

Preventing Corruption through Rules Based and Value Based Approaches

Introduction

The African Union Convention on Preventing and Combating Corruption (AUCPCC) defines corruption as solicitation or acceptance, directly or indirectly by a public official or any other person of any goods of monetary value or other benefit such as a gift, favour or advantage for himself or herself. Further AUCPCC indicates that this acceptance is considered corruption if it aims at exchanging commission or omission in the performance of his or her functions. Corruption remains a key challenge to governance worldwide. It continues to undermine the legitimacy of democratic governance and human development to the extent that some commentators now call for it to be declared a crime against humanity. The Global Competitiveness Report (2012) ranks corruption as the leading problematic factor when doing business in Kenya with a significant percentage of 21.2 per cent of the respondents who participated in the global competitiveness survey indicating this. Corruption lowers compliance with construction, environmental, or other regulations, reduces the quality of government services and infrastructure, and increases budgetary pressures on government.

Integrity and Anti-Corruption Initiatives

Given the overarching influence of corruption on public life, the

**Kellen Kiambati &
Anne Kariuki**
Karatina University, Kenya

global community has identified integrity as a central aspect of work behaviour that impacts on organizational efficiency and effectiveness. It is the absence of this attribute among public officials that breeds corruption and unethical conduct leading to lack of efficiency, effectiveness, accountability and transparency in the management of public affairs. Consequently for organizations to be effective and efficient, mechanisms for enhancing accountability and injecting integrity in the management of public affairs ought to be established. This includes mechanisms for ensuring that persons vested with leadership responsibilities at various levels of management uphold and maintain integrity in institutional operations. The requirement for integrity among public officials is premised on the understanding that integrity and ethics in the modern workplace are a product of the minds of the public officials and the policies and practices they establish and uphold. In this regard, public officials especially those in key state offices significantly influence their organizational culture as they set the ethical standards for service delivery. This is what is popularly known as “Tone at the Top” by

people in top strategic positions characterized by huge budgetary allocations. Their corrupt and unethical practices negatively impact on the management of public affairs.

Various countries have developed and implemented initiatives aimed at preventing and combating corruption. These initiatives have had diverse results based on the effectiveness of their implementation. For instance, Denmark, Finland and Sweden have consistently been ranked among the top ten countries perceived to record low levels of corruption by Transparency International (TI). These countries are reported to have effective law enforcement strategies and strong national integrity systems. Additionally, there is public participation and strong political will in confronting corruption practices. The effective anti-corruption initiatives in Denmark could further be attributed to, among other factors, the implementation of legal and judicial reforms through the Justice Partnership Programme (2010-2015). This programme has produced a number of results including but not limited to enhancing judicial reforms, implementation of key judicial instruments, reorganizing and strengthening judicial organs, and establishing the Justice Initiatives Facilitation Fund (JIFF). Denmark’s anti-corruption story is also attributed to high levels of press freedom, publicly available

data and an independent judiciary. Many countries in the world have used their Constitutions and other laws to provide mechanisms for entrenching integrity in the management of public affairs with the ultimate goal of minimizing corruption. Notable examples are Argentina and El Salvador in Latin America; in Europe, the former East Germany, Bosnia and Poland have legislated on integrity in public service while in Africa; laws have been enacted to provide ethics and integrity. Ghana included 'integrity in leadership' as a critical component during the adoption of its new constitution in 1992. This also happened in post-apartheid South Africa (Lynch, 2008). Enactment or amendment of laws to provide integrity for public officials is primarily aimed at ensuring that public affairs are managed efficiently, effectively, transparently and responsively. Such laws and regulations are geared towards compelling holders of public office not to engage in practices that breach the very public trust vested in them to efficiently manage public affairs for the benefit of all citizens.

The United Nations Convention Against Corruption (UNCAC) is an international convention that provides mechanisms that member states should implement to inculcate integrity in the management of public affairs. At the regional level, African states enacted the African Union Convention on Combating and Preventing Corruption (AUCCPC) that obligates states parties to entrench integrity in the management of public affairs. Kenya, for example is a signatory to these two conventions. States parties are required to domesticate these two conventions, which set standards and enact both their substantive and institutional frameworks for the war against

corruption. Among them are independent institutions and strong anti-corruption law enforcement agencies. In 2010, Kenyans enacted a new Constitution to, among other things, transform governance by setting very high standards of integrity for holders of public office. Prior to the enactment of the Constitution of Kenya 2010, corruption had been institutionalized and internalized in the public service leading to poor service delivery. It is against this background that Kenya entrenched integrity in the supreme law of the land so as to address corruption, mediocrity and unethical culture that continue to hamper effective service delivery.

Strategies and lessons learnt

A few lessons have been learnt which we can address using Kenya as an example. Enactment of enabling legislation is not a panacea to preventing and combating corruption. The promulgation of the Constitution of Kenya 2010 and enactment of many anti-corruption laws provide the framework for institutionalizing good governance, accountability, transparency, and integrity in the management of public and private life. Kenya's experimentation with the establishment of an institutional framework is a step in the right direction but it is more critical to mainstream good governance, integrity and ethics in the processes and functional areas within the Judiciary. Organizational culture is a key factor in enhancing or inhibiting change processes in an institution. State capture affects the policy, legislative and institutional frameworks by exploiting both formal and informal networks operations.

Conclusion

The war against corruption is on course. It is necessary to develop effective strategies that are commensurate with the emerging trends in the practice of corruption. African Governments and judiciary in general could leverage on existing opportunities to ensure that corruption does not prevent Africans from realizing the promise in their respective constitutions with respect to good governance and quality life for all.

In most of the African countries, the Constitution guarantees public participation provided through the Devolved or decentralized Government strategy. However this could be hampered by the absence of a framework that empowers and facilitates citizens to effectively participate in governance processes. Effective social transformation is only possible if corruption prevention and combating is addressed from both rules based and values based approaches to good governance.

References

- Government of the Republic of Kenya (2010), *Task Force Report on Judicial Reforms* Government Printers, Nairobi.
- Harrison, A., & Sichwell, M. (2011) Transparency International : *The Global Coalition against corruption Annual Report 2011*. Retrieved from www.transparency.org
- Kenya Anti-Corruption Commission (2010) *National Corruption Perception Survey 2011*.
- Kibwana, K., Wanjala, S., Owiti, O., (Eds) (1996) *The Anatomy of Corruption in Kenya: Legal, Political and Socio-Economic Perspectives*, Nairobi, Claripress.
- Lynch, G. 2008, Courting the Kalenjin: the failure of dynasticism and the strength of the ODM wave in Kenya's Rift Valley province. *African Affairs*, 107(429): 541–568.



National Council for Law Reporting (2010) Constitution of Kenya Retrieved from www.parliament.go.ke/index.php
United Nation Office on Drugs and Crime (2001) *A Global programme Against Corruption research & Scientific Series: An Economic and jurimetrics Analysis of official corruption in the court*. Retrieved

from www.unodc.org/pdf/crime/gpacpublications/cicp12.pdf
United Nation Office on Drugs and Crime (2002) *Global programme Against Corruption Conference: Judicial integrity and its Capacity to enhance the public interest*. Retrieved from www.unodc.org/pdf/crime/gpacpublications/cicp12.pdf

United Nation Office on Drugs and Crime (2004) *United Nation Anti-Corruption Toolkit, 3rd ed. The Global Programme against Corruption* Retrieved from www.unodc.org/documents/corruption/publication_toolkit_sep04.pdf