

# **STUCK ON A TREADMILL?**

**A national opinion poll to evaluate progress on the anti corruption agenda in the last decade**

**Transparency International Kenya (TI-Kenya)**

**February 2013**

## BACKGROUND

The expanded political space that followed the advent of multiparty politics in early 1990s brought to the fore the demand for improved public financial management. Corruption became a core topic in political discourse. By the end of the decade, demand for improved financial stewardship was a central driving force for renewed leadership. The National Rainbow Coalition (NARC) rode on this popular demand and won the 2002 general elections.

In his inauguration speech<sup>1</sup> on December 30, 2002, HE President Mwai Kibaki said *“Corruption will now cease to be a way of life in Kenya and I call upon all those members of my government and public officers accustomed to corrupt practice to know and clearly understand that there will be no sacred cows under my government”* With this commitment, the Kenyan citizenry had reasons to look forward to clear break from the corrupt past and a government that would relentlessly pursue the corrupt.

As part of its commitments, the new government adopted a zero tolerance to corruption policy. There was an apparent change of values both at the populace and leadership levels. In its first year, the NARC government passed key anti corruption legislation notably the Anti Corruption and Economic Crimes Act (ACECA) and the Public Officers’ Ethics Act (POEA). In the same year, Kenya became the first country to sign and ratify the United Nations Convention against Corruption. The then minister of Justice and Constitutional Affairs, Hon Kiraitu Murungi expressed the importance and urgency the government attached to tackling corruption. During the ratification session, he noted- *“ for us in Kenya, the fight against corruption is a matter of life and death..... it cannot wait for tomorrow”*.

At the institutional level, the government created a position of Permanent Secretary in charge of governance and ethics. The holder, reporting to the president was his adviser on ethics and anti-corruption matters. The Kenya Anti Corruption Commission as provided under the ACECA was also instituted. A judicial inquiry into the Goldenberg scandal was constituted under the

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<sup>1</sup> <http://www.statehousekenya.go.ke/speeches/kibaki/2002301201.htm>

chairmanship of Justice Samuel Bosire. The first attempt to reform the judiciary was also rolled under what came to be known as the 'radical surgery'. This was in response to recommendations made by the Integrity and Anti Corruption Committee of the Judiciary constituted by the Chief Justice on 19<sup>th</sup> March 2003 under the chairmanship of Justice Aaron Ringera.

As these efforts were progressing, doubts started developing on the commitment of the government to the much publicized zero tolerance to corruption. Perhaps the most enduring blow to the zero tolerance commitment was the revelation of a series of corrupt deals touching on security procurement in what came to be known as Anglo Leasing scandal. In April 2004, Ntonyiri Member of Parliament, Maoka Maore, tabled documents in Parliament to support the discovery of massive loss of public funds through suspect procurement dealings. The shenanigans that marked the new constitution debate served to further challenge government commitment through apparent hesitation for radical constitutional reform. By 2005, there was an almost apparent appreciation that the zero tolerance fascia had collapsed.

During the 2007 elections, corruption was again a major campaign platform. The electoral dispute and the consequent coalition arrangement was to impact on the anti corruption agenda of the new government.

Kenya is again headed to another election. Unlike in the last three elections, corruption is not a central issue in the campaign agenda. According to the Kenya National Dialogue and Reconciliation (KNDR) monitoring October 2012 report<sup>2</sup>, corruption was ranked third among the key concerns at 10%. High cost of living and unemployment were ranked first and second at 45% and 14% respectively. A similar survey conducted by Gallup in April<sup>3</sup> had ranked corruption as second most prominent concern at 28%. Though the ranking may not have given corruption the top position, it is notable that corruption has a strong bearing on the existence and pattern of the other concerns like cost of living and unemployment.

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<sup>2</sup><http://www.dialoguekenya.org/Monitoring/%28October%202012%29%203RD%20Review%20Report.pdf>

<sup>3</sup> <http://pesatalk.com/jobs-and-corruption-top-election-issues-for-kenyans/>

The danger arising from this relegation is a likely dilution of attention to the anti corruption crusade by the incoming government. Transparency International Kenya intends to have the agenda mainstreamed by the next regime. To do this, there is need to evaluate the success and failures in the last ten years and draw critical lessons.

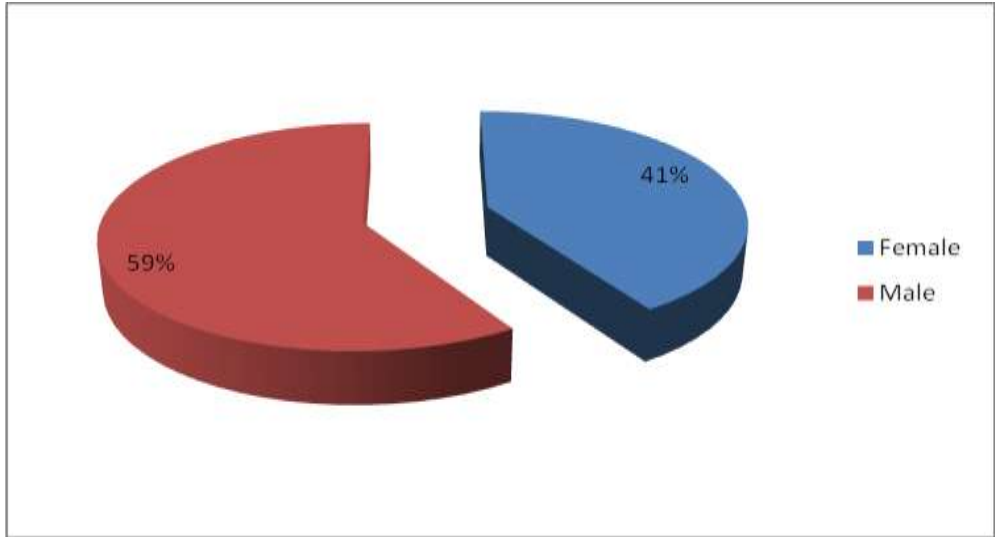
The national opinion poll was commissioned to get ordinary Kenyans appraisal of the past decade. The poll was aimed at providing an agenda setting platform on the anti corruption agenda for the next government.

The national opinion poll was constructed around the following objectives-

- i) Assess the perceived change in corruption levels in the last decade
- ii) Assess the public verdict on the effectiveness of the various anti corruption interventions
- iii) Draw public recommendations on ways and means of reinvigorating the anti corruption responses for the next regime.

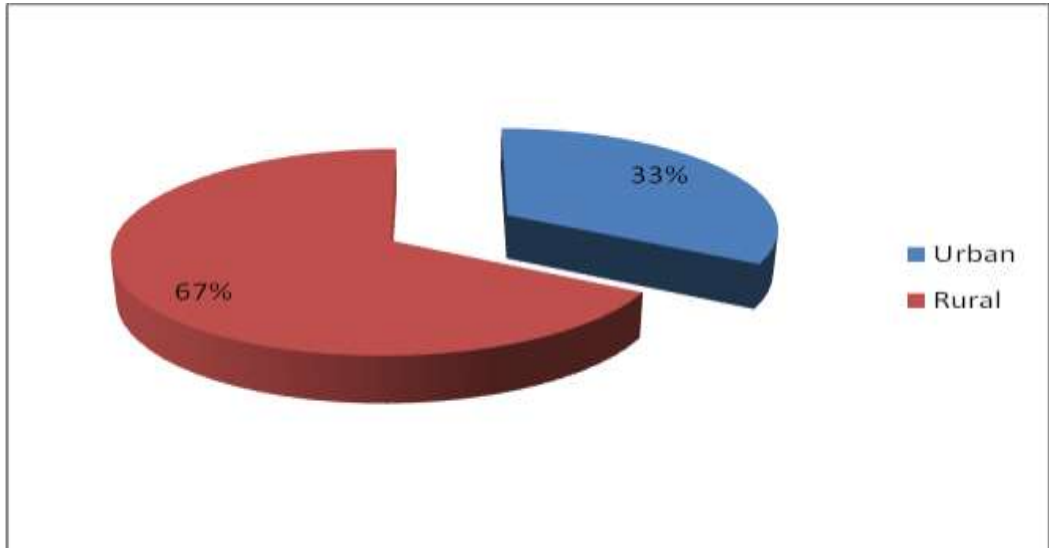
## **METHODOLOGY**

The survey was conducted through face to face interviews among Kenyans above 18 years of age. A total of 1,788 respondents were picked using simple random sampling at confidence level of 95% and a margin of error of +/- 2.4%. Since the survey was meant to record personal recall for the past decade, the sample was tilted towards respondents who were at least 15 years in 2003. Field data collection was carried out between 17<sup>th</sup> January 2013 and 8<sup>th</sup> February 2013.



**Gender representation**

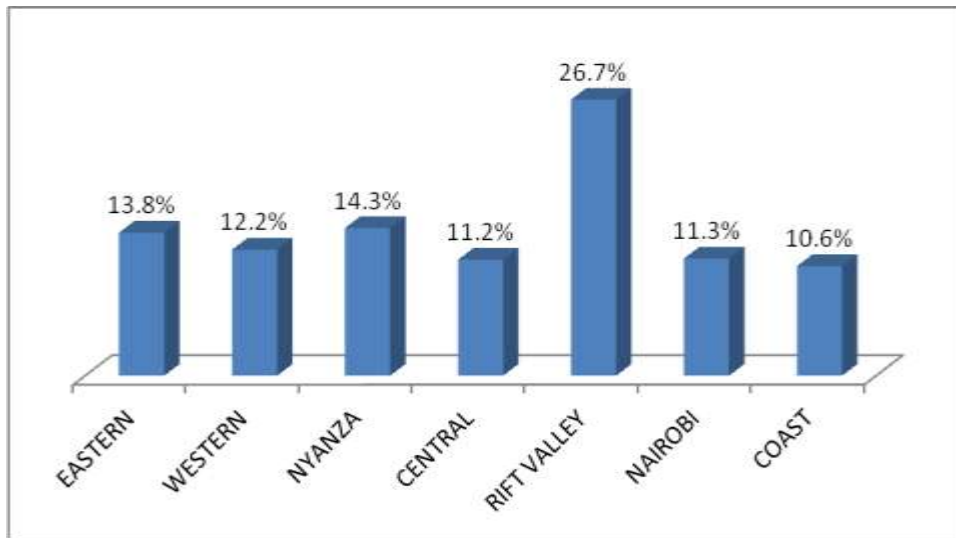
The sample consisted of 59% male against 41% female respondents picked across rural and urban areas of the country with two thirds being sampled from the rural setting.



**Sample disaggregation according to residency**

### Regional representation of the sample

In terms of regions, the poll covered 34 out of the 47 counties nationwide and seven out of the eight provinces. The consideration was diversity, accessibility and logistics. Due to logistical problems North Eastern Province was not covered. The regional distribution of the sample based on probability proportion to size was as follows



### Regional sample distribution

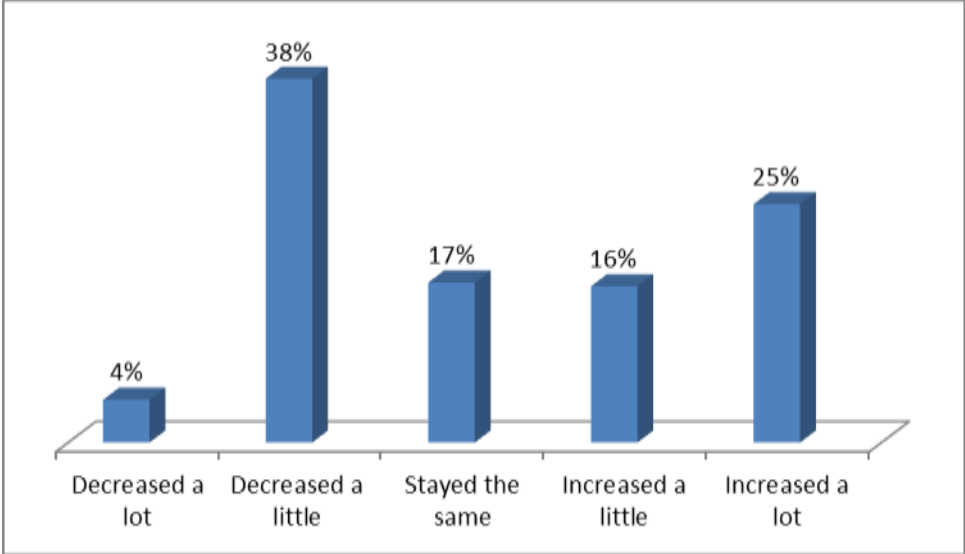
## FINDINGS

### i) Perceived change of corruption levels

Though there has been a lot of activity in the policy and legislative reform in Kenya for the last decade, the general populace still seems divided on the overall effect of the same on combating corruption. Almost sixty percent (58%) think corruption levels have either remained the same or increased. Actually, a quarter of the respondents believe the levels have increased a lot across that period.

**Implication-** The efforts that have gone towards the anti corruption crusade have either not been comprehensive and participatory enough to win public confidence or have been diluted by negative occurrences perhaps in terms of perceived government lack of commitment or the

grand corruption scandals that have continued to happen and remain unresolved even alongside reform efforts. The continued adverse performance of basic services sectors like water, education and security on petty bribery as captured by the East African Bribery Index and other surveys may have also contributed to this perception.



**Perceived change of corruption levels in the last ten years**

When viewed across the rural- urban divide, the rural dwellers seem to have a more positive assessment of the situation with slightly more than double of the respondents perceiving a positive change in the corruption levels as compared to urban dwellers.

	Decreased a lot	Decreased a little	Stayed the same	Increased a little	Increased a lot	Total
<b>Urban</b>	1.3%	11.7%	7.1%	5.1%	8.1%	<b>33.4%</b>
<b>Rural</b>	3.1%	26.1%	9.5%	11.1%	16.7%	<b>66.6%</b>
<b>Total</b>	<b>4.4%</b>	<b>37.9%</b>	<b>16.6%</b>	<b>16.2%</b>	<b>24.8%</b>	<b>100%</b>

*Urban- rural assement of corruption levels*

**ii) Reported knowledge of past incidents of grand corruption**

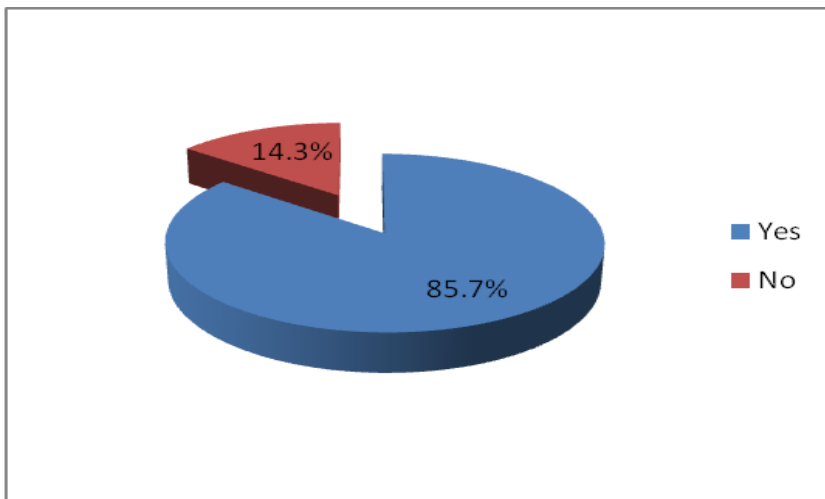
As a way of establishing the extent of knowledge of corruption in the country during the study period, the survey asked the respondents to mention three scandals they could remember. The

maize scandal was most mentioned with almost a quarter (22.6%) of the respondents mentioning it. This was followed by Grand Regency sale and Anglo Leasing scandals.

Scandal	Percent
Maize Scandal	22.6%
Anglo Leasing	9.4%
Grand Regency	9.1%
Free Primary Education Scandal	8.5%
NHIF Scandal	7.8%

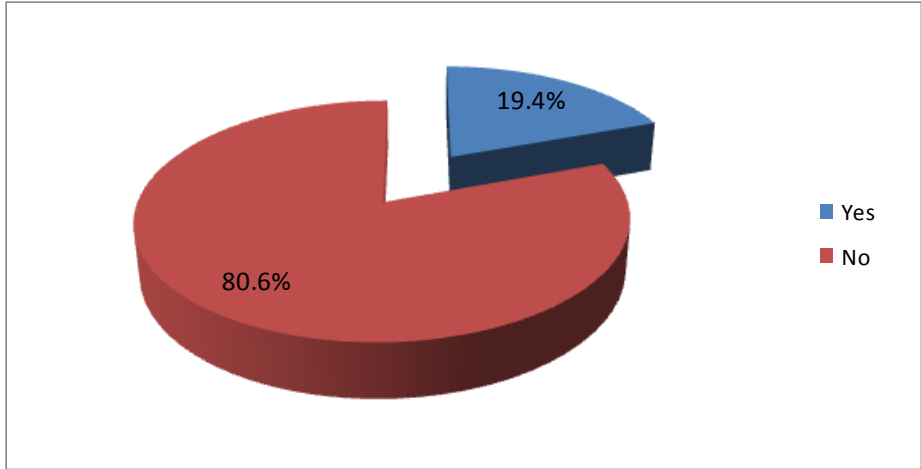
**iii) Action against those involved in grand corruption**

Although majority of the respondents believe that the president had requisite powers to deal with those suspected for their roles in the scandals (85.7%), only a small proportion think the president did enough in the exercise of these powers to deal with the scandals. This perception may imply less than optimal confidence in the institution of the presidency to render critical support to anti corruption issues.



***Those who think the president had enough powers to prevent/ deal with the scandals***



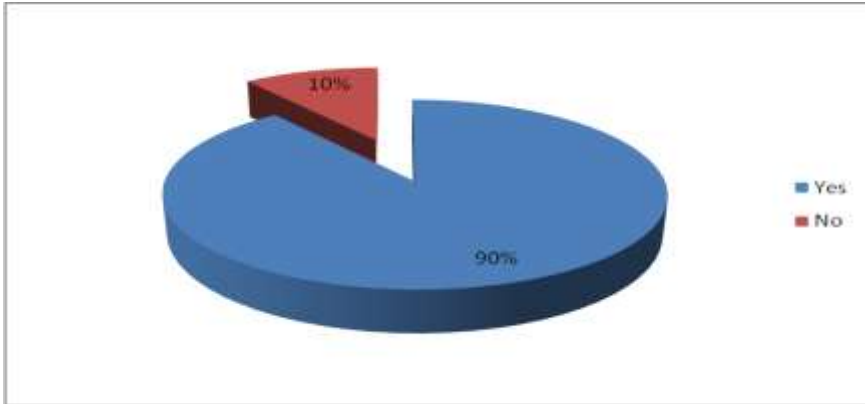


***Those who think the president did enough to deal with or prevent the scandals***

**Implication-** Though the survey centered around assessing the president’s response to these scandals, the negative perception on this particular institution may generally point to failure of key institutions to effectively forestall or respond to corruption incidents. In this context, the presidency embodies the general political will of the government. The assessment may therefore be safely read to imply perceived absence of political will at the top echelons of government.

**iv) Did the scandals affect ordinary Kenyans?**

It is notable that Kenyans rightly believe that the mega scandals of the last decade affected them at the personal level. This observation is contrary to some opinion within the elite that the figures involved may not register any meaning to the ordinary Kenya.



***Whether the respondents felt affected personally by the scandals***

**v) How the scandals affected the ordinary citizens**

Probed further on how the scandals affected them, majority (38%) of the respondents noted that the prices of essential commodities and services rose. This observation must have arisen from the effect of such scandals like the maize and the free primary education scandals on ordinary citizens. The tax burden was also observed to have risen following some of these scandals. Though this may not be a direct and obvious consequence, it follows that misuse public funds has the implication that a higher levels of taxation are needed to deliver the same bundle of public goods. Perhaps the most direct effect was felt on the free primary education scandal where some of the donors for the project ceased support and even demanded a refund on claims of impropriety. Such refunds could only be obtained from tax coffers. Where impropriety is proven and refunds made out of public funds without holding those responsible to account, the public suffers double loss.

**Implication-** It is encouraging that a majority of the respondents can see a direct relationship between their day to day life and the huge loss of public funds. Enlisting this majority to support anti corruption efforts by the public and private sector therefore becomes easy.

Reasons	Percent
Prices of commodities went high	38%
I was affected as a taxpayer due to high taxes to recover the stolen money	15%
Inhibit the growth of economy	11%
Citizens are deprived of their essential services especially in NHIF and Water scandal	10%
Loss of tax payers money through commissions instead of developing the country	6%
Hard to be employed or obtain other essential services incase you are not corrupt	5%
My child in primary school was affected by the free primary school scandal	5%

***Why the scandals were seen as detrimental to ordinary Kenyans***

Out of the 10% of the respondents who deemed the scandals as having no effect on them, close to a third (30%) observed that they have not seen any change in their life. There was also the erroneous observation that scandals affect the rich urban elite.

**Implication-** Public disconnect with loss of public funds is still rife. The continued poverty levels may be squarely blamed for the observation that with or without scandals, life continued normally – with little real or perceived change. Normality in this context most likely means constant struggles for basics of life to the extent that news of huge scandals hardly attracts any attention. In fact, this postulation is further supported by 16% of the respondents who observed that even without the scandals, taxation levels remain high. There is need for enhanced public education on the effect of grand corruption to ordinary Kenyans. Unless this is done, anti corruption work may not be popularly owned and driven especially in situations where corruption is seen as a problem of the urban elite.

Reason	Percent
With or without scandals, life has continued normally and have not seen any change	30%
Most of those affected are the rich and mostly in Nairobi	19%
High taxes are there with or without scandals	16%
I concentrate with my own work and never mind about the scandals	15%
I am in private sector	10%
I have never bothered about the scandals	9%

***Why respondents felt the scandals did not affect them personally***

## **FUTURE PROSPECTS**

### **i. Most trusted institution in the fight against corruption**

The on- going judicial reforms seem to have an implication on public perception on the support to anti corruption efforts. Judiciary was the most trusted institution to support the anti corruption efforts. The civil society, religious groups and the Ethics and Anti Corruption Commission followed in that order.

Organization / institution	Percent
Judiciary	24.6
Civil Society Organizations	22.3
Religious Leaders	17.2
Ethics and Anti Corruption Commission(EACC)	16.7
Executive	8.6
Parliament	4.7
Attorney General	3.5
Police	1.4
Commission on Administrative Justice (CAJ)	1.0

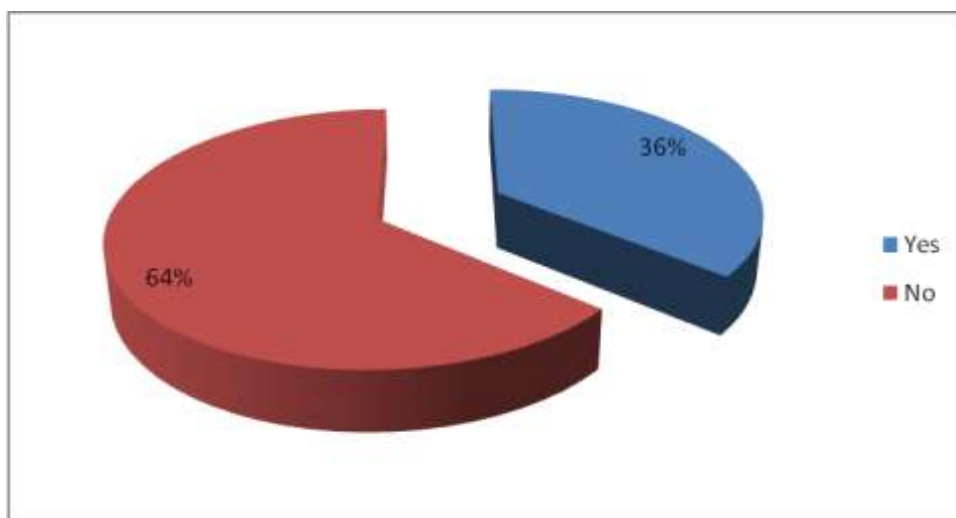
**Implication-** sucessfull affront to corruption calls for public confidence in key institutions to deliver on their mandate. Parliament should particularly enjoy public confidence given the

centrality of its oversight and legislative roles. The poor public perception reflected in the survey, may be a reflection of the failure of Parliament to convincingly pursue these roles.

The survey noted low levels of public knowledge on the existence and the role of the Commission on Administrative Justice. The commission should embark on public education to popularise its place and role in strengthening integrity public service delivery. While its mandate in the fight against corruption and impropriety is only second to that of the Ethics and Anti-Corruption Commission (EACC), it is yet to be tested and its presence felt in this regard.

**ii. Prevention of corruption scandals in the future**

Asked if they thought the government has put enough measures to prevent corruption scandals in future, almost two thirds (64%) of the respondents answered in the negative.



**Whether government has done enough to prevent corruption**

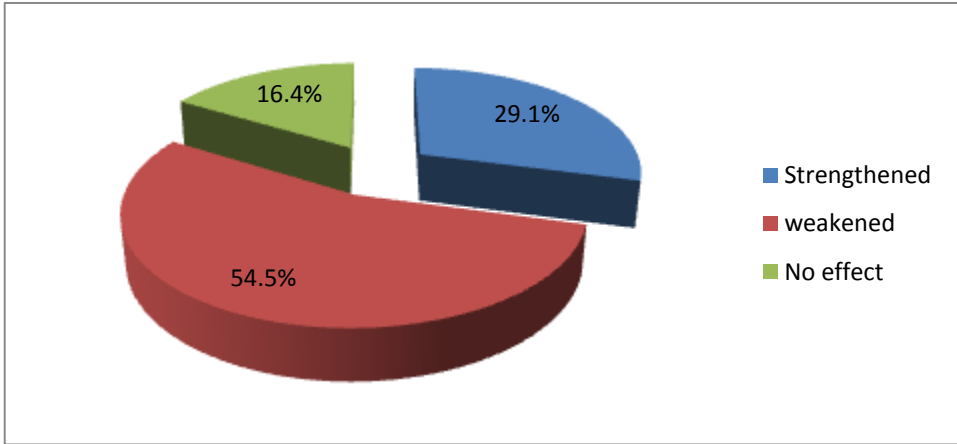
**Implication-** This response may have been informed by the continued cases of corruption scandals even after the institution of various policy and legislative reforms in the anti corruption arena. It is instructive to note that the most mentioned scandals (Maize, sale of Grand Regency hotel and NHIF scandals) touched on public procurement. This is despite an elaborate public procurement and disposal law and an equally well established procurement

oversight authority. Further, the fact that corruption scandals are never satisfactorily resolved or at all could be a great contributor to this perception.

In a situation like this, public confidence that such scandals will not happen in future is grossly eroded. The next Parliament should accelerate efforts to review the procurement law to seal the loopholes that allow corrupt practices to continue. The next government should prioritize resolution of corruption scandals as a way of instilling confidence in the public that accountability is possible for economic crimes irrespective of the status of those implicated.

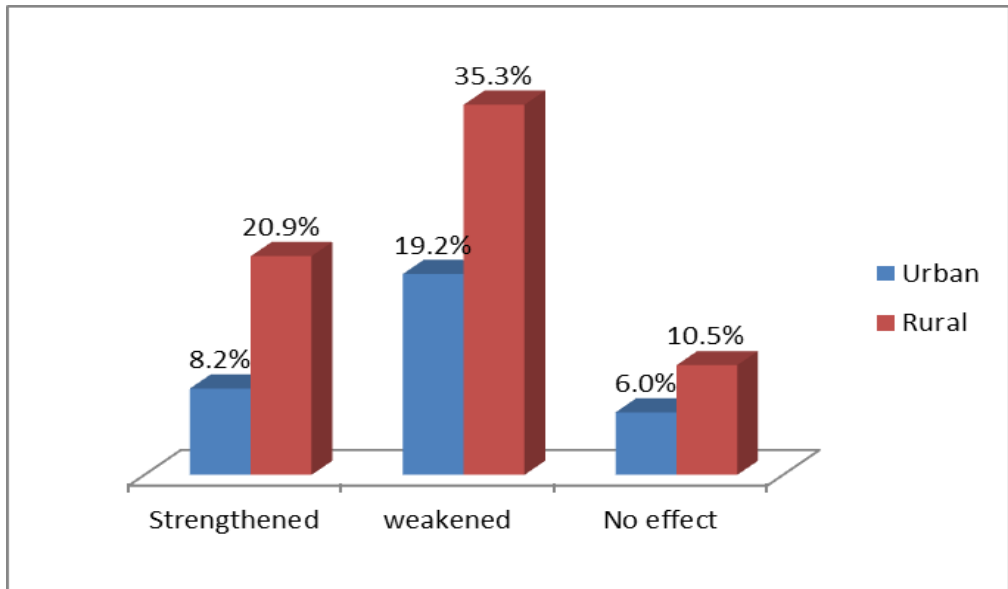
***iii. In your own opinion how did the coalition government set-up affect the anti-corruption efforts in Kenya?***

Following the disputed 2007 presidential results, the three main political parties formed a coalition government. Since corruption was a key campaign issue, it would have been expected that the three partners would bring on board their hitherto expressed intention to confront the vice. Were this to happen, corruption would be more effectively tackled. The other possibility was that once in power, the erstwhile rivals would overlook each other's transgressions and join into one league indifferent to the vice. The latter seems have been the case. About 55% of the respondents observed that the coalition set-up served to weaken the anti corruption efforts. Over the past five years, there have been claims of wheeler-dealing especially in Parliament whenever corruption issues arose. The maize and the NHIF scandals particularly stood out on this regard. There was however about 30% who observed that coalition set up strengthened the anti corruption agenda.



***Assessment of the coalition government***

The negative evaluation is consistent between the rural and the urban respondents. The rural respondents however returned more dire assessment with the proportion that believe the coalition set up compromised the corruption agenda being almost double those of a similar opinion on the urban areas.

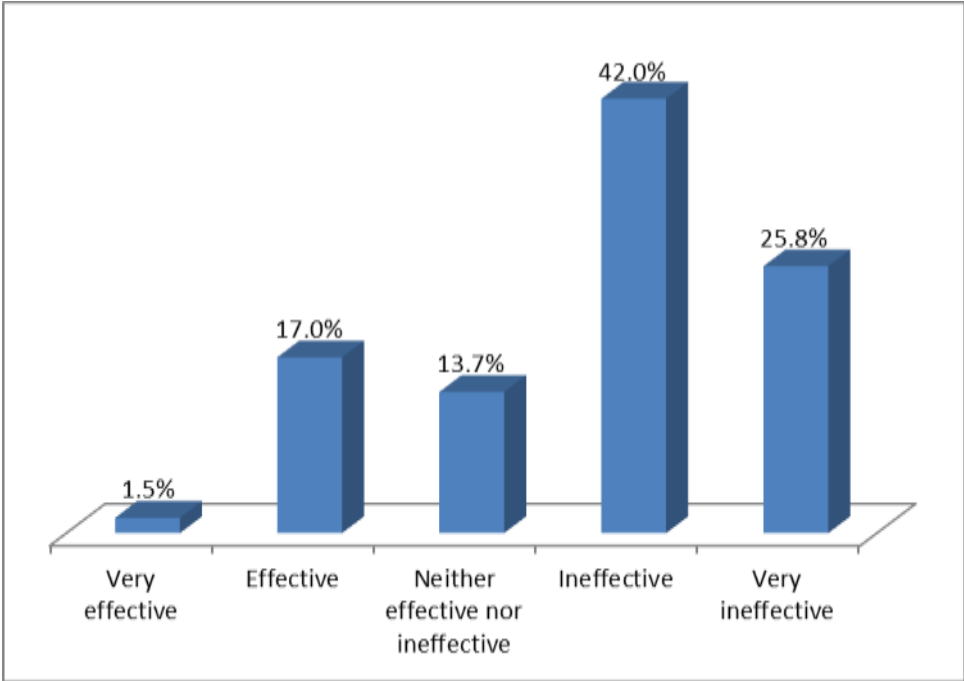


***Assessment of the coalition set up across residency***

**Implication-** The hugely negative evaluation of the political players in the coalition is a sad reality that corruption though a strong campaign issue does not clearly reflect as a governance agenda for any of the players. Given that the main players of 2007 are again in the race for power, there is need for vigilance to ensure the agenda is more mainstreamed and carried through. The situation is even more critical given the almost diminished prominence on the agenda in the 2013 campaigns.

**iv. Rating of commissions set up to investigate corruption cases**

One of the response mechanisms employed by the government in the last decade was to set up commissions to investigate such scandals as Goldenberg, the Artur Brothers and NHIF scandals. The survey sought to establish the perceived effectiveness of these commissions. Almost 70% of the respondents believe the commissions have been ineffective. A quarter of the respondents judge the commissions as having been very ineffective. The situation is even more dismal when a further 13% that is ambivalent is brought into the scene.



***Rating of investigation commissions***



**v. Reasons for negative assessment of investigation commissions**

Asked why they think the commissions are seen to be ineffective, almost a third of the respondents complained that the reports are not made public. About 21% complained that necessary action is never taken on the suspects named. About 15% complained that the reports from some of the commissions are not conclusive.

<b>Reason</b>	<b>Percent</b>
Results not made public	29.80%
No action taken on named suspects	21.70%
Reports do not seem conclusive	14.50%
Nothing has been recovered from suspects	10.10%
Recommendations never implemented	7.80%
Apparent collusion with suspect	6.10%
Others	5.70%
No change observed on the level of corruption	4.30%

***Reasons for negative assessment of investigation commissions***

**Implication-** Investigative commissions are an acceptable approach to unearthing complex cases of corruption. A commission can exclusively focus on a particular incident and generate rich information on which prosecution and other responses can be based. However, commissions in Kenya have created an impression that they are public relations exercises to placate the citizenry. To reclaim their rightful place, future commissions need to produce results and create mechanisms for follow up on their recommendations. The starting point for this can be the review of the Commissions of Inquiry Act (1967) to provide for clear mechanisms that put legal requirements on the relevant institutions to act on the reports and make the findings public in the minimum.

**i. Evaluation of anti-corruption institutions in Kenya**

The civil society enjoys the highest amount of trust among institutions engaged in the anti corruption agenda. Sixty one percent of respondents rank the civil society's contribution as

good. Among the public institutions, the judiciary was ranked good by about 46%. The police were very adversely ranked with 85% of the respondents judging their contribution as poor.

<b>Institution</b>	<b>Good</b>	<b>Average</b>	<b>Poor</b>
Executive	35.4	34.9	29.7
Parliament	14.7	22.9	62.5
Commission on Administrative Justice (CAJ)	20.9	28.0	51.1
Attorney General	24.5	36.0	39.5
Religious Organizations	54.1	28.4	17.4
Ethics and Anti Corruption Commission(EACC)	39.3	27.6	33.1
Police	4.9	9.2	85.9
Judiciary	45.9	31.1	23.0
Civil Society	61.1	26.4	12.5

***Evaluation of anti corruption institutions***

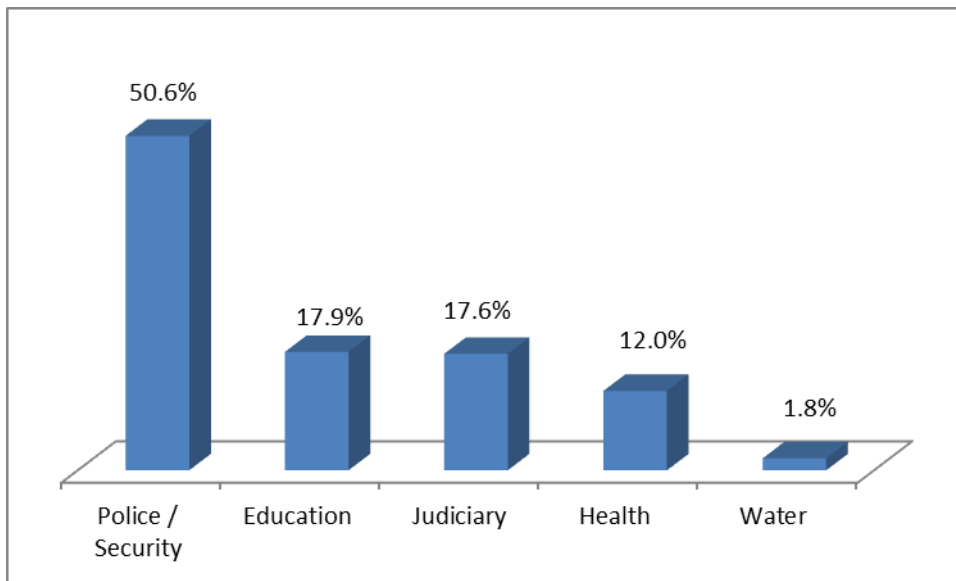
**Implication-** the assessment points at the need to ensure a more concerted effort among the public institutions in supporting the on- going efforts. The success of many of the interventions will rely on how well the partners are carrying out their mandate and collaborate with one another. In the absence of proper concert, even the positively appraised institutions will find it hard to succeed.

**ii. Sectors that need urgent attention**

As a way of understanding the most pressing area / sector for anti corruption reform, the survey sought to establish where respondents need to see immediate amends. The survey question asked respondents which sector/ institution they would prioritize if they had the capacity to tackle corruption themselves. Though the survey did not ask for the reasons behind the choice, it must be appreciated that the answer to this may be motivated by several reasons especially-

- Some respondents may be guided by their perception on which institution is most corrupt
- The answer may also be based on sectors that provide services that are very critical to the respondent
- Respondent may also choose institutions that are apparently easier to reform or where reform efforts are already underway.

The police/security sector was seen as the most preferred entry point for reform. A half of the respondents mentioned this institution. The education sector and the judiciary were mentioned prominently at 18% and 17% respectively.

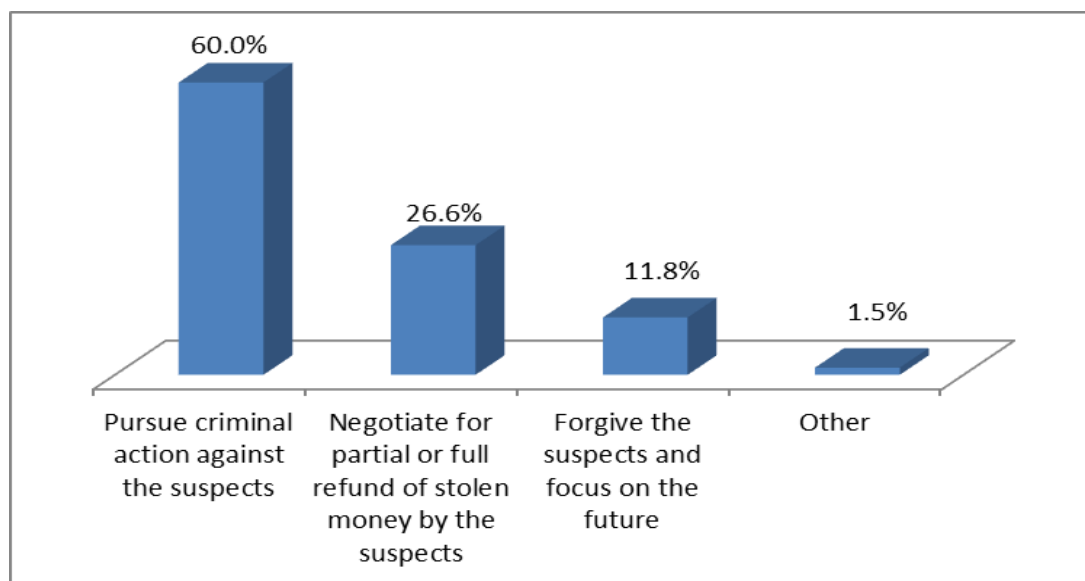


***Sectors that need priority***

**Implication-** It is notable that education and police/security were the hosts of one of the most mentioned scandals by the respondents namely the free primary education and the Anglo Leasing scandals respectively. The mention of the police would however most likely be informed by the high likelihood of ordinary citizens being expected to pay petty bribes to the institution. The low mentions of the water sector at lower than 2% may not necessarily point to low corruption levels but most likely to lower reach of this service to the general populace.

### iii. Recommendation to the next government on how to deal with past corruption scandals

In terms of what the respondents expect the government to do, it was clear that a majority (87%) would like to see some action taken towards solving the past corruption scandals. A majority in this group (60%) would like to see the next government instituting criminal charges against those adversely mentioned. There is a notable 11% who would favour unconditional let off.



#### ***What needs to be done on past corruption***

**Implications-** Even with the perceived inaction of the government on the scandals, Kenyans still have an expectation that something needs to be done. It is notable that the trust on commissions to investigate and successfully close the scandals is quite low. The situation can however be redeemed if the prosecution as recommended by the respondents was to start based on the findings of past commissions.

#### **What needs to be done to make anti-corruption laws more effective**

Following the negative assessment of progress on the anti corruption agenda in the last decade, the survey was interested in establishing what needs to be done to move the agenda forward. Slightly more than a third (35.8%) felt that the laws need to be applied equally regardless of

one's stature in society. About a fifth (22%) of the respondents felt there was need to make the penalties a bit stiffer.

Action	Percent
The laws need to be enforced equally regardless of offender position in the society	35.8%
The penalties need to be made more stronger/ stiffer	22.3%
The laws need to be implemented all the time	16.0%
Provide more channels for citizen participation	13.0%
There should be political support for anti-corruption efforts	6.5%
We need more anti-corruption laws	5.0%

***Improving effectiveness of anti corruption efforts***

**Implication-** In a situation where the general populace feels the law does not apply equally among the citizens, the anti corruption agenda is set off on the wrong footing. Where those negatively affecting implementation of the law are political elites, the political goodwill against corruption is lost. Further, confronting corruption at any other level of the society is compromised once the ordinary citizenry feels the law unfavourably targets them while letting off the rich and powerful.