



SHIFTING BRIBERY TRENDS: KENYA BRIBERY INDEX 2007



Dr. David Ndiu presenting during the KBI launch

The Kenya Bribery Index (KBI) is in its sixth year. The KBI 2007 is pivotal in telling us how corruption and bribery trends have been in the country, and what has changed.

The KBI instrument used asks people to rank the institution they deal with frequently, the ones they have bribed either by being asked for or offering at will, and what they bribed for.

This survey is a service delivery audit of institutions of one dimensional i.e whether the services one requires is offered without incentive. In that sense it provides more management information to the institutions. The survey is not about the big mega fraud corruption type done by the big fish, and instead it is about things which happen be-

tween the common *mwananchi* and the other person on the other side of the counter in one office or in the streets as in the case of policemen, the hawkers and the city council *askaris*.

Shifting bribery trends

According to the KBI 2007 survey, with respect to corruption as captured by bribery experiences of *wananchi*, things did not change much from the previous years on aggregate. The survey used an aggregate index, a number which tries to capture the different di-

mensions of manifested corruption issues. The current aggregate index is 19.1 down from 19.2 in 2005 which rose from 14.9 in 2004. The visible changes seen encompasses the amount of bribe paid which increased and bribes paid for services

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Shifting Bribery Trends: Kenya Bribery Index 2007

within the law enforcement. The survey depicts that a lot of people are paying bribe to city askaris and police officer. However, the police force came down significantly from 46% of the transactions reported to 36% in the KBI 2007 survey. This is as a result of the government abolishing the road licence; which discouraged corruption between the police and the motorists. Also notable is that the gap between the police force and the second ranked institution is diminishing, clearly indicating a significant improvement in its own account.

The average size of the bribe related to jobs and employment increased from Ksh.2000 the last years to about Ksh7000 in 2007. The value of business related bribes also increased in comparison to 2005 survey. We do not need to know economics, but what you need to know is that price is a reflection of demand and supply.

If you look at the service delivery like in the health sector, there has been a huge increase in service delivery and too much medicine in public hospitals. When you think about employment the opposite is true. The number of people looking for jobs is going up every year by virtue of population, but the numbers of jobs are not going up. When respondents were asked which area the government is going wrong, they said employment, a confirmation that jobs are scarce. There is an improvement in disposable income meaning that, people are prepared to pay more, but clearly the message which comes out is that the anti-corruption reforms and efforts in public sector are more focused in procurement.

What are people doing in terms of reporting bribe cases? There is an improvement in this area as people are willing to report corruption cases. The survey recorded an increase from 9 % to 14 % of which most reporting was via SMS and hotline number either to KACC and the media.

Looking at the rankings of particular organisation, there are significant changes among the organisation at the same time a low aggregate level at the micro and macro level. In the top ten of the 2006 ranking, only 2 re-appeared in the 2007 ranking which are the police and the local authority, the other eight did not feature in 2007.

Another institution in third position is public colleges and universities. Getting chances in these institutions is difficult and up to Ksh.15000 bribe size is paid on average to secure a place. NGOs and Religious organisations are also in the list. Why would that be?

Of course because are people looking for better paying jobs. There are also institutions that made a lot of effort who were very high last year and have shown improvement in this year's index. These include Teacher's Service Commission(TSC) and state corporations.

New Entrants

If you look at CDF, it has never featured before because they did not exist or rather they were not active by virtue of the scale of operation. The other thing which requires comment is the entrants of law fraternity in the top ten for the first time; this validates the hypothesis as what might be seen in the case of the immigration of the lockers of bribery from the judiciary to private lawyers offices due the spot light.

The judiciary has been on the spot for the last couple of years very significantly and this is not a usual operation to migrate from high visibility to low visibility areas when there is an attack. This migration does not necessary mean that lawyers collect bribes; they may be collecting these bribes for their magistrates or they may be lying to their clients which happen a lot. This is made credible by the fact that people believe in the so called principle of inducing to get favourable judgement.

The other institution that features very prominently is Transport Licensing Board (TLB). This is an institution that is not highly recognised. It has become very active in terms of trying to enforce compliance and the PSV regulations in the Matatus sector. Corruption has been witnessed in cases when a Matatu licence is withdrawn for various reasons and the latter bribe to get it back.

Another institution in focus is the registrar of persons. There are a numbers of young people looking for the national IDs and they are not getting it. Their representatives are putting a lot of pressure for them to go and put pressure to the registrar of persons making them vulnerable to corruption. Kenya Ports Authority(KPA), which has featured before made an entrant. Corruption in International Organisation was reported when people are looking for employment in positions like drivers and other junior supporting staff. Bribing for these jobs in those institution was reported.

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KENYA BRIBERY INDEX (2002-2006) ANALYSIS

By Kwame Owino

Introduction

The KBI is distinct from other means of assessing the degree and character of corruption in the country because it captures real cases of incidents of bribery where it exists and is therefore not based on perceptions about incidents and character of bribery occurring in the country. The purpose of this piece is to review the publications of the Kenya Bribery Index in order to identify trends in respect of bribery as a form of corruption and to suggest its implications for overall anti-corruption policy.

The Trends

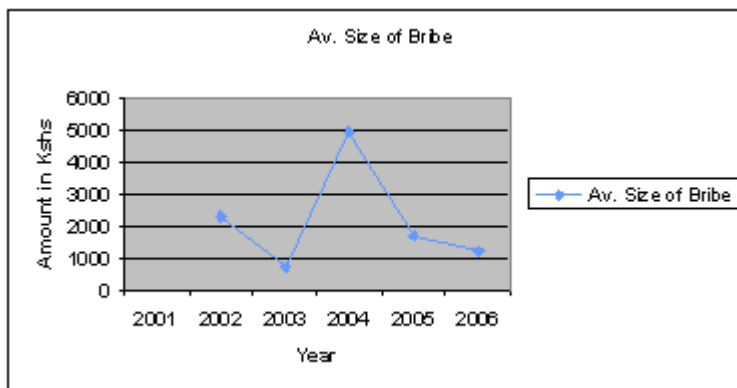
An important factor that emerges from the view of the KBI shows that while bribery is not limited to the public sector, it is predominantly a public sector phenomenon. During the period since the first publication of the index, the leading organizations in respect to propensity to accept bribes have been in the public sector. It is essential to state that the top five institutions in the bribery league in Kenya have been connected to government in the sense that they are either state corporations or institutions within the public service. Review of the tables on the aggregate index therefore establishes the clear fact that bribery is most evident in institutions of the public sector. Starting with the first report that covered the year 2002, it is empirically established that bribery is predominantly a vice perpetrated in the public sector. Equally evident in the annual tables of the aggregate index is the fact that this trend has maintained.

Size of Bribe

Granted that corruption in Kenya may occur at different levels, bribery is probably the most common vice in which ordinary Kenyans may participate or observe. This tends to occur in transaction in which Kenyans seek services in the public sector, in the search for employment or are required to comply with regulations and laws that have been developed. As illustrated by figure 1 above, the average size of the bribes that Kenyans pay has been in the range of Kshs. 720 to Kshs. 5000. What this implies is that the average size of the bribes that are paid out fluctuates within a wide margin and has varied by more than Kshs. 4000 in the five years period. Also to be noted is the fact that the lowest level was reached in 2003 following the election of a new political administration whose platform emphasized the reduction of corruption. Initial enforcement reduced the average size of the bribes to Kshs. 719 in the first year of that administration.

Subsequently, the average size of bribes began to rise again and reached its highest level in the year immediately after that. The KBI explains that the reforms initiated in the public transportation industry provided an opportunity for bribery during the period of strict enforcement of the new

Figure 1: Average Size of Bribes



Public Service Vehicle (PSV) rules. This led to more than a five-fold rise in the average size of the bribe through the total number of bribes were reduced. However, since that monumental rise in the average size of the bribes paid out, the trend has been downwards. The most recent KBI 2007 covering results for 2006 shows that it has continued to fall but is still below the 2003 figure.

Bribes per person

In addition to calculating the average size of bribes that Kenyans pay during interactions with institutions, the KBI also isolates information to determine the number of bribes paid per person for that year. This too has varied over the years and was at its peak of 94 bribes per person annually in 2002 and fell sharply to 27 in 2003. The reduction in the number of bribes per person maintained the downward trend in 2004 when it reached its slowest level at 0.5 bribes per person annually. After rising to 1.2 bribes per person in 2005, the figure doubled to 2.5 in 2006. The picture here is also instructive because it shows that the character of these factors is responsive to policy initiatives and law enforcement. For instance, the rapid reduction in the indicator for bribes per person shows that the initiatives that were in place in 2003 also had a massive effect on the number of bribes per person.

However, it is critical to note that whereas the average size of bribes has maintained a downward trend since 2004, the number of bribes paid per person has instead risen. It is possible that these two factors are related. Discussions and emphasis on reduction of corruption in general has had an effect on impunity thereby reducing the size of the bribe, but the recent reduction of vigilance has led to compensation by increasing the number of bribes. Viewed differently, these two factors show that the average size of bribes has gone down but the total numbers in the last two years have risen primarily because the initial enforcement of anti-corruption measures are perceived to have waned.

Likelihood of Encountering Bribery

A more accurate picture of the extent and degree to which bribery is experienced could be measured by the likelihood of encountering it when engaging in transactions

Kenya Bribery Index (2002-2006) Analysis

with institutions in the public or private sector. The Kenya Bribery Index attempts to capture this by asking the respondents of the survey the number of transactions that they had with institutions and isolating from that data the number of times during which bribery was encountered. By putting together the data from the individual respondents to the survey, a clear picture of the overall probability of encountering bribery is accurately drawn. Regarding this measure, there has been a consistent upward trend starting from 40% in 2003 to 54% in 2006. The only exception was the year 2004 during which the likelihood of encountering bribery fell to 34.2% of all transactions.

This measure shows that bribery is a critical form of corrupt practice in Kenya as citizens encounter it at least half the time whenever they are engaged in interaction with institutions. Similar to the other indices, the gains made in 2003 and 2004 have begun to erode and the likelihood of bribery has increased by up to 20 percent in the last three years. This has happened in spite of the fact that the average size of bribes is

reducing and proves therefore that Kenyan citizens are either compelled or offering to pay smaller bribes, but with a higher likelihood. Thus the conclusion from the survey is that the tendency to demand or accept bribes is in the ascendancy even if the overall cost is reduced both in nominal terms and in real terms.

Reporting Corruption

Given the fact that the likelihood of encountering bribery has been increasing overall, it is interesting to note the reaction by Kenyans whenever they face a situation of bribery. The successive surveys from 2003 reveal that an overwhelming proportion of Kenyans take no action during or after encountering situations in which bribery occurs. As figure 2 illustrates above, the second most common response is to complain to other colleagues or acquaintances, with the result that formal complaints or reporting to authorities is still the exception as opposed to the rule. However, it is still discernible that the number of Kenyan citizens opting to make formal reports has been growing over this four years period. The critical indicator of those making reports to authorities has grown from a very low base of 4.3% to 13.8% between 2003 and 2006. This may represent the fact that the degree of impunity has reduced and that has inspired the confidence of Kenyans who encoun-

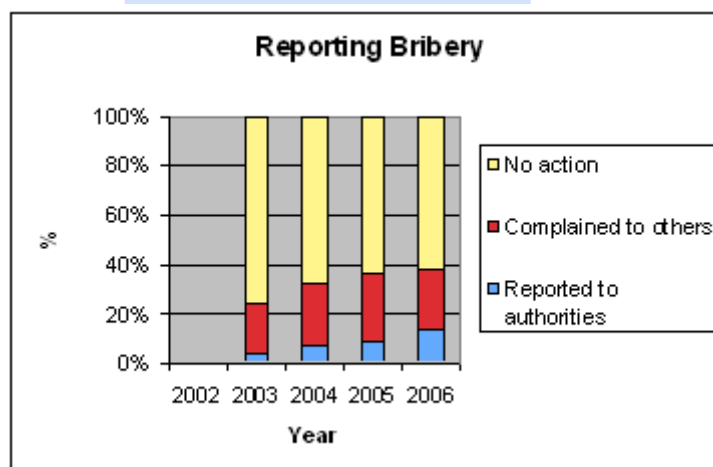
ter bribery to make formal reports to authorities.

It is still a curious fact that the number of meaningful reports to authorities is below 15% of all incidents in which respondents encounter bribery. This state of affairs represents a paradox because the fight against corruption has had a very high profile within the public sector during this period. Therefore, the failure by respondents to make reports to authorities suggests that there is no confidence that such reporting will result in any meaningful intervention.

Public perception here show that the placement of suggestion boxes and corruption reporting mechanisms do not provide an incentive for citizens who encounter

bribery to make reports to the authorities who may be able to deal with that report. As a result, the non-formal mechanisms for responding to an incidence of bribery are largely informal and take the form of discussion with friends and acquaintances on the one hand or failure to report at all.

Figure 2: Trends in Tendency to Report Bribery



This behavior is a concern for the fight against corruption because institutions that use the reports from the public as proxies for the incidence and frequency of bribery will likely get the wrong picture regarding the effectiveness of the measures that they have undertaken. Added to the observation in successive issues of the KBI is that the likelihood of encountering bribery is rising, the very low incidence of reporting to authorities greatly challenges the extent to which the policy on corruption is responding to bribery within institutions in Kenya.

Conclusion

Some of the trends that have been discussed here show that the character of bribery is complex and has responded to the general anti-corruption measures that were instituted in 2003. Equally poignant is the fact that all of the factors that are used to make sense of bribery changed significantly due to the aggressive anti-corruption drive in the year 2003, but that the momentum has been reducing. This suggest that corruption control policy must be sustained over time and cannot be a one time strike because there is irrefutable evidence that bribes payers and takers in Kenyan are bound to adopt a rational behavioral response to such a shock.

VIEWS ON THE WAR ON GRAFT

By Kenya Parliamentary Journalist Association

The public's verdict is clear: the war on corruption has not succeeded. Bribery, which was a hallmark during the last regime, has now received new niche-in muted circumstances.

Views from a cross section of Kenyans, ranging from politicians and professionals to ordinary people, point out that the awareness campaign against the vice that has caused the tax-payer billions of shillings seem to be bearing fruit. Their arguments and proposals on how the country should contain and eventually control corruption are well informed and can form the basis on which an energized campaign can be crafted and executed.

Education Assistant Minister Hon. Dr. Kilemi Mwiria, holds that the fight against corruption has been slowed down by the weaknesses inherent in the institutions set up to deal with the vice. The institutions he is referring to include the Kenya Anti-Corruption Commission (KACC), the National Anti-corruption Campaign Steering Committee (NACCSC), the Banking Anti-Fraud team, the Public Accounts Committee (PAC), the Public Investments Committee (PIC) and the Cabinet committee on Anti-Corruption.

"There are those who think that the organs established to fight corruption have failed and should be dissolved. I think this is not right because some institutions have produced results," he continued. The reason why KACC had not met Kenyans expectations is because of inherent flaws in the Act of Parliament. "In fighting corruption, we cannot afford to give up on the existing structures such as KACC in which so much has been invested. Instead we should endeavour to make them stronger by removing any obstacles in their way of effectiveness," he says.

Dr. Mwiria says that cases of bribery, which were prevalent during the Kanu regime, have gone down. In his ministry, where the recruitment of teachers by the TSC has come under scrutiny he says such cases have not been brought to the open and backed by proof. "These are things that we hear of and my challenge to those making the allegations is come and report to us and provide us with proof. This does not mean there is no bribery in recruitment of teachers," he says.

Mr. Polycarp Ochilo, Executive Director of NACCSC has a different view of the war on corruption and bribery. "The NACCSC has embarked on a sustained campaign to educate Kenyans on why they should assist the Government to fight corruption," he says. Apart from the limited funds that have been directed towards tackling corruption, he said the public stands indicted for failing to aid institutions in dealing with the vice. Mr Ochilo said the attitude of see

no evil hear no evil' exhibited by Kenyans as regards incidences of corruption must be changed in order for the campaign to succeed.

"We now have our network to the grassroots with the hope that our advocacy is going to convince Kenyans to start reporting cases of corruption. Cynicism amongst the public has been, and is, the biggest challenge. Few Kenyans are willing to roll up their sleeves and get involved, even when their own safety and interests are at stake," he states. "Incidences of bribery which have been alleged during the recruitment of police officers and teachers can be easily contained if people report them. Unfortunately, they just cannot do it for the sake of getting the much needed job. We should change this," he says. But he assured the public that his, mainly advocacy based organization was going to intensify its activities to ensure that the public effectively participate in the fight against graft.

...the fight against corruption has been slowed down by the weakness inherent in the institution set up to deal with the vice.

Mr. Alex Asena a management consultant blames the creation of multiple institutions and the politicisations of the anti-graft crusade as the main cause of little achievement in ridding the country of corruption. Mr Asena warned that experiences from countries which had adopted the approach of tackling corruption through numerous organizations, have always failed. "It is incorrectly perceived that to fight corruption, a country has to create more institutions which can tackle it from different perspectives," he says.

He also blames lack of political will in fighting corruption and the return of 'kitu kidogo' in the country after its near disappearance in 2003. Mr Asena said political leaders are either unwilling or are blocking efforts by anti-graft agents to punish their friends or senior members in government. "There must be the readiness and capacity from leaders. It is a big blow for political leaders to show that they can abet some form of corruption as we witnessed in the hiring of the Kenya Wildlife Service game rangers. When it became so clear, they acted very fast and cancelled the entire exercise," he says.

Mr Jacob Wasai, a policy and advocacy officer with a local non-governmental organization on HIV/AIDS, takes the issue of the failure of the anti-graft war a notch higher. He blames the lack of institutionalisation of politics, closeness to senior members of government and lack of personal involvement by President Kibaki as the factors behind the failure to slay the dragon. For instance, people are campaigning now; are we asking ourselves where they are getting money for those campaigns? This is a key plunk in fighting corruption," he submits.

He also admits that corruption is not just a question of

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Views On The War On Graft

money-it is about the relationship between the one who gets into office and his supporters. "People who loot public funds through dubious deals get off the hook simply because of their closeness to State House," he says. Mr Wasai went ahead to blame President Kibaki for personally not taking a lead role in fighting corruption. He says that in countries where the head of state takes a lead role in a certain course, it definitely succeeds. He states that although the level of bribery has come down, it will soon shoot up as politicians lure voters with money to be re-elected. "It is our hope that the Electoral Commission will this time be tough on politicians who bribe people to get votes," he said.

A Mombasa resident, Mr Eliud Nyabagasi, says that the war on graft in Kenya is far from over because of the

pace at which the Government is moving to prosecute cases on corruption. "Unless there is a radical change in the way the crusade is being prosecuted at the moment, Kenyans should expect very little to happen," he says.

Mr Peter Ouma, a Human Resource professional, says that the war on graft will only succeed if KACC was given prosecutorial powers, which it now lacks. "We recently saw an exchange between the commission and the Attorney General Amos Wako on shoddy investigations. If they had prosecution powers, they could have taken the suspects to court on their own," he says. Mr Maina Kangethe, a matatu driver, differs with the rest who state that bribery on Kenyan roads has reduced. "It has not because we still bribe. The only difference is that it is now done more discreetly than before."

Table 8: Aggregate Index

Rank	Organisation	2006	2005	2005 rank
1	Kenya Police	46.6	60.3	1
2	Transport Licensing Board	35.7		
3	Public Colleges & Universities	31.6	23.8	11
4	Immigration Department	28.5	20.0	16
5	Ministry of Local Government	27.6		
6	Ministry of Public Works	25.8		
7	Local Authorities	25.1	31.3	3
8	CDF Office	24.0		
9	Lawyers	23.3		
10	Ministry of Labour	23.0		
11	Private Companies, n.e.s.	21.7	15.5	20
12	Judiciary	21.3	27.8	6
13	Parliament	21.1		
14	Attorney Generals Office	21.0		
15	Ministry of Education	20.4	14.7	21
16	Provincial Administration	20.4	25.7	7
17	Ministry of Lands	19.7	25.5	8
18	NGOs/CBOs	19.2	9.8	28
19	Public Hospitals	18.7	16.2	19
20	Ministry of Health	17.8	25.4	9
21	Electoral Commission	17.7	13.7	23
22	Prisons Department	17.7	28.2	5
23	Central Government, n.e.s.	16.9	23.3	12
24	International Organisations/Embassies	16.9		
25	Public Schools	16.6	11.1	27
26	Ministry of Water	16.5	14.4	22
27	Kenya Wildlife Service	15.0		
28	State Corporations, n.e.s.	14.5	31.5	2
29	Insurance Companies	14.1		
30	Public Organisations, other	14.0		
31	Teachers Service Commission	13.6	30.1	4
32	Kenya Ports Authority	13.2		
33	Religious Institutions	13.1	3.8	32
34	National Social Security Fund	12.8	17.4	17
35	Kenya Power & Lighting Co.	12.7	9.7	29
36	Kenya Airports Authority	12.3		
37	Telkom Kenya	11.8	17.0	18
38	Ministry of Agriculture/Livestock	11.6	12.7	24
39	Cooperative Societies	10.2	11.3	25
40	Financial Institutions, n.e.s.	9.4	6.3	30
41	Posta Corporation	7.9	6.0	31

HAS THE CONSTITUENCY DEVELOPMENT FUND MET ITS OBJECTIVE ?

By Gideon Ochanda Ogolla

Against a general public perception and feeling that Constituency Development Fund (CDF) is such a recent phenomena, brought about by the 'NARC' government, this column wants, in a synoptic sense, to remind Kenyans of the roots of CDF, its real objectives and reasons for its formation and attempt to appraise CDFs ongoing projects against the real intent.

CDF is one of the few private members motions that has since independence managed to conclude the hopeless legislative route to become a law in Kenya. It is in the touchline with the Aringo Bill which created the Parliamentary Service Commission (PSC) but was very far from a private members motion like the creation of an ombudsman office that has been passed by parliament in three different times, but has never been translated into legislation for three decades.

What one reads from this is common knowledge, that its easy to pick self interest motions and turn them into laws. So CDF was passed as a motion in October 2000 and by October 2002 it was passed into law and very quickly assented to and published within the very first months of the Kibaki Administration.

Objects and Reasons

The CDF law, as any other law, has its real intent in the memorandum of objects and reasons normally appended together with schedules in bills. The memorandum is clear that the effects of the legislation is to ensure that a portion of the annual government budget normally devoted to general development in the country is set aside and directed to constituency based projects in a bid to focus on the constituency as a unit in an effort to alleviate poverty.

In the memorandum it is further stated that parliament recognizes the fact that the war against poverty had to be taken to the grassroots level through implementation of community based projects. It appreciated the need to relieve MPs from the heavy demands of fundraising for projects which ought to be financed through the consolidated fund. It envisaged that by so legislating, MPs would have the chance to focus on long term planning for the development of their constituencies and to effectively ensure their participation in national issues.

The whole gamut of objectives and reasons was de-

fended by the argument that in the eyes of the electorate, MPs are seen as the people responsible for steering the course of development. It also justified the need to preserve the established Kenyan concept of community development and the value of promoting the community sense of ownership for projects once completed. Five years down the line, critical analysis can only be laid out in relation to what the fund had set to achieve.

The Fund's legality

The whole idea of setting aside a fund is legal and the approval for the expenditure is well in the realm of parliament. It also answers to a greater extent the question as to whether the fund has been set aside and whether it has been reaching the constituencies.

Over Kshs 33 billion has been transferred under the CDF fund, however, fundamental legal questions remain unanswered particularly those that pertain to the operation of the fund. The extent at which The CDF Act has allowed parliament to be involved in the executive functions is, simply put, unconstitutional.

It first negates the constitutional principle of checks and balances. It completely undermines the MPs

oversight role which they are supposed to play both in parliament and out of parliament. Participation of MPs as Patrons; (*not provided for in the CDF Act*) presiding over both policy and implementation of projects and prescribing a role on the constituencies fund committee at the national level set with a mandate to oversee the implementation of the Act is a mockery of unlimited proportions. The issue is gravely complicated by the fact that audit reports of public expenditure are to be laid before the same parliament for scrutiny every year.

Governance Arrangement

Arising from the legal complications, it is evident that the fund operates at the mercy of the MPs, and community participation is mentioned without any proper arrangements. MPs are only required to conduct two meetings in each term of five years for project identification. Harmonization processes required of the technical central government professionals under the tutelage of the Development Officers is moribund in many districts as CDF committees ignore them.

At the districts levels, there are three government institutions that do not consult each other yet they serve the same populace. We have the Central Government at the district level under the mandate of

...The extent at which the CDF Act has allowed parliament to be involved in the executive functions is simply put, unconstitutional.

Has the Constituency Development Fund (CDF) met its Objectives?

the DC and managing the districts treasury; we have the county councils and town councils who operate in districts headed by the clerks with minimal guidance from councilors operating their individual treasuries and finally the MPs arranged as constituency committee operating their own CDF accounts. In many districts, the three institutions are normally at war, projects are duplicated, funds wasted and responsibility lost. There are several cases where construction of health facilities such as dispensaries are completed, but are not operational because the District Medical Officer of Health did not approve of them.

The community ownership of projects initially envisaged is far from the reality. Projects completed are not community owned as they are handed back to line ministries.

Harambees are unfortunately on the increase. What parliament thought will ease the burden on MPs and that they would be seen as steering development was far fetched. There are higher premiums on personal matters than public and the demands on MPs to attend weddings, church functions, funerals, pay hospital bills and the like are on the increase. Only a hand-

ful of MPs have put in place a strategy for long term development projects for their constituencies. Majority are operating at the spur of the moment and sometimes at the behest of damage control; more so now as we gear up for the 2007 December elections.

In conclusion,

The ninth parliament will go down in history by the end of 2007 as the most ridiculed parliament than any other before it. It has had the least legislation, hardly tallying at 30 (if routine bills are left aside). National and fundamental bills/legislation that affects a large section of the population will never get to 12 by the end of its term.

CDF has made MPs more parochial and village oriented than they were before. Quorum hitches are on the increase in parliament implying that CDF generated an alternative role for parliamentarians. The rationale developed for CDF needs to be checked once again and needs to be fitted against an idea of collapsing all the decentralized funds into a single governance regime with a single piece of legislation. There are too many parallel committees, weird expectations on the people and communities, and too much wastage of public resources.

Up coming Events

Event: Youth Forum: "Shika Rada" on Election
 Date: September 5th 2007
 Venue: Kenya Cultural Centre, Nairobi
 Organizers: TI-Kenya

Event: Corruption Perception Index launch
 Date: September 26th 2007
 Venue: London
 Organizers: Transparency International Secretariate

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Pasha Nikupashe radio programme is back, join us every Saturday from 10.00 am - 11.00a.m on 92.9 FM, KBC Swahili service

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