

BUSINESS INTEGRITY COUNTRY AGENDA (BICA) KENYA REPORT



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ABOUT BUSINESS INTEGRITY COUNTRY AGENDA (BICA)

The role of business integrity in fighting corruption

The Business Integrity Country Agenda (BICA) is an initiative of Transparency International (TI) developed both to enhance national level business integrity and to create a body of evidence on business integrity in various countries. BICA is a widely shared agenda for reform and acts as a collective momentum towards enhanced business integrity among key stakeholders. It is envisaged that BICA will become an important reference point for fighting corruption in business practices around the globe, including Kenya.

The private sector is generally viewed as the supply side of corruption, with the making of corrupt payments to gain business advantages: there is a common belief that companies that do not engage in corrupt practices may lose business prospects. The business environment is thus not a level playing field but improving business integrity is a way to create an environment in which all businesses can prosper.

Transparency International defines business integrity as “adherence to globally-recognised ethical standards; compliance with both the spirit and letter of laws and regulations; and the promotion of responsible core values such as honesty, fairness and trustworthiness”. Business integrity can promote a healthy working environment for employees and also foster a stronger community relationship. Commitment to business integrity drives companies to proactively pursue the objectives and values of available laws rather than just staying within the bounds of the law. BICA aims to establish collective action among three main stakeholders: the public sector, private sector and civil society. This is reflected in the BICA framework illustrated in Figure 1.

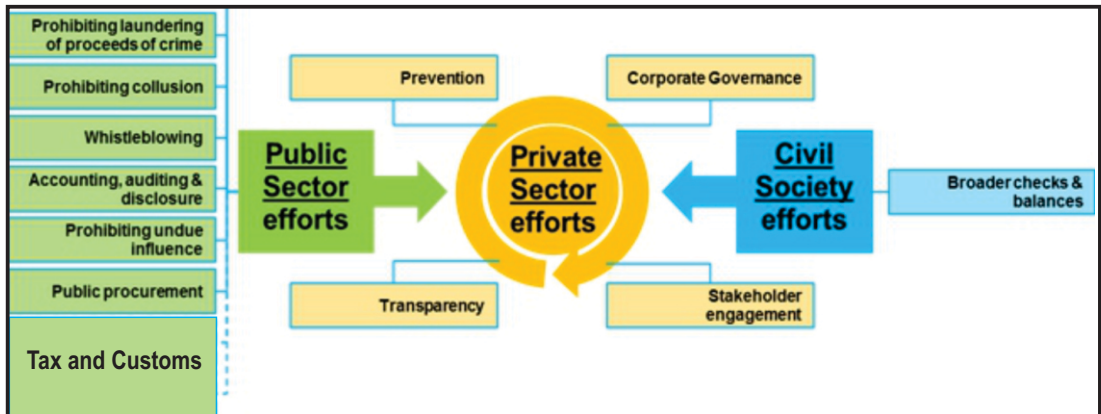


Figure 1. Transparency International - Supplement 1 BICA Framework

Source: Transparency International¹

The BICA Framework illustrates the dynamism of collective efforts towards developing a business integrity environment among the three main stakeholders. Although the focus is the private sector, in order to foster sound business integrity, the active participation of both the public sector and civil society is necessary. Overall, there are 15 thematic areas and 51 indicators for assessment of the three stakeholder groups.

Why BICA?

BICA is the first report to analyse the overall business integrity environment in a given country—in this case –Kenya - by looking at the efforts of all stakeholders. Furthermore, it is the first comprehensive assessment aimed at reducing private sector corruption. The report creates a body of evidence and acts as a benchmark to assess future progress in private sector anti-corruption movements. Additionally, BICA informs a collective action agenda that will be adopted based on the findings of the report. The BICA assessment is designed to encourage all stakeholders to use the findings and collaborate to improve business integrity and level the playing field for everyone.

Transparency International - Supplement 1 BICA Framework

Methodology

The three main stakeholder groups are assessed based on thematic areas. For the public sector there are nine thematic areas or assessment categories: prohibiting bribery of public officials; prohibiting commercial bribery; prohibiting the laundering of the proceeds of crime; prohibiting collusion; whistleblowing; accounting, auditing and disclosure; prohibiting undue influence; public procurement; and taxes and customs. Each of these thematic areas has from three to six key indicators, each with a scoring question. The focus of the public sector assessment is to determine to what extent the country's laws and practices prevent, reduce and/or respond to corruption in the private sector.

For the private sector there are five thematic areas or assessment categories: integrity management; auditing and assurance; transparency and disclosure; stakeholder engagement; and board of directors. Likewise, each of these thematic areas has from three to four indicators, each with its scoring question. The focus of the private sector assessment is to determine to what extent private sector efforts prevent, reduce and/or respond to corruption in this sector.

Finally, civil society has just one thematic area or assessment category: broader checks and balances. This thematic area has three indicators with a scoring question for each. The focus of civil society assessment is to determine to what extent civil society efforts prevent, reduce and/or respond to corruption in the private sector.

The BICA adopts a multi-stakeholder approach in order to elicit a wealth of information and diverse views that may otherwise not be used or even be unknown. To this end a National Advisory Group (NAG) was established at the outset of the assessment. The NAG for the Kenya BICA comprised of nine members from each major stakeholder group, complemented by other national and international experts.

The main areas of responsibility of the NAG during the BICA Assessment were:

- Reviewing the assessment framework and proposal of adaptations to reflect the national context
- Assisting the external researcher in data collection and verification
- Reviewing and validating scoring of indicators
- Proposing recommendations for relevant stakeholder groups
- Supporting dissemination of assessment results after publication

The NAG met twice, on 12th July 2017 and 26th March 2018, and the full list of members is available in ANNEX 1.

Data

The data was collected and validated through a comprehensive process that included:

- **Desk Research:** The main data source for the research was desk research of both primary and secondary sources. Data included information from laws, reports from various oversight institutions and law enforcement agencies, international institutions, local NGOs, private companies, and media publications. This was conducted in August and September of 2017 and additional data updated in January and February 2018.
- For the private sector assessment's indicators on corporate transparency and disclosure, an adaptation of TI's Transparency in Corporate Reporting (TRAC) methodology was used as a basis for collecting the relevant data. The questionnaire used can be found in ANNEX2.² Information on anti-corruption programmes, financial disclosure and stakeholder engagement among others was obtained by searching the companies' websites for policy documents, financial reports, activity reports, CSR and sustainability reports as well as any other information relevant to the study. Data for TRAC was collected in October 2017.

2. For more information on the TRAC methodology, see https://www.transparency.org/news/feature/global_companies_global_transparency.

It is important to note that the BICA uses this methodology as a basis for scoring of the indicator, transparency and disclosure

- **Expert Interviews:** Where there was insufficient secondary data available to attribute a score, researchers conducted expert interviews from the public sector, private sector and civil society. These were conducted between August and October 2017.
- **Draft of the scores:** Following the research, expert interviews and the references for each sub-indicator, TI Kenya generated the first draft of scores along with the comments related to each indicator and sub-indicator. The researchers based the proposed scores on their holistic analysis of the aggregated data.
- **Feedback from NAG:** TI Kenya shared the indicator scores and comments with NAG members to validate the BICA report and to ensure the objectivity of the results. Three workshops were held to discuss each indicator and validate each score. Some of the scores were modified based on the recommendations and feedback of NAG members.
- **Final scores attribution:** Researchers revised the scores and comments based on NAG input and finalised the report. An independent expert reviewer edited and provided additional comments on the report.

Scoring

At the core of the BICA assessment framework are indicators which translate the (largely) qualitative information into a quantitative score (on a five-point scale with the options being 0, 25, 50, 75 and 100). Each indicator has an overall “scoring question” and more specific assessment criteria.

Indicator	Qualitative Judgement	Visualisation
0	The scoring question is answered, “No, not at all”. The evidence collected for the assessment criteria indicates that the requirements are not met at all.	Red
25	The scoring question is answered, “To a limited extent”. The evidence collected for the assessment criteria indicates that a few of the requirements are fully met; or that many requirements are met to a limited extent.	Red-Yellow
50	The scoring question is answered, “To some extent”. The evidence collected for the assessment criteria indicates that roughly half of the requirements are met; or that most requirements are met to some extent.	Yellow
75	The scoring question is answered, “Largely”. The evidence collected for the assessment criteria indicates that many of the requirements are met or most requirements are met to a great extent.	Yellow-Green
100	The scoring question is answered, “Yes, fully”. The evidence collected for the assessment criteria indicates that (almost) all of the requirements are met.	Green

In order to facilitate comprehension, the scoring results are visualised in traffic signal colours. The individual indicator results per thematic area are aggregated to an overall thematic area result, using a simple average calculation. Thus, each indicator within a thematic area is weighted equally.

Again, the overall thematic area score is expressed through the traffic light analogy, using the colour symbol which corresponds closest to the aggregated score.

The idea of the scoring is not to cast a negative light on stakeholders or suggest that they lack willingness to improve the business integrity in Kenya. On the contrary, the purpose of scoring is to launch continued discussion and engagement with relevant stakeholders and to highlight where more efforts are needed in terms of law enforcement and legislative initiatives. A scoring metric creates benchmarks to assess continued progress, should TI Kenya conduct a follow-up BICA assessment in future.

EXECUTIVE ASSESSMENT SUMMARY

The BICA assessment examines three main stakeholders: public sector, business sector and civil society, all of which are instrumental in building a strong business integrity environment. The stakeholders are analysed using 15 thematic areas and 51 indicators. In this summary, we present the key findings for the three stakeholder groups.

Assessment summary for the Public Sector

The public sector reviewed 31 indicators covering nine thematic areas as seen in the graph below.

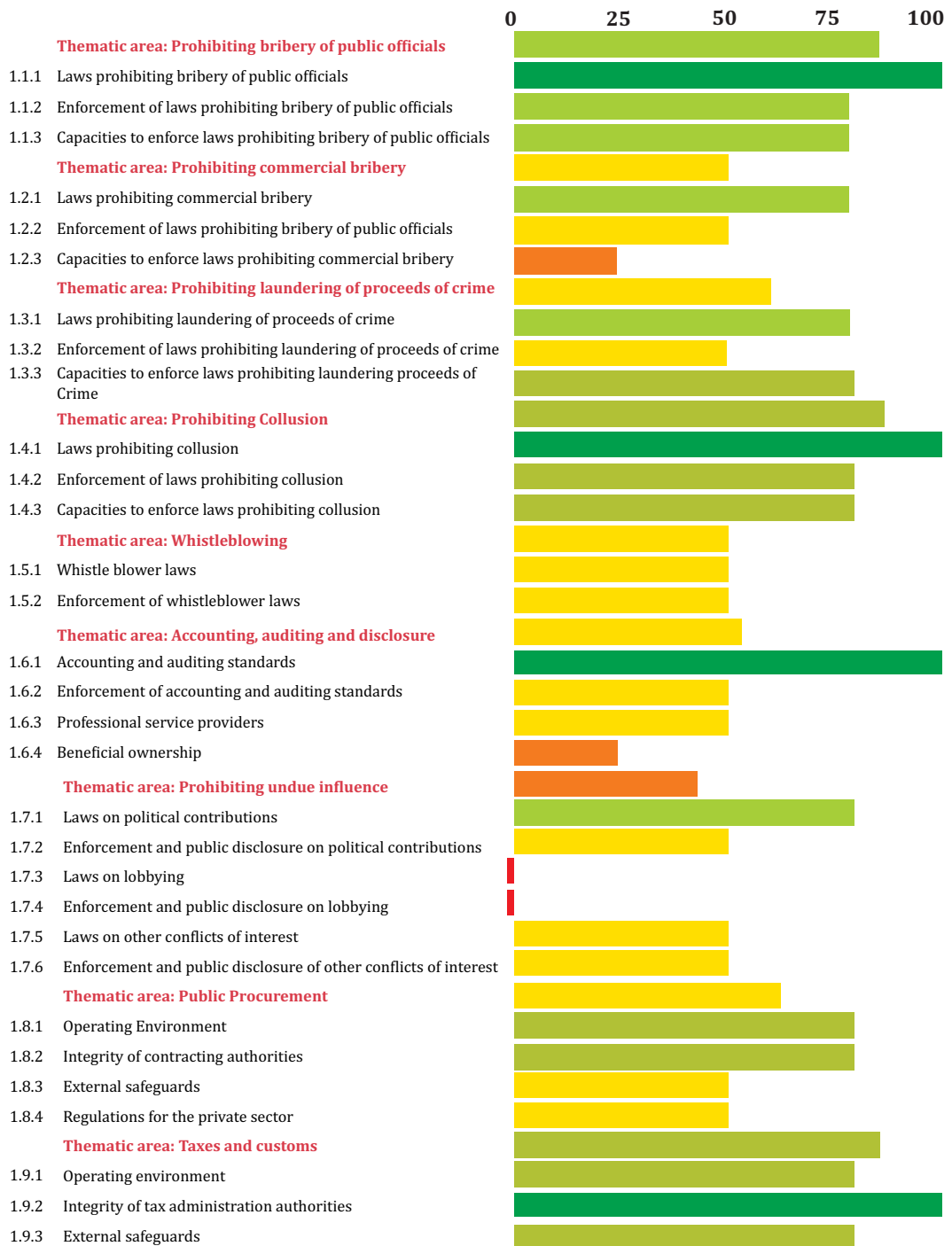


figure 2: Assessment scores for public sectors

The assessment finds that the Anti-corruption and Economic Crimes Act, 2003 (ACECA) and the Bribery Act 2016 contain sufficient provisions that **prohibit passive and active bribery of public and foreign officials**. Additionally, these laws have specific provisions that prohibit facilitation payments and include a broad category of what constitutes **undue advantage** to include money, employment, etc. The assessment however notes that there is no explicit provision prohibiting bribes as a tax deductible item.

The assessment notes that there is **some active enforcement** of the laws prohibiting bribery of public officials by the Ethics and Anti-Corruption Commission (EACC) and the Office of the Director of Public Prosecutions (ODPP) but under the ACECA. This therefore means that charges preferred against accused persons are currently reported (in ODPP and EACC reports) as economic crimes and not specifically bribery cases. The establishment of the Anti-corruption and Economic Crimes division at the Judiciary has also aided in the enforcement of the anti-corruption laws.

The EACC and the ODPP list **limited capacity** (Inadequate (human and financial resources) as a key challenge to execute their mandate; investigation and prosecution respectively. They also particularly note the arduous process associated with Mutual Legal Assistance (MLA) as another factor affecting proper enforcement.

The Bribery Act, 2016 prohibits passive and active **commercial bribery**. The enforcement of the Act on these provisions is yet to start as there have been no cases investigated or prosecuted so far. The development of regulations to boost implementation and enforcement is ongoing.

Capacities of the EACC and the ODPP for handling commercial bribery cases remain low as they are yet to adjust their resources accordingly. The assessment notes that the Bribery Act significantly expands the mandate of the EACC to focus on the private sector. The ODPP reports making efforts to improve its human resource capacity to handle anti-corruption matters in general.

The Proceeds of Crime and Anti Money Laundering Act (POCAMLA) 2009 contains provisions that **prohibit laundering of proceeds of crime**. This includes the concealment or disguise of property with knowledge that it was proceeds of crime; acquisition or use of property knowing that the property is the proceed of crime as well as association or participation in a conspiracy to facilitate, abet or counsel in the concealment or acquisition of proceeds of crime.

The Act does not, however, have provisions that prohibit the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property.

The assessment notes that the Financial Reporting Centre (FRC) has the primary mandate to **enforce POCAMLA** with the assistance of various reporting institutions and supervisory bodies. It is however not possible to establish to what extent the law has being enforced, nor establish the capacity of the FRC as it hasn't produced any annual report since its formation in 2012.

The Competition Act, 2010 is the primary law that **prohibits collusion in Kenya**. The Act contains key provisions that prohibit making collusive tenders, fixing prices, sharing of markets by allocating customers, suppliers etc., and establishing output restriction quotas.

Enforcement of the Act is primarily the responsibility of the Competition Authority. The Authority, in its annual reports, has indicated active enforcement of collusion cases. Additionally, it has launched a leniency programme that is currently being rolled out to improve compliance to the Act.

The Authority reports having a working relationship with the Common Market for Eastern and Southern Africa (COMESA) Competition Commission and is involved in activities that aim to see the EAC Competition Commission operational. This boosts their enforcement capacity across member states. The Authority reports a

relatively steady allocation of resources from the exchequer that allows them to execute their mandate with minimal challenges.

The assessment notes that the country does not have an individual **whistleblower protection** law. There are however provisions in other pieces of legislation such as the Bribery Act, 2016 that protect whistleblowers in the public and private spheres. The Bribery Act, however, has a specific definition of a whistleblower as one who makes a report to the Commission or the law enforcement agencies on acts of bribery or other forms of bribery.

The Act, while it provides for penalties to those who are responsible for retaliation to whistleblowers, it does not provide for remedies for whistleblowers that suffer detrimental action as a result of whistleblowing. Additionally, the act requires all law enforcement agencies to put up measures to protect whistleblowers but does not require other government agencies or private entities to do the same.

The assessment however notes that listed companies require the board to ensure that a company has a Whistleblower Policy and are subject to the provisions of the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015. There is however, limited information on internal disclosure procedures used by public and private organisations to adequately protect employees who report wrongdoing.

Despite the fact there is no independent **whistleblower** investigation/complaints authority or tribunal, there are government agencies such as Kenya Revenue Authority (KRA) and EACC that receive and investigate reports from whistleblowers.

The Companies Act, 2015 contains provisions that require companies to prepare annual financial statements that adhere to **prescribed accounting and financial standards**, as set by the Institute of Certified Public Accountants Kenya (ICPAK). Additionally, the Act requires a company to keep accurate books of accounts at the company's registered office for a minimum of seven years. The Act further requires only listed companies to have external audits according to internationally recognised standards and for these companies to publish their external audit reports annually. The Act, however, does not require companies to set up internal control systems such as internal audit functions.

The assessment notes that there is a gap in **enforcement of these standards** as ICPAK can only ensure enforcement among its membership; ICPAK's membership is not required of all that serve as accounting professionals in various companies in the private sector. Additionally, the assessment notes that while there are legal requirements for **professional service providers** such as auditors, accountants and providers of rating or related advisory services to be licensed, there is significant proportion of practitioners in the market who are not licensed.

This therefore poses a challenge to professional oversight bodies whose reach only extends to their licensed membership. Independence and autonomy of the service providers is mostly guaranteed through their ethical and professional standards as there is no legal or policy frameworks that speaks to this.

The Assessment also notes that annual reports submitted to the Business Registration Service and annual returns submitted to the KRA are not reviewed for compliance to accounting and auditing standards. Additionally, there is no legal or policy framework that would grant ICPAK access to these reports for review.

The Companies Act, 2015 outlines penalties and sanctions for directors that fail to prepare annual financial statements as per the requirements. Institutions in charge of enforcement such as The Central Bank of Kenya (CBK), the Capital Markets Authority (CMA) and ICPAK do not necessarily publish reports that show enforcement actions and decisions taken in individual cases, including accounting matters.

The August 2017 amendment to the Companies Act, 2015 brought in provisions **on beneficial ownership**. The amendments include a definition of a beneficial owner and requirements to provide information on beneficial owners in addition to that of directors and members. The information on beneficial owners should be included in the company register – kept at the company's registered address and lodged at the Registrar of Companies. The Act neither penalises willful misrepresentation of information on beneficial ownership nor failure to disclose nominees fronting directors or shareholders.

The Election Offences Act, 2016 and the Political Parties Act, 2011 have provisions that prohibit use of public resources for the purpose of campaigning during an election or a referendum by any person or referendum committee. Additionally, the Political Parties Act, 2011 provides for a mechanism that determines equitable and transparent **public funding to political parties**.

The Acts further provide for lawful sources of funding to political parties to include individuals and corporates, with limits put on corporate and donations from a single source. Anonymous contributions are banned. Political parties are required to keep records of their sources of funding (among other details of the same) as well as publish the parties audited accounts.

The Registrar of Political Parties and the Independent Electoral Boundaries Commission (IEBC) have the mandate to **enforce laws on political contributions**. The assessment notes that the Registrar reported full compliance from political parties in the last general elections and as such had not imposed any sanctions administrative or otherwise on any political party. The IEBC prepared and gazetted regulations on campaign financing but they were suspended by the National assembly.

There is currently no legal or policy framework in Kenya that regulates **lobbying** and as such no requirements on companies to disclose their lobbying activities.

The Public Officer Ethics Act, 2003 and Leadership and Integrity Act, 2003 are the two main laws that manage **conflicts of interests** between public and private sector. Public entities are required to keep a register of conflict of interest where public officers and state officers are required to declare conflicts of interest (gifts, benefits, hospitality etc.) on need basis. While these declarations are not made public, public entities are required to submit annual reports to the EACC on the gifts they have received, those they have disposed off or intend to dispose off

. Further, the two Acts prohibit state and public officers from taking up other gainful employment. The laws do not, however, put a waiting period for elected public officials or senior civil servants intending to move to private sector or for corporate executives intending to move senior public offices and positions in government.

The assessment notes that information regarding public tenders is made publicly available on government websites nationwide circulation newspapers and other available public spaces.

The country adopted a digital system for use in public finance management, the Integrated Financial Management Information System (IFMIS). However, there have been reported challenges in the roll out of the system especially at the counties. Additionally, the **Public Procurement and Asset Disposal Act, 2015** outlines procedures for various types of procurement, including those that require competitive bidding as per the financial threshold outlined.

The assessment notes that the Act requires prospective bidders to declare that they or their sub-contractors haven't been barred from participating in public procurement proceedings. They are further supposed to declare that they will not engage in any fraudulent or corrupt practice. Other than these declarations, there are no other anti-corruption requirements made on bidding entities to qualify them to respond to government tenders. Conversely, there are no incentives or advantages to prospective bidders that have effective anti-corruption programmes in place.

Contracting authorities, on the other hand are, subject to provisions of the Public Officers Ethics, Act 2003 and the Leadership and Integrity Act, 2013 with regards to setting **integrity management initiatives**. Such initiatives include wealth declaration by public officers, which is done once every two years. These declarations are however not made public but can be accessed through procedures laid down in the Acts. Additionally, the EACC provides advisory services on anti-corruption and mainstreaming of the same to various government agencies.

The Public Procurement Review Board (PPRB) offers aggrieved bidders a channel through which they can appeal the outcome of a procurement process. The decisions of the review board are available on the Public Procurement Regulatory Authority (PPRA) website. Additionally, the PPRA is charged with the responsibility of receiving and investigating complaints that are not subject of administrative review on procurement and asset disposal proceedings. They however neither have a dedicated line nor mechanism that receives such complaints nor a voluntary disclosure programme that allows companies to report on corruption.

Despite provisions in the Act for cooperation between PPRA and non-state actors to improve the public procurement systems, not much has been done in this regard yet.

The Kenya Revenue Authority has the primary responsibility of **tax administration** in the country. They have standardised the process and method of collecting and paying taxes determined by the National Treasury and Ministry of Planning. The processes are digitised to a large extent with application for Personal Identification Number (PIN) numbers for individual and corporate tax payers as well as payment and filing of tax returns being done online. Information on number and level of tax rates, criteria for tax exemptions is readily available online. Information regarding tax deals with national and multi-national companies is managed by the National Treasury.

KRA has an intelligence and strategic operations department with the mandate of prevention, detection and investigation of corruption and unethical conduct in the Authority. They are guided by the KRA anti-corruption policy and a code of conduct that all employees sign and are regularly trained on. The internal audit department is also responsible for investigation of fraud and fraud related cases at the Authority and is relatively independent. Reports of their investigations are however not made public. Additionally, the Authority has a whistleblower policy that provides for protection of whistleblowers contacting the authority.

In terms of **external safeguards**, the assessment notes that KRA is subject to audit by the Office of the Auditor General (OAG) whose independence is guaranteed by the Constitution and the Public Audit Act, 2015. The Auditor General makes the results of the audits available on its website.

KRA operates a complaint and information center that receives complaints on corruption and other related operational matters of the authority via phone and email. The Authority does not however have a voluntary disclosure programme that allows companies to self-report on corruption cases in exchange for mitigation sanctions. They instead have an informer reward scheme that allows members of the public to report or provide information on unpaid taxes and get a percentage of the recovered amounts.

The assessment therefore recommends as follows:

In the short term:

	Recommendation	Agency
1.	Establish a policy or Legal framework for the Multi Agency Team (MAT) to concretise collaborative efforts of the agencies involved. This will improve the rate of resolution (investigation, prosecution and conviction) of corruption cases.	Attorney General
2.	Fast track the establishment of a public register showing beneficial ownership of companies.	Business Registration Service
3.	Expedite the development of regulations to aid in the full implementation of the Bribery Act.	EACC/ODPP
4.	Adjust the budgetary allocation to EACC and ODPP to allow them expand accordingly to accommodate the additional mandate brought about by the enactment of the Bribery Act, 2016.	EACC, ODPP , National Treasury
5.	Fast track the enactment of a Whistleblower Protection Law to enhance the fight against corruption.	Attorney General
6.	PPRA should set up a dedicated corruption reporting mechanism to receive all procurement related corruption reports.	PPRA

In the Mid term :

	Recommendation	Agency
1.	Amend the Bribery Act, 2016: a. To an express prohibition of deductibility of bribes for tax purposes.	EACC, KRA
	b. To include provisions for all government entities to put in place whistleblower protection mechanisms as part of their anti-corruption programme.	EACC, KEPSA, KAM
	c. To include remedy for whistleblowers that suffer reprisal as a result of their actions.	EACC, Attorney General
2.	Amend the Companies Act, 2015 include crucial aspects of beneficial ownership disclosure particularly criminalisation of willful misrepresentation of beneficial ownership information.	Business Registration Service
3.	Amend the Accountants Act to ensure mandatory registration of practicing accounting professionals to ICPAK to ensure proper application and enforcement of accounting and auditing standards in Kenya	ICPAK, Attorney General

In the long term:

	Recommendation	Agency
1.	Enact legislation to regulate lobbying in Kenya.	Attorney General , KEPSA ,KAM
2.	The Public Procurement Regulatory Authority should incorporate integrity pacts as accountability measures in the procurement process. This can be done with the help of the civil society sector to actualise provisions of section 9 (1q) of the Public Procurement and Asset Disposal Act (PPDA) 2015. Additionally, regulations for the PPDA 2015 Act should include a clause compelling procuring entities to include civil society organisations oversight during the procurement process for procurement above a certain threshold.	PPRA
3.	To enhance accountability and integrity of bidding entities , the PPDA 2015 should be amended to include preference or certain advantages for companies with effective anti corruption programmes	PPRA, National Treasury, KEPSA/KAM

Assessment summary for the Private Sector

The assessment on the private sector focuses on the anti-corruption efforts initiated by the business community to promote business integrity. It assesses 5 thematic areas and 17 indicators.

Below is a graphical representation of the key findings of the thematic areas:

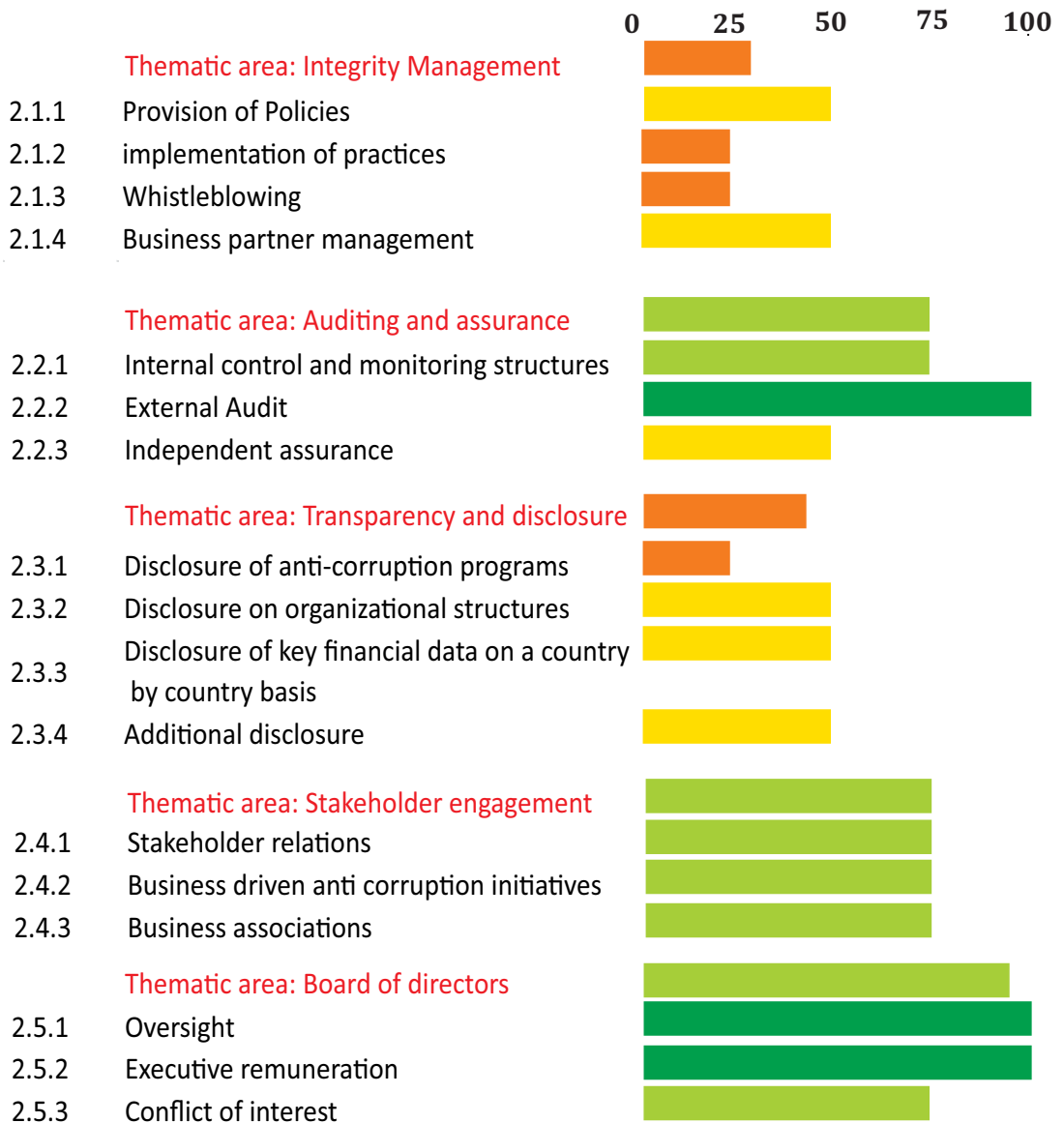


figure 3: Assessment scores for private sector

The assessment notes that **provision of anti-corruption policies** among companies is now mandatory after enactment of the Bribery Act, 2016. Prior to that, only specific categories of companies were required to have anti-corruption policies or programmes; companies listed at the Nairobi Securities Exchange (NSE), companies regulated by the Central Bank of Kenya (CBK) and those that are signatories to the Code of Ethics for Businesses in Kenya.

There are no guidelines or minimum requirements for the content of anti-corruption policies or programmes. The Bribery Act 2016 requires companies to implement anti-corruption programmes according to size and risk while the CBK and the code of ethics for private business has no specifications. All categories of policies outlined above require adherence across all levels and areas of the company.

For companies listed at the stock exchange and those regulated by the CBK, the board has the responsibility to ensure that the ethics and anti-corruption policies are adopted and implemented within the company.

There is no standard way in which the companies **implement their anti-corruption programmes**. Some programmes contain training aspects and feedback or review mechanisms to ensure effectiveness. For instance, companies listed at the stock exchange are however required to have annual governance audits while the other two codes do not have such a requirement. Only companies listed at the stock exchange are required to publish their codes while for the others it is discretionary.

The Bribery Act, 2016 does not require companies to put in place **whistleblower protection mechanisms**; only law enforcement agencies are required to do so. The Act has provisions that protect whistleblowers from retaliation from employers but does not offer remedial action for those that suffer detrimental action as a result of whistleblowing. Companies listed at the stock exchange are required to have a whistleblower policy but information on implementation of this was limited.

In terms of applying anti-corruption programmes to relevant business partners, signatories to the code of conduct, at the integrating and reporting level are encouraged to use their influence to encourage other companies to sign on to the code. The other two codes do not have similar provisions.

The assessment notes that there are legal and policy provisions that require companies to set up and maintain internal controls over accounting, record keeping and other business processes. These include keeping accurate books and records that document all financial transactions. However, only listed companies are required to have internal audit functions while there are no legal provisions for non-listed companies to establish the same.

The **Audit committees of listed companies have the mandate to review** the effectiveness of the internal audit function as well as ensure that recommendations from the internal audit reports are implemented. The Board of Directors is responsible for preparing and approving a financial statement of a company.

The Companies Act, 2015 requires companies to conduct **annual external audits**. These should be conducted by licensed auditors. For listed company, the auditors should be in good standing with Institute of Certified Public Accountancy of Kenya (ICPAK). The external auditors should be independent, not employees or board members and their families. Additionally, external auditors of listed companies should be rotated every six to nine years. External audits reports should be presented as an annex to a company's annual statutory financial report, be sent out to members of the company and in case of public companies, be presented at an annual general meeting.

Companies listed at the stock exchange are required to undergo an annual governance audit, conducted by practitioners licensed by the Institute of Certified Public Secretaries of Kenya (ICPSK). There are no requirements to publicly disclose the assurance opinions.

The assessment reviewed **transparency and disclosure patterns of 35 out of 64 companies listed at the Nairobi Securities Exchange**. These companies represent a category of companies with stringent regulations and statutory obligations from the Companies Act, 2015 and the Capital Markets Authority (CMA).

The assessment notes that **anti-corruption programmes**³ were the least disclosed items in the assessment. Half of the companies assessed (18 out of 35) did not disclose any information on their anti-corruption programmes while 34% of the companies (12 out of 35) had a score of between 1 and 50% with the remaining five scoring more than 50%. None of the companies assessed got a perfect score.

In terms of disclosure of **organisational structures**,⁴ 20% of the companies assessed (7 out of 35) did not disclose any information regarding their subsidiaries. This included companies that did not state whether or not they had any subsidiaries. Majority (74%) of the companies assessed obtained a score of more than 50% with 20% of the companies getting a perfect score.

In terms of disclosures of key financial data on **country-by-country basis**,⁵ 44% of the companies assessed scored 50% and above while 22% scored 25% and a third of the companies scored zero. None of these companies got a perfect score.

The assessment notes that there are initiatives within the private sector that encourage sustainability of financially sound enterprises. These are usually **multi-stakeholder-led initiatives**, bringing together business member organisations and regulators. These include awards such as the Top 100 Mid-Sized Companies and FiRE Awards. It is however worth noting that in these initiatives, anti-corruption issues take little or no prominence. Various stakeholders involved in corporate governance processes have access to relevant information, but this is largely guided by best practice and statutory information.

3. Disclosure on details of an anti corruption program such as various policies (gifts and hospitality, prohibiting facilitation payments, political contributions), a code of conduct that applies to employees, board and external stakeholders among other elements of an anti corruption program.

4. Disclosure on subsidiaries (Consolidated and non-fully consolidated), their percentages, countries of operation and incorporation.

5. Disclosure on revenues, capital expenditure, pre-tax income, income tax and community contribution.

Other private sector led initiatives include a Code of Ethics for Business in Kenya that was spearheaded by apex **business associations** KAM, KEPSA and UN Global Compact Kenya. This is a voluntary initiative that has 700 signatories so far. Members that have been implementing it for a few years are taking lead promoting the benefits of signing on to the code among other members. The private sector has also collaborated with government and civil society in various forums such as the Kenya Leadership Integrity Forum.

There are also initiatives that are spearheaded at the sectoral level. For instance, the banking and manufacturing sectors provide support to members at sector and national level in form of training and provision of relevant materials.

The Companies Act, 2015; the Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 and CBK Prudential guidelines charge the board with the responsibility of shaping and enforcing a company's governance practices. The board is also responsible for communicating, to various stakeholders, the level of compliance to the code of corporate governance. There are, however, no explicit provisions for mandatory compliance of the board with the company's anti-corruption programme. However, the code of corporate governance recommends that the board undergoes annual training on areas of governance from credible sources.

In terms of **executive remuneration**, the code recommends that the board has an independent remuneration committee to recommend to it the remuneration and structure of the compensation of the executive and non-executive directors. Further, the code recommends that the remuneration of the executive board should be linked to corporate performance, while that of executive directors should be in line with industry rates. Information on the directors' remuneration and benefits package should be approved by shareholders at an annual general meeting and should form part of the notes in the company's annual financial report.

The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015, The Companies (general) Regulations and the Companies Act, 2015 have various provisions on conflict of interest of the board.

The **code recommends a balance of executive and non-executive members**, with the non-executive making up the majority and have a policy that ensures independence of the board. Additionally, the code requires that there be a policy to manage conflict of interest of the board. This should include a register of the board's **conflict of interest** declarations that should be updated by the company secretary. There are however no requirements to make this register public.

The Companies Act, 2015 requires that a director of a company avoids situations that can present a conflict of interest with the company. The regulations on the other hand, require that the directors declare the nature and extent of the conflict and avoids voting or be counted as quorum in matters relating to the declared conflict.

The assessment therefore recommends the following:

In the Short term :

	Recommendation	Agency
1.	Amend the Bribery Act 2016 to include provisions for private companies to provide for Whistleblower protection mechanisms as part of their anti-corruption programmes	EACC, KEPSA ,KAM
2.	Civil society, in collaboration with the EACC and Business Member Organisations to sensitise the private sector on the importance of business integrity. This can begin with a sensitisation campaign on the provisions of the Bribery Act.	EACC, KEPSA ,KAM

In the mid-term:

	Recommendation	Agency
1.	KEPSA, KAM and the UN Global compact should prepare sample anti-corruption policy with minimum requirements to be adopted by signatories to the code of ethics for companies in Kenya	KEPSA ,KAM, UN Global Compact
2.	Consider including an indicator on adoption and implementation of integrity management mechanisms as an assessment criteria in the existing award initiatives such as FiRe Awards to encourage accountability in the private sector	CMA,ICPAK, EACC,KAM,KEPSA

In the long term:

	Recommendation	Agency
1.	There is need for the country to adopt cohesive integrity standards that apply to all categories of companies.	KEPSA, CMA,

Assessment summary for the Civil Society

The assessment of the civil society looks into their role in reducing, preventing and responding to corruption in the private sector. It assesses two thematic areas and three indicators. Overall, the assessment notes that in terms of broader checks and balances, the civil society performs averagely while they perform poorly in terms of engagement with the private sector. The findings are presented graphically below:

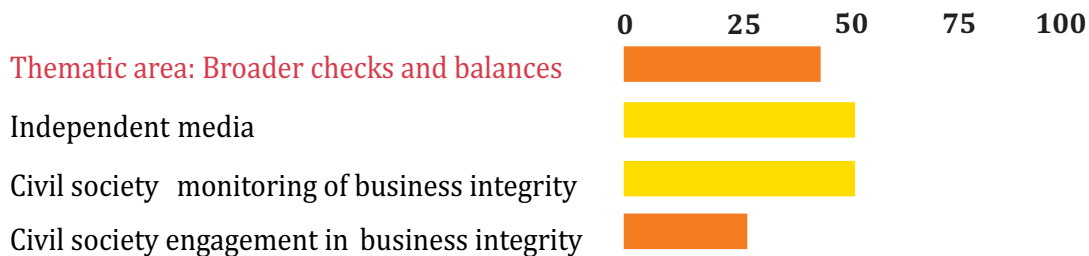


figure 4: Assessment scores for Civil Society

The **media** in Kenya is largely owned and controlled by the private sector for commercial purposes. This has been perceived to compromise their independence and reporting the private sector in negative light. The assessment further finds that media practitioners subscribe to a code of conduct prescribed and enforced by the Media Council of Kenya.

On the other hand, the Constitution of Kenya guarantees independence of the media from government. This however has been put to test several times, with government attempting, and sometimes succeeding, in undermining this through passage of various pieces of legislation such as the Security Laws Amendment act and the Media Council Act.

In terms of **civil society monitoring of business integrity**, the interventions undertaken are noted to be thematic and uncoordinated for the most part and have led to limited success. However, some successful initiatives of the civil society engaging the public sector in creating an enabling environment for the business sector have been recorded.

Nevertheless, there has been limited civil society engagement with the private sector. While there have been sector based initiatives and campaigns undertaken by the civil society, there are limited reports outlining the success of such initiatives.

The assessment therefore recommends the following:

In the short term:

	Recommendation	Agency
1.	There is a need to civil society to have a concerted effort to engage the private sector in matters of business integrity. They can leverage their experience in engaging the public sector to engage the private sector on governance matters. For instance, civil society can seek observer status in Business Member Organisation initiatives.	CSOs, KEPSA ,KAM

In the Mid term :

	Recommendation	Agency
1.	Strengthen the enforcement mechanism at the Media Council of Kenya to check issues of integrity among journalists.	Media Council of Kenya
2.	There is need for civil society organisations to convene a forum that focuses on business integrity. Similar fora have seen some level of success in the initiatives undertaken in the public sector.	Civil Society

Annex 1 – National Advisory Group Members

	Organization	Sector
1.	Kenya Revenue Authority	Government
2.	Business registration Bureau	Government
3.	Ethics and Anti-Corruption Commission	Government
4.	UN Global Compact Kenya – UNGC-K	Private Sector
5.	Kenya Association of Manufacturers -KAM	Business Member Organization
6.	Glaxo Smith Kline	Private Sector
7.	Kenya Bankers Association	Private Sector
8.	Institute of Certified Public Accountants Kenya - ICPAK	Professional Body
9.	CUTS-Nairobi	CSO

Annex 2- TRAC Questionnaire

REPORTING ON ANTI-CORRUPTION PROGRAMMES (ACP)

1. Does the company have a publicly stated commitment to anti-corruption?
2. Does the company publicly commit to be in compliance with all relevant laws, including anti-corruption laws?
3. Does the company leadership (senior member[s] of management or the board) demonstrate support for anti-corruption?
4. Does the company's code of conduct/ anti-corruption policy explicitly apply to all employees and the board of directors?
5. Does the company's anti-corruption policy explicitly apply to persons who are not employees, but are authorised to act on behalf of the company or represent it, for example agents, advisors, representatives or intermediaries?
6. Does the company make anti-corruption requirements on non-controlled persons or entities that provide goods or services under contract, for example contractors, subcontractors or suppliers?
7. Does the company have an anti-corruption training programme in place for its employees and directors?
8. Does the company have a policy on gifts, hospitality and expenses?
9. Is there a policy that explicitly prohibits facilitation payments?
10. Does the programme enable employees and others to raise concerns and report violations of the programme without risk of reprisal?
11. Does the company provide a channel through which employees can report suspected breaches of anti-corruption policies, and does the channel allow for confidential and/or anonymous reporting (whistleblowing)?
12. Does the company carry out regular monitoring of its anti-corruption programme to review the programme's suitability, adequacy and effectiveness, and implement improvements as appropriate?
13. Does the company have a policy on political contributions that either prohibits such contributions or requires contributions to be publicly disclosed?

ORGANISATIONAL TRANSPARENCY (OT)

1. Does the company disclose all of its fully consolidated subsidiaries?
2. Does the company disclose percentages owned in each of its fully consolidated subsidiaries?
3. Does the company disclose countries of incorporation for each of its fully consolidated subsidiaries?
4. Does the company disclose countries of operations for each of its fully consolidated subsidiaries?
5. Does the company disclose all of its non-fully consolidated holdings?
6. Does the company disclose percentages owned in each of its non-fully consolidated holdings?
7. Does the company disclose countries of incorporation for each of its non-fully consolidated holdings?
8. Does the company disclose countries of operations for each of its non-fully consolidated holdings?

COUNTRY BY COUNTRY REPORTING (CBC)

1. Does the company disclose its revenues/ sales in country x?
2. Does the company disclose its capital expenditure in country x?
3. Does the company disclose its pre-tax income in country x?
4. Does the company disclose its income tax in country x?
5. Does the company disclose its community contributions in country x?



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