimeu noted that citizens' views on the national and county governments' priorities could be a pointer to the governments to revisit campaign priorities and to align them with what the people identify as real and urgent needs through paying fidelity to the participatory planning process enshrined in law. "The public response to our poll is indicative of the lack of peoples' voice in the setting of development priorities." Said Mr Kimeu

Kimeu cautioned that if corruption goes unchecked, it will undermine the developmental aspirations of Kenyans at both levels of government. "Merely lamenting about widespread corruption will never address the scourge. Being responsible and well informed citizens, it is our duty to our nation and future generations to take individual and collective steps to stop corruption in our society. "

The judiciary was seen as the most trusted institution in driving the anti-corruption agenda with close to 30% respondents supporting this assertion. The confidence in the civil society and EACC stood at 20% and 17% respectively.

Institutions most trusted to drive the anti-corruption agenda in the next 12 months.

The TI-Kenya Executive Director explained that the judiciary continues to enjoy public confidence. This is a positive boost for the on-going reforms

in the institution. However, it must be noted that the premium enjoyed by the judiciary can stretch only up to some limit. The stalled reforms in the police, the hitherto drawn out transition of the EACC and the lack of proper and firm leadership on the anti-corruption agenda by the Executive does not auger well for the fight against corruption in the present and long-term. "It is therefore important that the reform efforts run concurrently in all institutions that have a core anti-corruption mandate," he said.

He advised Parliament to do a proper introspection to understand why there is so little confidence in its ability to lead the fight against corruption and to adopt appropriate remedial measures. "Equally worrying is the premium placed on the potential role of the media and the public generally. The fight against corruption cannot succeed without unequivocal public demand and support."

Kimeu warned that corruption undermines economic development by generating considerable distortions and inefficiency. Furthermore, he said, "corruption erodes the institutional capacity of government as procedures may be disregarded, resources may be siphoned off, and public officers could be bought and sold. Officials may increase the technical complexity of public sector projects to conceal or pave way for such dealings, thus further distorting investment."

Kimeu advised Kenyans that while all issues of corruption are important, any reasonable person with commitment to rooting out corruption will agree that it is tackling those grave and huge matters of grand corruption as well as petty corruption that lead to reducing corruption in any society.

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CORRUPTION
BRIBERY, FRAUD, ABUSE OF OFFICE, CONFLICT OF INTEREST & EMBEZZLEMENT ARE COMMON MANIFESTATIONS OF CORRUPTION



September 2013 Upcoming Activities

- Social audit of Economic Stimulus Programme activities on education projects in Moiben, Turbo and Kapseret Constituencies from September 2 to 10, 2013.
- Three public forums on civilian oversight in Moiben, Turbo and Kapseret constituencies
- One public forum on anticorruption strategies at which the Kikulacho documentary will be aired on September 11, 2013.
- Outreach activities will be conducted in Trans-Nzoia County comprising mobile legal aid clinics and public forums on anticorruption strategies and devolution from September 16 to 20, 2013.



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