

**FROM INSTITUTIONAL AND PROGRAMMATIC APPROACH TO ALTERNATIVE
MANAGEMENT OF CORRUPTION IN KENYA**

By

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**A Thesis Submitted in Partial Fulfillment of the Requirements for the Award of Master of
Arts Degree in Political Science and Public Administration at the University of Nairobi.**

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NAIROBI

June, 2015

DECLARATION

This thesis is my original work and has not been submitted for a degree award in any other university.

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DEDICATION

I dedicate this anti-corruption study to my children (Wanjiru, Waithira and Kahuha), veterans and comrades in the Kenya Defence Forces (KDF).

ACKNOWLEDGEMENTS

I am indebted to so many people who helped me in one way or another in the task of accomplishing this study and indeed the MA course. To all of you, please do accept my unreserved and sincere appreciation and gratitude.

To mention, but a few, my special thanks and sincere appreciation goes first to my Supervisors, Dr. Fred Jonyo and Dr. Solomon Owuoche, for their valuable suggestions and tireless professional and scholarly guidance throughout the study and research. Without their patience and total commitment, this study would not have been a success.

My gratitude also goes to the Ministry of Education, Science and Technology and to the University of Nairobi for having accepted me to the MA in Political Science and Public Administration programme, thereby providing me with the subsequent scholarship, educational facilities and tools necessary for this study.

Many thanks go to the various individuals in government ministries and departments, civil society and private sector organizations for answering my research interview guide questions. My thanks also go to the Vice Chancellor of the University of Nairobi and Lecturers for their facilitation of my study at the University.

I cannot forget to thank my friend and senior lecturer Dr. Musambayi Katumanga, also of the University of Nairobi, for the way he has always encouraged me to pursue the Political Science course to the very end, despite the many hindrances I have encountered along the way. Many thanks also to my research assistant Samuel Okeyo for his tireless effort during the data collection exercise phase of this research.

Last but not least, my heartfelt gratitude and appreciation goes to all my other friends for their continued moral support and encouragement throughout the study and research.

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ABSTRACT

FROM INSTITUTIONAL AND PROGRAMMATIC APPROACH TO ALTERNATIVE MANAGEMENT OF CORRUPTION IN KENYA

Supervisors:

Dr. Fred Jonyo and Dr. Solomon Owuoche.

Since independence, corruption in Kenya has assumed an incrementally progressive trajectory, almost in tandem with the escalation of measures to tackle it. This study therefore interrogates the appropriateness of the current anti-corruption policy implementation approaches within the contemporary political economy context. The proposition herein was that the current less than efficient elite-driven and rent-seeking anti-corruption policy implementation strategies and processes, that are embedded in current anti-corruption approaches, further identified as a “Logframes”, have been responsible for the observed challenges facing the anti-corruption war in Kenya. To effectively interrogate underlying domestic and systemic factors, the study has utilized the Elite Theory to explain the observed disconnect between the current institutional and programmatic approaches to the management of corruption in Kenya and their expected effectiveness. In addition to available secondary data on the subject from books, journals, media, and official government and international organizations’ reports, the study has also used non-probability generated primary data through self-administered interview guides that were procured from subject-area experts in relevant government enforcement, oversight, advocacy, watchdog, institutions and organizations. The study has analytically identified the existence of the above referred ‘Logframes’ at both the local and international levels as being the singularly fundamental impediment to the success of the current approaches to the management of

corruption in Kenya and consequently recommends resolute and graduated governmental efforts in the removal of the same as the way forward which constitutes the alternative approach.

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ACRONYMS

ACECA	-	Anti-Corruption and Economic Crimes Act, 2003
ACPU	-	Anti-Corruption Police Unit
AG	-	Attorney General
AKI	-	Association of Kenya Insurers
APSEA	-	Association of Professional Societies of East Africa (APSEA)
AU	-	African Union
CEO	-	Chief Executive Officer
CPI	-	Corruption Perception Index
ESAP	-	Enhanced Structural Adjustment Programme
FPE	-	Free Primary Education
GoK	-	Government of Kenya
ICT	-	Information Communications Technology
IFMIS	-	Integrated Financial Management Information Systems
IGAD	-	Inter – Governmental Authority on Development
ITMS	-	Integrated Tax Management Systems
JKUAT	-	Jomo Kenyatta University of Agriculture and Technology

JSC	-	Judicial Service Commission
KACA	-	Kenya Anti-Corruption Authority
KACC	-	Kenya Anti-Corruption Commission
KANU	-	Kenya African National Union
KADU	-	Kenya African Democratic Union
KPLC	-	Kenya Power and Lighting Company
KRA	-	Kenya Revenue Authority
MNCs	-	Multi-National Corporations
NAO	-	National Audit Office
NEPAD	-	New Partnership for Africa's Development
NGO	-	Non-Governmental Organization
NNAK	-	National Nursing Association of Kenya
PIN	-	Personal Identification Number
PSC	-	Parliamentary Service Commission
SAP	-	Structural Adjustment Programme
SRDP	-	Special Rural Development Programmes
TI – Kenya	-	Transparency International – Kenya Chapter
TI	-	Transparency International
TOC	-	Transnational Organized Crime

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background to the Study

Corruption as a vice is “an age-old phenomenon with numerous proposed remedies”¹, save for some scholars who have seriously argued that “corruption is an efficient corrective for overregulated economies or that it should be tolerated as an inevitable by-product of intractable forces”.² The proposed remedies have worked in some countries while they have failed in others.

Transparency International (TI) has rated Kenya to be between positions 145 and 147 out of 180 interchangeably, on its Corruption Perception Index (CPI) scale, for consecutive years between 2003 and 2009³. In the same period New Zealand has maintained position number one with an index of between 9.3 and 9.4 out of 10 against Kenya at between 2.0 and 2.2. TI’s local chapter, Transparency international – Kenya (TI-Kenya), on its part, has estimated that “the average urban Kenyan pays 16 bribes per month”.⁴

Consequently, and with the intended purpose of eradicating corruption, Kenya like “most nations of the world, has over the years, enacted anti-corruption laws”⁵ and policies, upon which the existing administrative anti-corruption programmes have been based. From these laws and policies, a number of institutions and programmes have been established and instituted respectively, as a local approach to the war against corruption.

¹ Noonan, J. T. Jr. (1984) **Bribes**. Macmillan, New York.

² Heineman, B. W. Jr. and Heineman, F., **The Long War Against Corruption**, in Foreign Affairs (May/June 2006), p 76.

³ Transparency International (2009), **Global Corruption Report 2009: Corruption and the Private Sector**, Cambridge University Press, New York.

⁴ Transparency International - Kenya, **Frequently Asked Questions**. Accessed March 1, 2006.

⁵ Heineman, B. W. Jr. and Heineman, F., **The Long War Against Corruption**, in Foreign Affairs (May/June 2006), p 75.

However, these measures have not managed corruption thereby posing a serious challenge to the anti-corruption campaign. In fact, the documented corruption trend has, according to the defunct Kenya Anti-Corruption Commission (KACC), “become progressively incremental, even with an escalation in anti-corruption measures”⁶ and policies. But interestingly, similar policy-based anti-corruption institutions and programmes have succeeded elsewhere and the fact that they have, is indicative of a variance between policy formulation and implementation in the Kenyan case.

In an attempt to address the corruption problem in Kenya, many local public and intellectual discourses have revolved about issues of “governance”⁷, “governmental accountability, public service ethics, and the rule of law.”⁸ However, these discourses have fallen short of addressing themselves to the major underlying factor of how the less than perfect governance and managerial systems in Kenya “have produced suboptimal systems in the country, that are beyond the control of the citizens’ as well as the donor community’s management, thereby undermining the achievement of the purpose of the anti-corruption measures”⁹ to the extent of frustrating both the local and international efforts of eradicating corruption in Kenya.

From the above, it becomes apparent that the anti-corruption institutions and programmes in Kenya have acquired elitist characteristics hence the high susceptibility to either sometimes being designed and/or established, or being deliberately manipulated, to serve interests other than the eradication of corruption per se.

⁶ Kenya Anti-Corruption Commission, **Annual Report 2009/2010**, p 11.

⁷ Kivuva, J. and Odhiambo, M. eds, (2010), **Integrity in Kenya’s Public Service: Illustrations from Goldenberg and Anglo- Leasing Scandals**, CLARION, Nairobi, p xi.

⁸ Wanyande, P. Omosa, M. Ludeki, C. (eds), (2007), **Governance and Transition Politics in Kenya**, University of Nairobi Press, Nairobi. P 5.

⁹ NORAD, (1999), **The Logical Framework Approach. Handbook for objectives-oriented planning**, Fourth edition,

1.2 Statement of the Research Problem

Like in many other countries, corruption has basically undermined investment, economic growth, and democratic development in Kenya. In independent Kenya, one of the most fundamental challenges to national economic growth and governance has been the progressively incremental corruption, which is currently in tandem with any escalation in anti-corruption measures. In an attempt to eradicate corruption in Kenya, the government has, either on its own volition and/or under pressure from local, regional and international stakeholders, formulated anti-corruption policies that have, over the years, brought about a number of anti-corruption institutions and programmes. However, these have not tackled the vice. The fact that a similar approach and measures have worked elsewhere, is suggestive of the presence of certain dynamics that negatively affect the current anti-corruption policy implementation process. In this study, these negative dynamics have been referred to as “Logframes”.

From the onset, this study’s assumption is that the contemporary anti-corruption approach has been sanctioned to satisfy certain local and international stakeholders’ demands as opposed to being aimed at eradicating corruption per se. As such, the study therefore seeks to establish the extent to which this “Logframe” riddled approach, to the fight against corruption, has contributed towards the challenges now facing the anti-corruption policy implementation process in Kenya. The following questions will therefore guide the study;

1. Why has the implementation of the anti-corruption policy not managed corruption in Kenya?
2. How has the war on corruption been conducted in Kenya?
3. How should the anti-corruption war be prosecuted in Kenya?

1.3 Objectives of the Study

In view of the questions identified above, the study's general objective became; "to examine the role of policy implementing agencies in the management of corruption in Kenya". This general objective was to be realized through two specific objectives, namely;

- a. To examine the relationship between the anti-corruption policy implementation process and the management of corruption in Kenya.
- b. To assess the relationship between a logframe free anti-corruption strategy and the management of corruption in Kenya.

1.4 Justification of the Study

Past studies on corruption in Kenya have variously touched on its causes and manifestation and have blamed it on governance and accountability lapses. Out of recommendations from these studies, the government has developed and operationalized strategies and measures to tackle the vice but paradoxically, corruption has increased progressively in tandem with the escalation of the said measures. Thus, there is little on record to show why an escalation of anti-corruption measures does not bring about commensurate reduction in corruption, or its eradication, from a cause-effect perspective. The absence of such expected reduction indicates that the current approach, in the management of corruption is wanting. This state of affairs necessitates an investigation in order to unravel this ambiguity.

Towards this end, the selected case study respondents were deemed to be in a position to offer experts' exposition on the challenges facing the contemporary anti-corruption approach by virtue of their familiarity, experience, exposure and knowledge on the subject matter under study. Consequently, the data collected from them has been analyzed and presented for use in filling the

existing knowledge gap, identified above, in order to facilitate the effective management of corruption in Kenya.

1.5 Scope and Limitations of the Study

The study will review the contemporary public and intellectual discourses that inform the subject matter of corruption in Kenya, in so far as the identification of the “logframe” challenges facing the current anti-corruption approaches is concerned. In this respect, the study will be confined to the factors that inform the observed ‘progressively incremental corruption’ that currently appear to be in tandem with any escalation of anti-corruption measures.

While collecting data in the field, some financial and time constraints were experienced as anticipated, especially, during the administration of the research instruments. This involved physical delivery and collection of the same to and from the offices of the selected respondents, who in most cases were not always reachable at their offices. The other challenge involved the safeguarding the integrity of the purposive sampling method used, as this is ‘fundamental’ to the quality of data gathered. In this respect, the reliability and quality of the data gathered was ensured by having the Chief Executive Officer (CEO) of the institutions or organizations take personal responsibility of answering the fielded questions.

1.6 Definitions of Terms

Corruption - Abuse of public power, dishonest action or illegal behavior, misuse of office, or resources by government officials or employees as well as the general citizenry for personal gain through extortion, soliciting or offering bribes in exchange of otherwise free services that translates into loss of government revenue, funds or citizens’ lives. Corruption also involves

corporate criminality and the abuse of power by corporation officials, either internally or externally.

Institutional Approach to the Management of Corruption - An anti-corruption method that has been in use in Kenya since 1999. The method has employed the use of institutions such as Kenya Anti-Corruption Authority (KACA), Anti-Corruption Police Unit (ACPU), Kenya Anti-Corruption Commission and Ethics and Anti-Corruption Commission (EACC) to fight corruption.

Programmatic Approach to the Management of Corruption - An anti-corruption management method that has been used in the fight against corruption in Kenya since 2003. The method has employed a strategy of implementing a variety of legal instruments and administrative procedures for the purpose of fighting corruption such as the imports of the Public Officer Ethics Act (2003); Public Procurement and Disposal Act; the Privatization Act; the Fiscal Management Act (2008); and Communications (Amendment) Act (2008), performance contracting and wealth declaration annual requirements.

Elite - A small and privileged minority in society comprising, but not limited to, bureaucrats, wealthy cliques of local and transnational individuals, institutions, organizations and companies that are able to exert significantly preponderant power over the policy decisions of corporations and the government at will for particular partisan purposes. However, at the individual level the terms elite in Kenya describes those who hang around the state, to accumulate power and privileges for partisan interests and purposes.

Logframe Approach - An elite-driven, rent-seeking anti-corruption policy implementation method that has created a variance between the stated policy objectives and

actual results in the fight against corruption. The approach creates the impression that the anti-corruption measures in place are logically described in such a manner that they are; well designed, described objectively, can be evaluated and clearly structured and as such there should be no corruption, while in the real sense the method only succeeds in creating policy ineptness that facilitates corruption.

1.7 Review of Literature

1.7.1 Introduction

Corruption is as old as mankind. In Kenya, it is therefore older than the nation-state itself. And being one of the several manifestations of bad governance internationally, corruption has the singular capacity of destroying institutions and eventually nation-states. Locally, corruption has managed to destroy the national fabric to the extent of, some intellectual and public discourses, calling to question the viability of the state from the Westphalian perspective. Corruption has made Kenya's economic growth rate practically stagnate at the one-digit level since independence, a situation that admittedly makes a mockery of the realization of both the Millennium Development Goals (MDG) by 2015 and vision 2030 goals, unless something is done about it urgently.

Past studies have demonstrated that corruption not only varies from place to place but also from time to time and as such there are cases where corruption appears to be high and others where it appears to decline in every country's history. In an effort to manage corruption in Kenya, the government has, over the years, formulated and/or enacted a variety of policy-based institutional and programmatic anti-corruption measures but these have always encountered serious challenges, resulting to failure, at the implementation stage. This observed systematic failure

calls for an alternative approach that will take into account, the underlying challenges to the contemporary anti-corruption approach. Consequently, the next section will identify and discuss the challenges facing the current approach, with a view to examining the de-facto role of policy implementing agencies in the management of corruption in Kenya.

1.7.2 General Policies Implementation Challenges

Historically, Kenya is replete with policies implementation challenges right across the governance spectrum since independence. For instance, Kenya attained independence on a Kenya African Democratic Union (KADU) devolved constitution but within a year, the independence Kenya African National Union (KANU) government immediately started to amend the same constitution to conform to their “proposed pre-independence unitary constitution.”¹⁰

In this classic case, the type of constitution deemed to be most appropriate for independent Kenya as agreed, at the Lancaster Constitutional Conference, was the devolved one and not the unitary one. However, KANU party which won the independence elections did not implement the ‘independence constitution’, thereby triggering a constitutional crisis that lasted for the next five decades. In this case, the first two post - independence governments “logically” purged the independence constitution, with the Kenyatta (first President of Kenya) administration effecting ten (10) legislative constitutional amendments between 1964 and 1969 that helped to create an ‘Imperial Presidency’ while the Moi (second President of Kenya) administration effected six (6) judicial constitutional amendments between 1978 and 1983 that helped to create an inept

¹⁰ Republic of Kenya, (1971), **Report of the Commission of Inquiry: Public Service Structure and Remuneration Commission**, Government Printer, Nairobi. p 9.

judiciary in Kenya, in order to apparently conform to the ruling party's wishes, in total disregard of the implementation of the constitution as per the Lancaster agreement.

In this regard, fidelity to the independence constitution was blatantly sacrificed at the altar of partisan party, bureaucratic and government elitist interests. From this precedence, various governments and even political, economic as well as bureaucratic elite have learnt and perfected the art of manipulating policy implementation processes for particular and often personal interests. Here, the independence constitution, itself a basic governance policy framework, was subjected to political expediency by the political elite. The net effect was the officially sanctioned breaching of the corruption floodgates. And although the new (2010) constitution did secure most of these crucial institutions and laws against possible executive and elite-driven purge, corruption still persists in Kenya, courtesy of the logframe that is packaged in the form of manipulated policy implementation process.

Even today, the unsecured parts of the current constitution are constantly under threat from similar elite manipulation. For instance, in a constitutional reference advise, the Commission for the Implementation of the Constitution (CIC) offered an advisory to the effect that "the Prime Minister, Ministers and their Assistants should have quit office after the March 4th 2013 general election"¹¹ only for the then Prime Minister to repudiate that six days later by instructing the said "ministers and their assistants to remain in office until a new president is sworn in,"¹² an act that made them practically occupy two offices at the same time contrary to constitutional provisions. Ironically, the Prime minister was issuing this directive, for the ministers to remain in office, even as the same ministers from across the political divide tendered their resignations in order to

¹¹ Daily Nation, Friday March 15, 2013, p72.

¹² Daily Nation, Thursday March 21, 2013, p68.

comply with the constitution. This is an instructive case of a political elite-driven policy implementation confusion and challenge, which means that the constitution only stands a chance to be implemented, without a fight, only if, where and when it does not threaten certain partisan elite interests. This is political corruption in the form of abuse of office.

Similarly, the implementation and operationalization of Chapter six of the constitution is another classic example where parliamentarians, in 2012, connived to “water down” the integrity requirements for public office holders with the aim of guaranteeing their return to parliament even with questionable leadership and integrity issues. In this particular case, a law was quickly enacted to address issues other than what was envisaged by the constitution. On the face of it, the law is available but integrity and leadership code violations continue unabated.

Following the promulgation of the constitution in 2010, we have witnessed open resistance to the implementation of a number of laws and policies that threaten partisan elitist interests. In this respect, the Commission on the Implementation of the Constitution (CIC) is yet again on record as having gone to court to seek the interpretation of the constitution in cases where the operationalization of the same has faced implementation challenges. In the process, it has become apparent that these challenges have been engineered by either the bureaucratic or the political elite. For instance, it has been difficult to even start the restructuring process of the former Provincial Administration to accord with the constitution. In this case, the executive has been accused of superimposing the former provincial administration officials on to the county governments in contempt of the constitution. Also the medical practitioners did pour into the streets twice, in 2013, to block the implementation of the policy of devolving medical services to the county governments.

The examples above shows that Kenya has a rich history, in terms of cases of blocking and/or frustrating the implementation of policies that run counter to partisan interests. This intentional blocking and/or frustrating of policy implementation for rent-seeking purposes, is the “logframe” synthesis proposition that this study advances in the form of gaps in the available discourses on corruption.

Thus the implementation and operationalization of Chapter six of the 2010 constitution, the Commission on the Implementation of the Constitution (CIC) action of seeking the Supreme Court’s interpretation and the initiative of restructuring process of the former Provincial Administration to accord with the constitution, as discussed above, are classic examples of an escalation of anti – political corruption measures, that have not reduced or eradicated political corruption in Kenya. This is indicative of a direct relationship between the implementation of the anti-corruption policy/measures and the management of corruption.

1.7.3 Discourses on Corruption in Kenya

1.7.3.1 Intellectual Anti-Corruption Discourses

The local and international anti-corruption thesis has partially anchored the debate on two broad areas of governance and accountability lapses. However, these discourses have been mainly at the ‘governmental’ and ‘role’ levels but hardly discuss the problem from the international, state and individual levels of analysis perspectives. Even at the governmental and role levels of analysis, identified above, these discourses have failed to address the “logframe” manner in which the government, local and other international stakeholders handles the contemporary institutional and programmatic anti-corruption policies, within the framework of embedded elite interests.

From the governance perspective, however, some scholars have identified the “pilferage of public resources” as the single and most important issue that informs the incrementally progressive corruption and its persistence in Kenya. For instance, Odhiambo argues that “political regimes do at times resort to corruption as a means to generate funds to rally political support and retain political power illegitimately.”¹³ The import here therefore becomes the need to look for another way of rallying political support and power retention dynamics in order to do away with the corruption arising thereof. If this was the case then, the February 2008 National Accord did try to address this point, at least in part, by putting in place two centers of power in the same regime, with the hope that one center would check the other in terms of the inclination towards rallying political support and power retention using corruptly acquired funds, but corruption still continued.

In fact there were, in terms of numbers, more grand corruption cases that were reported during the Grand Coalition government’s term than all the other post-independence governments put together. Additionally the 2010 constitution further devolved political power to forty seven counties across the country, ostensibly to check the regime against such an inclination, but corruption still reined supreme in the Jubilee coalition administration. This suggests that the locus of the progressively incremental corruption phenomenon in Kenya is indeed elsewhere, and not necessarily as per Odhiambo’s proposition.

Besides, there are known cases whereby the government has “victimized and discriminated against people who did not support the government in power”¹⁴ as one of the forceful and effective way of rallying support. For instance, “there was a particular by-election in the 1990s in

¹³ Kivuva, J. and Odhiambo, M. eds, (2010), **Integrity in Kenya’s Public Service: Illustrations from Goldenberg and Anglo- Leasing Scandals**, CLARION, Nairobi, pt 1.

¹⁴ Kanyinga, K., **How Kenyans are benefiting from Certain Unintended Consequences of Devolution**, Sunday Nation, January 19, 2014, p 13.

which the government ordered electricity poles to be erected in an entire constituency to entice voters to support a ruling party candidate. When the people voted against the candidate, government workers began carrying away the poles before the vote count had even been completed.”¹⁵ This shows that the rallying of political support in Kenya is not necessarily a function of corruptly generated funds, as Odhiambo suggests.

Along the same lines, Lucky argues that there is “need to institute reforms in political financing in Kenya as a remedial and deterrent measure against political corruption in Kenya’s political processes and practices”.¹⁶ To address this concern, the 2010 constitution has provided for the public financing of political parties using a formula based on the number of votes each party garners in the general elections. In this regard, the funds due to the major political parties are still contentious as the final votes tally has not been reconciled, to the satisfaction of the parties, following the March 2013 general elections. Subsequently, therefore, the final outcome of this process is that only three political parties qualified for public financing. These are “The National Alliance (TNA) with KES 60.967 million, Orange Democratic Movement (ODM) with KES 59.696 million and United Republican Party (URP) with 19.25 million.”¹⁷ But even in the absence of this constitutional provision, political parties in Kenya have been financed, to a great extent, through Members of Parliament’s (MPs) “philanthropic donations”¹⁸, as well as other ‘anonymous’ benefactors, although when cornered, they unconvincingly claim to derive their funding from membership registration fees. However, even these token public gestures are unlikely to be effective remedial and deterrent measures against political corruption in Kenya from Lucky’s perspective because it does not cover the entire party development as well as

¹⁵ Ibid, p 13.

¹⁶ Kivuva, J. and Odhiambo, M. eds, (2010), **Integrity in Kenya’s Public Service: Illustrations from Goldenberg and Anglo- Leasing Scandals**, CLARION, Nairobi, ch 2.

¹⁷ Ongiri, I. **Cash- strapped Parties Appeal for Funds**, Sunday Nation, November 10, 2013, p 22.

¹⁸ Ibid, p 22.

recurrent expenditure. Besides, political parties are the world over, allowed to raise funds from a variety of other legally sanctioned methods and these should/do not necessarily constitute corruption. Lucky's is, therefore, a hard-to-sell proposition since it suggests that corruption in Kenya is an exclusive preserve of politicians and political parties, which is not the case.

Chweya and Wakaba argue that the "wide discretionary powers wielded by the executive create loopholes for unchecked acts of executive-sanctioned corruption (like Goldenberg and Anglo-Leasing) to occur."¹⁹ However, in independent Kenya it is a well established fact that this is a "necessary evil" given the kind of the "general public"²⁰ we have due to the uneven spread of awareness, education and general infrastructural development. The fact here is that fundamental challenges, in terms of basic needs, makes the general public gullible to the extent of caring less about the corruption taking place around them and are therefore less vigilant. The government, through the executive, may take punitive as well as corrective measures, for instance, on communities and individuals who do not see the need to take, for example, the girl child to school but instead marry them off or those who do not see the need to take their children for immunization. In such circumstances, it therefore becomes the responsibility of the government through the executive and under the watch of the legislature, to initiate necessary uplifting and alleviating programmes for and on behalf of such a citizenry. Thus a balancing act here becomes heavily tilted in favour of the optimists' status quo with respect to discretionary powers.

Sichei, from an "economics of corruption" perspective, argues that in Kenya, "corruption is a product of structures that make the vice an issue of rational choice for the perpetrators of the vice", in which case he proposes, among other remedies, a regime "that will make it possible for

¹⁹ Ibid, ch 3.

²⁰ Almond, G. (1950), **The American Public and Foreign Policy**, Harcourt, Brace, New York, p 269.

Kenya to pursue supply-side perpetrators of corruption – like foreign suppliers – who engage in corruption deals within Kenyan jurisdiction.”²¹ However, under the current international system’s perking order, this becomes a tall order for any regime to manage and follow through, given both the internal and external porosity and contestability of Kenya’s sovereignty in terms of domestic and extraterritorial enforcement capabilities. Maybe building of more formidable diplomatic alliances, regime notwithstanding, would guarantee better results in terms of pursuing foreign perpetrators of corruption than the nature of the local regime.

Chweya identifies “loopholes in Kenya’s institutional set up” and concludes, among other issues, that “the Kenyan civil service is ‘precariously’ amenable for use in pursuit of parochial individual and group interest at the expense of the general public good leading to prevalence of corrupt practices”.²² In this regard, it is important to note that this civil service amenability is, regrettably, a product of superficial reforms that have not been targeted to the philosophy and fundamental structure of the said institutions, in which case corruption will continue, regardless, as long as the institutional reforms are glossing over the real issues. As the adage goes, “it is only a fool who repeatedly does the same thing and expects different results each time”. In this respect, the Kenyan civil service is still, and regrettably so, intact as a colonial outfit complete with all the trappings and strapping of colonial powers, up to and including the uniform, and as such it is unfair to expect it not to be ‘amenable for use in pursuit of parochial individual and group interest’ especially by the elite class, both within and without.

Wambua argues that “the dismal performance of corporate governance in Kenya has led to mega corruption scandals of the Goldenberg and Anglo-Leasing magnitude, which have in turn led to

²¹ Ibid, ch 4.

²² Ibid, ch 6.

loss of billions of public money”²³ but as it has been shown above, the dismal performance of corporate governance is subject and subordinate to the interests of local and transnational elite.

However, this indicates that both the performance of corporate governance and the current anti-corruption institutional set up have a role in the management of corruption in Kenya. This role could be positive or negative, depending on how they are employed.

Wanyande, Omosa and Ludeki, look at corruption in Kenya differently as a function of “lack of adherence and respect of rules and ethical standards”, the one aspect, according to them, that cuts across the Kenyan society in general and the public sector in particular since independence. According to these scholars, this behaviour emanates from the “absence or declined governmental accountability to the citizens in Kenya that in turn “predispose public officials towards violation of the two broad bases upon which the management of the affairs of the state in a democracy is ideally founded, namely; respect for both public service ethics and the rule of law”. They further observe that over time, “Dishonesty in the conduct of public affairs became an insidious practice that has been attributed to a variety of factors, notably a shift of the basis of support for the post-colonial political regime from a democratically derived legitimacy to the distribution of patronage resources that include the leeway to act dishonestly”.²⁴

A closer look at the import of this discourse shows that it is only descriptive of the behavior but it does not analyze the strategic cause of this behavior, at least in terms of local elite interests, which this study calls logframes. These logframes have had a notorious tendency to subordinate public interests such that where anti-corruption measures stand in the way of local elite’s

²³ Ibid, ch 7.

²⁴ Wanyande, P. Omosa, M. Ludeki, C. (eds), (2007), **Governance and Transition Politics in Kenya**, University of Nairobi Press, Nairobi. p 5.

interests, then they rise up to protect the said interests, if they had not already factored their interests during policy formulation and enactment process. A good case is chapter six (6) of the constitution on integrity, which is not followed at all, yet the wordings of the constitution are very clear on this issue. This indicates a direct relationship between these logframes and the management of corruption in Kenya.

Thus upon testing the above discourses in terms of views and propositions against de facto factors that drive politics, corruption and governance in Kenya, they immediately point in the direction of existing elite-driven interests (logframes) as the underlying causes of corruption that have not been addressed so far. In this case, therefore, the discourses seem to have glossed over the real causes of corruption in Kenya and as such the policies thereof have failed to manage corruption even with an escalation of anti-corruption measures.

Indeed Nyong'o²⁵ and Nzomo²⁶ have located the problem of progressively incremental corruption, even with an escalation in anti-corruption measures, to be within the realm of systemic factors whereby they see the Multi-National Corporations (MNCs) activities as the facilitator of corruption in Kenya, but they also fall short of identifying the underlying MNCs elitist-interests that constitute the fundamental challenge to the implementation of anti-corruption measures in Kenya. To Kenya, MNCs are more of employment providers and passive transfer of technology agents than they are facilitators of corruption. Any corruption that may, or might have, involved MNCs falls within the transnational elitism domain, which is a direct indictment on our diplomatic engagements.

²⁵ Nyong'o, P. A. (1991), "**The Possibilities and Historical Limitations of Import-Substitution Industrialization in Kenya**" in Coughlin and Ikiara (eds) *Industrialization in Kenya*, p 149.

²⁶ Nzomo, M. (1997), **External Influence on the Political Economy of Kenya: The Case of MNCs** in Walter O. Oyugi, (ed.) *Politics and Administration in East Africa*, p 183.

But according to Transparency International (TI), the global civil society organization that is arguably leading the fight against corruption through more than ninety chapters worldwide, “the private sector plays a pivotal role in fighting corruption worldwide”. This is a central idea in Transparency International’s “Global Corruption Report 2009” that, among other issues, documents in unique detail the many corruption risks for businesses, ranging from small entrepreneurs in Sub-Saharan Africa to MNCs from Europe and North America. In this 2009 TI report, more than 75 experts examined carefully the scale, scope and devastating consequences of a wide range of corruption issues, including bribery and policy capture, corporate fraud, cartels, corruption in supply chains and transnational transactions, emerging challenges for carbon trading markets, sovereign wealth funds and growing economic centers, such as Brazil, China and India. These corruption issues constitute the underlying factors that inform the incrementally progressive corruption in Kenya, despite the recommendations of these experts, which this study has identified as “logframes”.

But incidentally, the private sector has successfully managed these corruption risks so far through the strict manner in which the management implements, monitors and supervises their anti-corruption programmes. But as Mohammed Abdikadir, a senior advisor to President Kenyatta put it, “the main challenge is a governance issue to fix the public property attitude where unlike the private sector, the public sector lacks mechanisms to enforce accountability and integrity as well as push for achievement of clear targets.”²⁷

This is probably because any corruption in the private sector immediately translates into loss of income leading to immediate and automatic insolvency while public sector corruption leads to non-provision of essential public services. This private sector success is brought about by the

²⁷ Otieno, O. **Slim Ray of Hope in the Fight against Corruption**, Sunday Nation, October 20, 2013, p 41.

fact that the sector employs a daily audit tool that ensures that irregularities observed are rectified by the close of business on a daily basis. This is, however, not the case with the public sector where losses from corruption are absorbed by the social welfare development programmes, the effects of which are felt after a long time.

Fesler and Kettl, see corruption in Kenya as a function of the nature of the state, where they posit that as an “Administrative State” Kenya, like any other state has “a multiplicity of administrative agencies, a large number of civil servants, and swelling governmental budgets to pay for what citizens want and for the administrative work by which such expectations are met”.²⁸ Where such a cocktail of factors have not been well managed, it has turned out to be a perfect recipe for corruption. This is in the sense of being a challenge to the contemporary anti-corruption management approach. And where these anti-corruption institutions and programmes have not been streamlined through appropriate fundamental reforms, progressively incremental corruption has continued to be reported, even with an escalation of anti-corruption measures.

Goran Hyden identifies a corruption facilitating lacuna within “the Governance Realm” of the Kenyan political system, in that area bound by the two variable conditions that determine the relationship between the rulers and the ruled, precisely “the actor dimension or personal expectations individuals have for each other’s behaviours and the structural dimension – the institutionalized procedures, or rules of the game – operative in a particular policy”.²⁹ Although this concept of a governance realm is applicable to African polities generally, Hyden makes a proposition that the Kenyan case is particularly instructive, because Kenya “is perhaps the only African state to establish a robust governance realm and then dismantle it.” For instance, the

²⁸ Fesler, J. W. and Kettl, F. D., (1991), **The Politics of the Administration process**, Chatham House Publisher, New Jersey, USA. p 1.

²⁹ Barkan, J. D., (1992), **The Rise and Fall of a Governance Realm in Kenya** in Hyden, G. and Bratton, M., (eds), **Governance and Politics in Africa**, Lynne Rienner Publishers, London.

Police Service Commission set up in 1961, along with the Majimbo (devolved) Constitution, was deemed to “threaten the integrity of the State and the capacity of the Central Government to carry out its plans for development,”³⁰ was eliminated in 1964 in order to clear the way for the Provincial Administration. This study argues that other factors, notwithstanding the manner of dismantling the robust governance realm, could have been informed by the need to facilitate economic, bureaucratic and transnational elite-sanctioned corruption. These apparently extraneous factors are what this study has identified as logframes.

However, and from a Susan Strange perspective, this should not be construed not to mean that the Kenyan state as a public conceptual institution is disappearing, but rather it is undergoing a metamorphosis brought about by structural changes in the general world society and economy. As such the Kenyan state can no longer make exceptional claims and demands that it is the only actor at the local scene since, like all the other states in the international system, it is becoming, as in the past, just but another source of authority among several, with limited powers and resources, hence the apparent “rolling back”-contraction-diminishing phenomenon. The vacuum so created by the rolling back, in the Kenyan case, has been filled by elite rent-seeking interests, hence the observed progressively incremental corruption.

But regarding the generic state, Myrdal in Martinussen’s edited 2005 book, “Society, State and market” notes that ‘the laws in developing countries are, as a rule formulated in such a weak and imprecise terms that a considerable degree of discretionary power is left with government officials’, who also double up as bureaucratic elites. Although discretionary powers are necessary as argued above, there is, in Kenya mounting evidence that these laws are deliberately

³⁰ Republic of Kenya, (1971), **Report of the Commission of Inquiry: Public Service Structure and Remuneration Commission**, Government Printer, Nairobi. pp 8- 9.

formulated to be weak and imprecise, to leave room in the form of a 'Logframe' for elite rent-seeking interests. Myrdal further observes that 'when the officials have to make a ruling, for example, in connection with application for import licenses, it might be natural for the applicant to offer some sort of commission or bribe to achieve a favourable result, in which case the officials on their side might not have any strong hesitations about receiving such a gratuity.'³¹

These are but just a few, among many such symptoms, of what Myrdal says constitute "the soft state",³² a term which at a high level of abstraction, refers to an unwillingness among rulers to impose obligations on the governed, and a corresponding unwillingness on their part to obey rules laid down even by democratic procedures. This effectively means that a 'soft state', which Kenya tends to be, is bound to work deliberately harder in order to implement anti-corruption policies that stands in the way of the bureaucratic, economic and transnational elite groups' interests in society.

1.7.3.2 Public Anti-Corruption Discourses

The general Kenyan public has not been left behind either, in the discourses aimed at the ways and means of managing corruption. This public anti-corruption campaign has been spearheaded by local stakeholders in the form of the civil society, NGOs, media houses, whistleblower organizations and patriotic individuals. These public anti-corruption discourses have mainly been in the form of advocacy, protest, demonstrations, as well as the name-and-shame media reports. However, documented evidence shows that public discourses on corruption have

... been concerned with the extent to which public servants serve clients impartially; duly undertake assigned duties; keep promises and appointments;

³¹ Martinussen, J. (ed), (2005), **Society, State and market**, University Press Ltd, Dhaka, p.226.

³² Ibid, ch. 18.

exert the highest degree of competence possible; observe due diligence; respect the laws as well as established rules and procedures; eschew the temptation for abuse of office for personal gain; and refrain from misuse and pilferage of public resources.³³

In this regard the general public has, on various occasions, taken some arguably circumstantially justified actions after observing intolerable corruption trends in the country. For instance, at the advocacy level, Transparency International (TI) has used its reports as an instrument of tackling corruption through its annual naming and shaming publications that use a corruption index and ranking system of the countries of the world. By use of these reports, TI raises public awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement, what they deem to be, effective measures to tackle corruption. According to TI, the Reports also discuss the most promising tools to tackle corruption in business, identify pressing areas for reform and outline how companies, governments, investors, consumers and other stakeholders can contribute to raising corporate integrity to meet the challenges that corruption poses to sustainable economic growth and development. However, Kenya has virtually turned a blind eye to these TI reports as it has remained at between positions 145 and 147 with a corruption index of between 2.1 and 2.2 on TI's ranking, where position 1 and an index of 10 is held by the least corrupt country in the world. New Zealand has held position 1 with a corruption index of between 9.3 and 9.4 for since 2009.

TI-Kenya (the local chapter of Transparency International) has through the media, for instance, variously ranked the civil service as the most corrupt institution of the Government. And in an article titled "The National Opinion Poll on Kenyans' Expectations of Corruption Trends Under the New Constitution" dated October 12, 2010, TI-Kenya even reported on the survey's

³³ Kivuva, J. and Odhiambo, M. eds, (2010), **Integrity in Kenya's Public Service: Illustrations from Goldenberg and Anglo- Leasing Scandals**, CLARION, Nairobi, p xi.

outcome. Thus through such actions, these civil society organizations have set the pace and direction of the public debate on corrupt public institutions, thereby triggering immediate, short and medium-term anti-corruption measures in the affected institutions. However, these measures have not managed corruption in the long-term.

Also in the wake of the National Rainbow Coalition (NaRC) administration in 2003, the general public took it upon themselves to rid the Kenyan roads of corrupt traffic policemen and women and went as far as fog-matching those policemen and women caught in the act of taking bribes, in full view of the cameras, to the wheels of justice. However, this public initiative was not sustainable and hence short-lived as it ran out of steam almost as quickly.

The Goldenberg Scandal was exposed by a whistle blower, Mr. Munyakei, who was then working at the Central Bank of Kenya. Munyakei's exposure of the scandal did spark off a public debate on corruption and more importantly, brought to the fore the existing conflict between the Official Secrets Act and the Witness Protection Programme. The Official Secrets Act, (Cap. 187 Laws of Kenya) which, according to the Kenya Anti-Corruption Commission (KACC), was "an impediment to public servants who would wish to report corruption, since it bars public officers from disclosing information that they come across in the course of their duties",³⁴ was used to punish the whistle blower. The victimization of Munyakei dealt a death-blow to this individual's initiative of exposing corrupt behavior on the part of persons in authority for fear of reprisals. In fact, the Nyayo era (President Moi's administration) tactics of dealing with whistleblowers have been reining whereby instead of even pretending that they are doing a good job of acting on such reports, the government instead unleashes "the usual retinue

³⁴ Kenya Anti-Corruption Commission: Annual Report 2004- 2005, p 17.

of attack dogs to launch verbal tirades and threats against whistleblowers,”³⁵ thus making them look the other way where corruption is taking place under their watch. Such legislative conflicts goes a long way in exposing the failure of this programmatic approach to the fight against corruption, thus necessitating an alternative.

Even at the onset of the Jubilee coalition’s administration, and armed with freedoms provided under the new constitutional dispensation, the civil society would lead the general public in demonstrations such as the parading of pigs outside parliament in October 2013, ostensibly to send a clear message to the parliamentarians that the general public is watching their corrupt behavior inside the walls of parliament. However, this initiative was also short-lived and ended up achieving nothing, especially after the demonstrators were forcefully dispersed and some arrested and charged under cruelty to animals’ laws.

The failure of these intellectual and public discourses, in terms of setting an agenda for an effective framework in the management of corruption in Kenya constitutes the corruption anti-thesis, so to speak. From this, clear threads of convergence that are also a points of departure in the future campaign against corruption, begin to emerge in the form of the need for an alternative to the current institutional and programmatic approach, as a synthesis, in a dialectical sense.

1.8 Theoretical Framework

Elite theory will guide this study. The theory is deemed to suit the study because of the position that the elite occupy in relation to policy formulation, implementation, monitoring and evaluation processes. Among other issues, corruption is a function of policy violation, non-implementation, manipulation or disregard. This study’s proposition, therefore, is that corruption in Kenya is

³⁵ Gaitho, M. **Organized Attacks on Whistleblowers Remind us of the Nyayo Kleptocracy**, Daily Nation, Tuesday January 28, 2014, p 12.

basically as a result of one major intervening negative factor in the form of a ‘logframe’, which is superimposed onto the contemporary institutional and programmatic anti-corruption policies implementation process. This logframe is put in place by the local as well as transnational elite purely for rent-seeking purposes.

In this regard the study argues that elite theory will provide an insight into what “logframe”, if any, has been put in place by the elite and how the existence, if any, of the said “logframe” has stood in the way of the anti-corruption policy implementation process. From the definitions of “elite” as being “a group of people in society, who are powerful and have a lot of influence, because they are rich, intelligent, among such others attributes”, this study sets out to prove that elite theory will effectively tie in such a combination of actors’ interests to the observed progressively incremental corruption in Kenya. Further, elite theory becomes handy, in this respect, in terms of describing and explaining the power relations matrix in the Kenyan society that underwrites corruption.

The theory posits that a small minority, consisting of members of the economic elite and policy-planning networks, holds the most power and that this power is independent of a state's democratic elections process, to the extent that through their positions in

... corporations or on corporate boards, and influence over the policy-planning networks through financial support of foundations or positions with think tanks or policy-discussion groups, members of the "elite" are able to exert significant power over the policy decisions of corporations and governments.³⁶

And true to what the theory portends, both local and transnational elite active in Kenya have, on various occasions, influenced anti-corruption measures negatively in order to gain from policy ineptness. For instance, in the Matatu (public transport) industry we have seen the local

³⁶ Bottomore, T. (1993). **Elites and Society (2nd ed.)**. Routledge: London. p25.

economic elite thwart the one-time famous and effective “Michuki rules”, which were aimed at enhancing public safety on the roads as well as stem off the necessity for the transport operators to bribe the traffic police. This came in the form of arm-twisting the government by withdrawing public transport at a critical time such as ‘schools opening time’ (the beginning school learning terms). In this case, the arm-twisting strategy becomes a logframe that is meant to facilitate corruption. On the surface, the logframe appears to be doing a logical thing, in the form of providing transport for children to report to school for learning. As a result of this arm-twisting strategy, defective public transport vehicles have, time and again, found their way back on the roads while traffic police continued collecting bribes with a corresponding increase in road carnage. In this respect, the traffic department statistics shows that the number of traffic accident were 3000 when the “Michuki rules” were effective in 2004, and this increased progressively to between 4000 – 4500 for seven years since the rules were compromised.

Another example is during the run-up to the 2013 General Elections whereby the political elite watered down the integrity law that was derived from chapter six of the constitution. This law was meant to weed out corrupt politicians from the political arena. The sabotage to the law was achieved by introducing a self-administered questionnaire as an integrity declaration instead of a direct vetting by Ethics and Anti-Corruption Commission (EACC), in order to maintain the status quo. Thus from elite theory perspective, one can easily identify elite-driven corruption in Kenya arising from this political action.

One of the lead Elite Theory proponents, Vilfredo Pareto, on the ‘psychological and intellectual superiority’ of governing and non-governing elites “called for a drastic reduction of the state and welcomed Benito Mussolini’s rule as a transition to this minimal state so as to liberate the “pure”

economic forces.”³⁷ It is now evident, in Kenya, that the state is increasingly becoming minimal as it tries to accommodate the ever increasing number of actors in the form of economic, political and bureaucratic elites as well as civil society groups and the media, and as liberalization, democracy, governance and public advocacy processes take root. While operating in this environment, the Kenyan state has encountered several challenges in the management of corruption, since this minimalism affords rent-seeking elite an opportunity to plan and execute corruption. This minimalism then becomes a logframe.

Gaetano Mosca in his ‘sociological and personal characteristics’ of the ruling class and the class that is ruled posits a proposition that “a man rules or a group of men rules when the man or the group is able to control the social forces that, at the given moment in the given society, are essential to the possession and retention of power.”³⁸ And true to Mosca’s proposition, the shared social services, in Kenya, as well as the collective national wealth have been placed in the hands of the elite to manage on behalf of the citizenry. In a case where most of the public is gullible, as in Kenya, as a result of facing more fundamental survival challenges, the environment gives the elite more latitude in terms of absolute control of social forces, thereby affording rent-seeking elite an opportunity to plan and execute corruption. This latitude becomes a form of logframe. For instance, the religious elite, in Kenya, have absolute control on matters of faith and some have used this to propagate extremism, fundamentalism and obtaining money from the faithful by false pretences. All these are forms of corruption.

³⁷ Eatwell, R, Wright, A. (1999), **Contemporary Political Ideologies**, Continuum, London, pp. 38–39.

³⁸ McGraw-Hill Book Company, INC. (1989)(Ed.), Mosca, G. **The Ruling Class**, McGraw-Hill Book Company, INC., New York and London, p13.

Robert Michels' 'Iron Law of Oligarchy' highlights the dynamics playing out within the social classes such as elite, in particular the old minority and the new and ambitious minority, which under the glare of everybody "engage in gigantic battles upon the scene of history, battles whose ultimate causes are to be found in economic antagonism,"³⁹ in pursuit of power. This economic antagonism has evolved into a money-making competition that has become an elite enterprise. The existence of this enterprise has afforded the rent-seeking elite an opportunity and need to plan and execute corruption. For instance, in Kenya, the 2013 political campaigns were played out within the 'Analogue versus Digital' platform whereby the old politicians were portrayed as corrupt and visionless while the young one would have us believe that they were future stakeholders and therefore more visionary and uncorrupt. When the young eventually took over the reins of political power, it turned out that the whole circus was a mere economic antagonism since they proved to be just as corrupt, if not more, given that the incrementally progressive corruption's trajectory is still high. It is rather ironical that the 2003 National Rainbow Coalition administration was elected on a 'zero tolerance to corruption' ticket, the 2013 Jubilee Coalition was elected on a similar ticket while corruption trend remained at the same level, if not higher. It therefore becomes apparent that these campaign tickets are just but different forms of logframes. Additionally, one might want to see elite theory as an explanation of corruption in Kenya from the perspective of the fact that elite theory stands in opposition to pluralism in terms of its basic feature of institutional stability. This situation obtains from the established fact that pluralism has a built-in mechanism of checks and balances. Elite theory also suggests that democracy is a utopian ideal and as such bureaucratic elite do not attach much importance to good governance, especially where their partisan and corruption facilitating interests are concerned.

³⁹ Michels, R. (2001), **Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy**, Batoche Books, Kitchener, Ontario, Canada, p224.

The theory also stands against Theda Skocpol's State autonomy theory, which proposes the idea that state bureaucracies could have potential for autonomous operations and that this potential has always been ignored by scientists focused on society-centric studies. For instance, Skocpol considers the idea that parties are more important in America than the government, and that class dominance plays heavily into American politics. When this proposition is mirrored to the Kenyan situation, it emerges that while class dominance plays heavily into politics, the government is more important than the parties since political parties are just but mere vehicles to power and once governments are formed political parties are quickly dispensed with, thereby doing away with their mobilizing, policy aggregating and articulating roles. This underwrites corruption in Kenya.

This study also makes a proposition that corruption in Kenya has a transnational dimension from the elite theory perspective since elitism does not respect boundaries. For instance, the KES 16 Billion 2003 Anglo-Leasing financial scandal involved elite companies such as, "Astilleros Godan, Impresa de Finanzas, Navigia Capital Corporation and Euromarine companies of Spain and Infotalent Systems Private Ltd of Geneva, Switzerland as well as elite personalities such as Mr. Anura Pereira, a Sri Lankan with Cypriot origins and Merlyn Kettering, a US national."⁴⁰

This proposition is informed by the fact that elite groups as well as organizations and their effects, in relation to corruption, transcend borders and will also be found in the international arena, courtesy of the Information Communication Technology (ICT) interconnectedness as a by-product of globalization. Thus the example above serves to show that elite activities are not limited or confined by national boundaries due to the strong elite network systems that have been developed over the years. In line with this, the study appreciates that the local elite have

⁴⁰ Sunday Nation Team, **Anglo Leasing: The Truth**, Sunday nation, January 22, 2006, p 4.

connections with the international system which adds to the complexities of elite-driven corruption. As such any study on corruption, including this one, must appreciate the role played by international actors in either fighting or exacerbating corruption, the argument here being that the elite are transnational actors.

1.9 Research Hypotheses

- a. The anti-corruption policy implementation approach affects the management of corruption in Kenya
- b. The anti-corruption policy implementing agencies are for purposes other than the management of corruption in Kenya.
- c. A Logframe-free anti-corruption strategy constitutes an alternative approach to the management of corruption in Kenya.

1.10 METHODOLOGY

1.10.1 Introduction

This section set out to explain the procedures that this study utilized in answering the stated research questions. These procedures included the sampling technique, description of the research instrument, and data analysis. The study employed a qualitative approach for data collection which included both primary and secondary sources. The primary method of data collection was based on an interview guide that was self-administered in order to describe the institutional as well as individual characteristics of the subject matter of corruption from the experts' experiences and knowledge.

This method was preferred because of its appropriateness to obtain opinion and attitude from those who dealt with the subject matter of fighting corruption on a daily basis in order to establish one or more anti-corruption parameter(s) where a parameter was defined as a set of fixed limits that controlled the way that something should be done.

1.10.2 Sampling Technique

In the study, the researcher used a non-random sampling technique and based on his knowledge of the existing institutional framework challenges governing anti-corruption inquiry in Kenya. A judgment sampling technique was used, whereby a deliberate choice of respondents was made. This choice was based on their deemed willingness to provide information, as a result of their substantial experience and/or expertise in the study area.

The study employed convenient sampling to identify the Chief Executive Officers (CEO) from each of the thirteen stakeholders' institutions and organizations across the oversight, advocacy, watchdog agencies and organizations spectrum, to be found within the framework of the Kenya Integrity Forum (KIF). The individuals so identified basically represent the official position of the institution sought for the study, from the institutional memory perspective.

All through, the researcher was alive to the fact that in analyzing data and interpreting results, judgment sampling is not a representative method. But even then, the study was able to make generalizations from the findings based on the responses given. The concerns of reproducibility were adequately addressed by a list of self-declared qualifications of each respondent such that any other person who visits similar institutions and organizations, in future, in a similar setting/environment and conducts a similar study should be able to produce similar results.

The sample was drawn from institutions, agencies and organizations within the membership of the Kenya Integrity Forum (KIF) which is charged, by the government, with the responsibility of

implementing the National Anti-Corruption Plan (NACP). This enabled the researcher to take advantage of institutional memory gained and maintained through the membership's participation in the Annual Integrity Review Conferences. Initially the Forum's membership was been spread across fourteen (14) stakeholders' sectors, that have since been collapsed into thirteen (13) by the new constitution, that are prone to corruption. This gave the study a comprehensive coverage of the subject matter. These thirteen sectors were drawn from five (5) general categories of governmental institutions, oversight establishments as well as enforcement, advocacy, and watchdog agencies.

This sampling procedure gave a sample size of thirteen (13) respondents, one (1) each from NGO Coordinating Board, Kenya Private Sector Alliance (KEPSA), Association of Professional Societies of East Africa (APSEA), Kenya National Audit Office (KNAO), Public Procurement Oversight Authority (PPOA), Independent Police Oversight Authority (IPOA), Transparency International (TI), Africa Centre on Governance (AfriCoG), Kenya Bureau of Standards (KeBS), Kenya Law Reform Commission (KLRC), Commission on Administration of Justice (CAJ), Public Investment Committee (PIC) and Public Accounts committee (PAC).

1.10.3 Description of the Research Instrument

A self-administered interview guide that is semi-structured was used in the collection of data in the field. One research assistant helped in delivering the interview guides to the sampled respondents as well as collecting the duly filled interview guides as applicable.

However, before they were dispatched, these research instruments were forwarded for correction and revision for validity, to three independent professionals in the areas of political science, economics and law, from the Universities of Nairobi and Jomo Kenyatta. The final corrections were made by the supervisors after the pilot-study of the instrument on some individual

respondents, who were not part of the sampled segment of the study. The purpose of this was to guarantee that the research instruments developed for this study really measured what they were supposed to measure.

The research assistant was trained on the intention of the study and the procedures and ethics necessary for the administration of the instruments while in the field. Alongside the interview guide was attached a copy of 'request for filling the guide' letter that explained to the selected respondents the purpose of the study and its importance to the Kenyan economy.

1.10.4 Data Analysis Procedures

The data from the responses were coded thematically and analyzed using Statistical Package for the Social Sciences (SPSS) software to produce the presented descriptive statistics. The purpose of using descriptive statistics was to ease the presentation of findings. This included the summary and interpretation of the information gathered from the field. The statistical frequencies and percentages obtained are presented in the form of tables.

1.11 Expected Outcome of the Study

The researcher has used the findings of this study to test the hypotheses and came up with conclusions. The conclusions have informed the formulation of recommendations on required alternative policies for the conduct a meaningful and effective war against corruption. These alternative policies will help in removing the current bottlenecks, in the form of the "Logframes" that are currently embedded onto the anti-corruption policy implementation process.

CHAPTER TWO

2.0 THE APPROACHES TO THE MANAGEMENT OF CORRUPTION IN KENYA

2.1 Introduction

The Government, either out of its own volition or on being coerced by donors or other local and international stakeholders has, adopted two broad approaches in the war against corruption in Kenya. These approaches are basically institutional and programmatic in nature. Within this framework, a number of anti-corruption institutions have been established and complementary anti-corruption programmes have been rolled out, with the sole purpose of fighting corruption in all its forms and manifestations. However, these approaches have encountered serious challenges at the level of policy implementation to the extent that the measures derived from these policies have become ineffective in the management of corruption in Kenya. However, a closer look at these implementation challenges points in the direction of deliberately imposed, elite-driven impediments for rent-seeking purposes.

2.2 The Institutional Approach

The history of the institutional approach to the management of corruption in Kenya is a tumultuous one and dates back to 1993 with the constitution of Anti-Corruption Squad of the Police department with the mandate of enforcing the Prevention of Corruption Act (Cap. 65) of 1956. The Squad was however disbanded in 1995 before it could make any significant impact. This institution encountered serious structural integrity challenges, and could therefore not execute its mandate. Although there could have been no extra funds set aside for this squad as it

was constituted from the police personnel, in this particular case the squad ended up not adding any value to the fight against corruption despite the initial objective of having the police play a key role in the management of corruption in Kenya.

However, the issue of the observed structural challenges brings to the fore, the complexities of the challenges facing the anti-corruption war in relation to the questions as to whether the act of disbanding the squad was informed by the need, of the corruption enterprise, to retain the status quo of not enforcing the Prevention of Corruption Act (Cap. 65) or the unacceptable explanation that the police force is/or has been inadequately organized to deal with corruption related cases in the country. It is important to point out that the police have, over the years, been ranked as the most corrupt institution in Kenya by Transparency International - Kenya Chapter and they therefore lack the moral authority and good will of Kenyans to fight corruption.

It is hardly conceivable that both the bureaucratic and political elite who crafted both the policy and law that established the Anti-Corruption Squad of the Police department were unaware of the requirement for the structural support to this initiative. Eventually, the lack of this essential support presented difficulties in policy implementation with respect to the enforcement of the Prevention of Corruption Act (Cap. 65) by the Anti-Corruption Squad of the Police department.

In retrospection therefore, one can only imagine what was happening between 1956 and 1993, with respect to corruption, but one thing is clear that the Goldenberg scandal, the biggest officially sanctioned mega-corruption scandal in Kenya, was exposed in 1993. In this scandal, it is estimated that over KES 16 billion was paid out to this company in the form of fictitious export compensation and when this scandal was exposed, the government reacted by appointing

a commission of inquiry, that has so far not led to the prosecution and conviction of even one individual and hence the mystery of the Goldenberg scandal persists to date.

The fact that this police anti-corruption outfit did nothing about corruption during its lifetime, and that it was disbanded within two years of its formation, gives credence to a proposition that the said outfit was established for the purpose of cooling down both the national and international Goldenberg scandal tempers, as opposed to fighting corruption. This constitutes a “Logframe” in the sense that the squad was established under the guise of fighting corruption while in the real sense it was for extraneous purposes other than fighting corruption.

Even the current reforms, up to and including, the establishment of the Independent Police Oversight Authority (IPOA) has only glossed over the real issue of fighting corruption in the police force but has succeeded in bringing to the fore, the levels of corruption in the force, given the millions of unaccounted-for monies in the accounts police officers as it emerged from the recent 2013-2014 senior police officers’ vetting exercise.

The ills emanating from the police force in relation to corruption within and perpetrated by the police have been discussed in various reports in the recent past. For instance, the 2009 Alston’s report called “for the dismissal of the Police Commissioner and suggested that the Attorney-General might wish to resign after many years in office”⁴¹ among the thirty one recommendations that were mainly at the reform level of the police force, the judiciary, the Attorney General’s office and Directorate of Public Prosecutions. These recommendations were mainly touching on formal guidelines, consultation, and institutionalized vetting for future appointments. In short the two public officials were impeding, instead of doing their part, in the

⁴¹ Statement by Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions, United Nations Human Rights Council, Geneva, 3 June 2009, p 5.

war against corruption in Kenya. Even the 2008 Commission of Inquiry on Post-Election Violence (CIPEV), popularly referred to as the Waki Commission, that saw the Police Service Commission as the guarantor of reforms in these institutions, made recommendations similar to Alston's.

Suffice it to say that even the 1998 Judicial Commission of Inquiry into Tribal Clashes since 1991 (Akiwumi Commission) and the 1992 Parliamentary Select Committee to Investigate the Causes of Ethnic Clashes (Kiliku Committee) reports did document in detail, election related violence witnessed during the two electoral periods and named the perpetrators, and no officials were ever punished for their role in the violence. Also in 2010 a Police Reforms Implementation Committee (PRIC), under the Chairmanship of Titus Naikuni, was appointed with the mandate to “coordinate, supervise and provide technical guidance and facilitation for the implementation of the police reforms”⁴² as per Gazette Notice No. 169 of 8th January 2010. The object of this initiative was to formally transform the Police Force into a sustainable, efficient and effective security agency that Kenyans can trust. In a nutshell, these institutions have failed in their complementary roles of fighting corruption.

Consequently, the inability of the Anti-Corruption Squad to execute its mandate necessitated an amendment of the Prevention of Corruption Act (Cap 65, LOK) in early 1997 that led to the creation of the Kenya Anti-Corruption Authority (KACA) in 1997. The mandate of KACA was to use the budget availed to fight corruption in all its forms and manifestations in Kenya. But after only six months in office, KACA ran into Human Resource (HR) challenges that saw a quick change of directors through a Judicial Tribunal process.

⁴² Report of the Police Reforms Implementation Committee for the Period Jan- June 2010, p 8.

Even with this amendment to the Prevention of Corruption law, KACA in its two years of existence only managed to open “164 corruption cases inquiry files, 53 in 1999 and 111 in 2000 respectively. However, nothing was done on these cases and the same were taken over by KACA’s successor.”⁴³ In this case, KACA had ran into institutional as well as constitutional conflict challenges where on December 22, 2000, the High Court in the case of *Gachiengo Vs Republic* (2000) 1 EA 52(CAK) made a ruling that the existence of KACA undermined the powers conferred on both the Attorney General and the Commissioner of Police by the then Constitution. In addition, the High Court further held that the statutory provisions establishing the Authority were in conflict with the Constitution. This ruling effectively dealt a death blow to KACA and its intended efforts in the fight against corruption in Kenya, giving way to the creation of the Anti-Corruption Police Unit (ACPU) in 1997.

Kenya had no anti-corruption institution between 1995 and 1997, which coincides with the design, in the period between 1995 and 1997 and the execution in the period between 1997 and 2001, of the Anglo Leasing scandal. It is rather paradoxical that the execution of the Anglo Leasing scandal happened under the watch of the Anti-Corruption Police Unit (ACPU). It is also interesting that the same Anti-Corruption Police Unit (ACPU) was created by way of an Executive Order in August 2001, with the aim of navigating the previously experienced challenges of the lack of expertise in both the investigative and prosecutorial processes within KACA.

The Anti-Corruption Police Unit, which operated under the Criminal Investigations Department (CID) of the Police Department, therefore, took over KACA’s mantle in September 2001. In addition to taking over the inquiries opened earlier by KACA, ACPU opened a further 182

⁴³ Kenya Anti-Corruption Commission, Annual Report 2004/2005, pp 14-15.

inquiries in the three years of its existence. Once again ACPU did nothing on these cases and handed over the 346 files to its successor, the Kenya Anti-Corruption Commission (KACC). ACPU's operational challenges were identified to be the lack of formative statutory integrity arising from its establishment through an executive order. This executive order blatantly overlooked the necessity of anchoring such an important institution in the constitution, meaning that ACPU was created to fail.

It was also during the watch of the ACPU that Anglo-Leasing took place, corruption scandal that remains unresolved to-date. In this regard, this study's proposition is therefore that this is another case of a "Logframe" whereby the police, the institution with a history of known structural and technical inadequacy, are conveniently left to handle matters of corruption. This meant that rather than deter corruption, the presence of this institution actually legally insulated corruption, in that any query would be met with an answer that the matter is under investigation.

This gap was apparently bridged through an injection of stakeholders' involvement, whereby KACC was established under the Anti-Corruption and Economic Crimes Act (ACECA) No. 3 of 2003 on 2nd May 2003, as a public body corporate, with prescribed composition and conferred powers and functions translating, like KACA before, into a mandate of fighting corruption in all its forms and manifestations. KACC was established as a response to donors' demand and a precondition for the resumption of aid. Additionally, section 70 of the ACECA repealed the Prevention of Corruption Act (Cap. 65).

The Anti-Corruption and Economic Crimes Act (ACECA) No. 3 of 2003 also established the Kenya Anti-Corruption Advisory Board, an unincorporated body comprising persons nominated by a cross-section of stakeholders. This Advisory Board was conferred with the mandate of

recommending for appointment of KACC Director and Assistant Directors. It was also mandated to advise the Commission generally on the exercise of its powers and performance of its functions under the Act. However, this was still not good enough as the director then, Aaron Ringera, was deemed not to be representative of the cross-section of political interests. Thus following parliamentary pressure in July 2009, a change of directors was forced amid vetting by Parliament.

This did not help much either, in terms of fighting corruption in Kenya, because the same Parliament had to disband KACC on 24th August 2011, in line with the requirements for change as stipulated in the new Constitutional dispensation whereby public participation in the appointment of the institution's top management was demanded. All the same, it appears that KACC had, by the time of its disbandment, achieved its elitist "Logframe" purpose of hoodwinking both the local and international stakeholders as well as cooling off the Anglo leasing scandal tempers.

The KACC, in its own published admission, sifted through a total of 32,502 genuine corruption reports between 2004 and 2010 and did little about it due to its lack of prosecutorial powers among other structural challenges. Available KACC annual reports show that resources in excess of KES 2.2 billion of donor and taxpayers' monies were sunk in the institution in terms of budgetary support⁴⁴. Thus from a cost-benefit analysis perspective, it would emerge that the idea of establishing KACC could not have been a worthwhile undertaking, given that the said

⁴⁴ Although this figure excludes fiscal years 2005 – 2008 and 2010/11 amounts that were not immediately available, a projected annual budgetary average would bring the total budgetary support for KACC to a whopping KES 6.2 billion spread over an eight year period.

institution presided over the “KES 100 billion Anglo Leasing scandal”⁴⁵ in addition to 32,502 other reported corruption cases where nobody was punished save for the recovery of a few assets. The whole idea behind the establishment of KACC therefore becomes an archetype of a “logframe” whereby large sums of taxpayers’ as well as donor resources are used to ostensibly shield corruption.

Following the ouster of KACC, the Ethics and Anti-Corruption Commission (EACC) was crafted through the Ethics and Anti-Corruption Act on 29th August 2011, in the wake of which the EACC was established on 5th September 2011. However, even with these supposedly streamlining measures in place, even the chairman of EACC could not assume office due to a legal challenge to his nomination and appointment processes. Suffice it to say that even before the stalemate arose over the chairman’s appointment, concerns had been expressed over the law that created the commission. This is because the bill was diluted in the house (parliament) and as per the words of a former justice minister, “the resulting law had created a toothless organization (EACC) that cannot really fight corruption”,⁴⁶ courtesy of not being given prosecutorial powers. This therefore becomes another, on the long list of “logframes” in that parliament created a moribund institution that would, on the surface, appear to be fighting corruption while the situation on the ground is variably different. Incidentally, EACC has been grappling with a KES “1.2 billion Central Bank of Kenya (CBK) procurement scandal”⁴⁷ and in a baseline survey report dated June, 2013, the Commission reported a dismal “26 per cent drop in the number of

⁴⁵Sunday Nation Team, **Anglo Leasing: The Truth**, Sunday nation, January 22, 2006, p 1.

⁴⁶ Daily Nation, **Opinion: Is the Anti-Corruption Body on its Death-Bed?** Daily Nation, Tuesday May 01, 2012, p 12.

⁴⁷ Sunday Nation, **Probe: Tobiko acts on Sh 1.2 bn CBK Tender Row**, Sunday Nation, August 11, 2013, p 11.

corruption cases reported, from 7,109 in 2011 to 5,230 in 2012”⁴⁸ against the backdrop of colossal funds expended in the form of budgetary support.

Eventually, and in an apparent trend that had been established, the High Court, in September 2012, annulled the appointment of the chairperson of the Ethics and Anti-Corruption Commission in a constitutional petition filed by the Trusted Society of Human Rights Alliance. In its ruling, the Court required both Parliament and the Executive to always “conduct proper inquiry into the suitability of all future public and state officers, as required by Chapter Six of the Constitution.”⁴⁹

This requirement ostensibly pronounced the rational test that future appointing authorities must satisfy the need for merit, equity, performance and services delivery to the public. This is because it is assumed that a competitive and open appointment process gives the public a chance to interrogate the candidates, and those who qualify take up public jobs with the confidence that they measure up to the task and are therefore not answerable to any individual other than the taxpayer. It is worthy of note, however, that the individuals so recruited may still have connections in high places, over and above the qualifications they present as the basis for their recruitment.

But in an interesting twist and turn of events, the same chairman who had been rejected earlier was reinstated and sworn into office in August 2013, upon appealing the High Court ruling. However, it is equally telling that EACC like its predecessor KACC “still has no prosecutorial

⁴⁸ Barasa, L and Ndege, B. **Survey Shows Kenyans Pay Bribes almost Everywhere they Seek Services**, Daily Nation, Wednesday November 13, 2013, p 4.

⁴⁹ Kibet, E. **Integrity Matters: Authorities Must Pay Heed to Matemu Ruling While Appointing Public Officers**, Daily Nation, Monday April 22, 2013, p 13.

powers”⁵⁰ and continues to operate without a “National Anti-Corruption Policy”⁵¹ to guide the war on corruption. One is left to wonder whether this lack of policy is by design, ignorance or failure. Evidence on the ground points directly to elite-driven design since the idea of failure due to lack of knowledge is practically untenable. What is still equally interesting is the fact during the period of transition from KACC to EACC and the ensuing legal tussle, the Kenyan taxpayer has continued to witness a number of equally massive corruption scandals. Such scandals include the KES 2 billion 2012 National Hospital Insurance (NHIF) “Ghost (non-existent) Clinics” scandal among others. This is another example of a “Logframe” in the sense that the elite have cleverly created a situation whereby one corruption scandal is pulled off after another, not because there is no institution responsible for prevention, but because the said institution is deliberately made ineffective through acts of omission and commission.

From an institutional perspective, therefore, the devolution concept was imported to the new constitution as a way of bringing services closer to the people as one of the governance reforms. In this case the pessimists have argued that with regionalization (decentralization of service delivery to sub-units of the state), corruption had been devolved to sub-units while the optimists hold the contrary opinion that the devolved units would better be placed in the fight against corruption. Taking the pessimists’ view above, this study identifies a “logframe” in that the Governors, in their elitist endeavours, have employed political pressure tactics like the call for a referendum and “arm-twisted the central government to the extent of it ceding ground and

⁵⁰ Ngwiri, M., **War Against Graft will be Lost Unless Matemu gets the Power to Prosecute**, Daily Nation, August 10, 2013, p 13.

⁵¹ Ethics and Anti-Corruption Commission (EACC) **Annual Report for the FY 2012-2013, Advertising Feature**, Daily nation , Wednesday February 19, 2014, p 39.

withdrawing the Transition Authority's Gazette notice that retained KES 27 billion meant for roads at the national level.”⁵²

This collective action by the Governors goes against the Transition to Devolved Government Act, 2012, which provides that transfer of functions should be carried out in phases over a three-year period and subject to appropriate parliamentary legislation. All this is happening against the backdrop of the fact that the Controller of Budget has personally faulted the budgets prepared by Governors on account of including votes that are not sanctioned by the law such as mortgages and car loans. In this case the clamor against the retention of the KES 27 billion is driven by considerations other than the delivery of services to the people and this is corruption. There is, so far, no evidence on the ground to support the optimists' view stated above.

It is also rather paradoxical that both KACC and EACC have so far only managed to bring to book, fairly junior officers (small fish) while turning a blind eye to the senior officers (big fish). For instance, the architects of the Goldenberg scandal are still out there free while a permanent secretary and a director at the treasury were arraigned in court. Similarly, the architects of the tourism scandal are still out there free, while a permanent secretary and a director were arraigned in court and even jailed, only to be released on bond upon appeal.

On the other hand, the office of the Ombudsman or Public Complaints Standing Committee (PCSC) was established on 21 June 2007 with the mandate to receive complaints from the public against public servants, including the judiciary and police. The office has since been renamed and reorganized to be, the Commission on Administration of Justice (CAJ), in line with 2010 constitution. This is yet another crucial office in relation to the fight against corruption.

⁵² Sunday Review, **Devolution: Deadlock over Functions that Counties can Handle and When to be transferred**, Sunday Nation, August 11, 2013, p 15.

However, this office has generally performed poorly, especially in terms of communication, in that a significant percentage of Kenyans do not know of its existence, let alone the services it is supposed to offer. The fact is that PCSC/CAJ has no investigative capacity and no statutory powers. In fact, the PCSC often refers cases to the Kenya National Commission on Human Rights (KNCHR) because of the KNCHR's greater capacity to investigate and follow-up on cases. As it is now, the PCSC/CAJ clearly does not have the teeth necessary to bring to account even police perpetrators of abuse and corruption.

Paradoxically, therefore, the police say that they have not received corruption reports from either the public or otherwise, and through deductive logic, that corruption in the service is on a downward trend. This is not necessarily true and hence the logframe proposition that this study has advanced.

On its part the Kenya National Audit Office (KENAO) has diligently discharged its mandate of auditing most of the Central Government, State corporations and Local Authorities and tabled the reports in Parliament. Many, if not all, of its reports have detailed the financial rot in government and its corruption networks but no serious action is taken against the well documented culprits. For instance, during the Moi administration, the then Auditor General (D.G Njoroge) did play his role efficiently but the Government repeatedly ignored his recommendations. Even as the 2010 constitution protected the office of the Controller and Auditor General from external political interference, the impact of the effectiveness of the office is still insignificant since its reports and recommendations are still being ignored. In this case the elite have applied themselves to ensure that the national audit report remains un-acted upon in order to avoid prosecution. Thus the National Audit Office has been reduced to be just another mechanical outfit for public relation purposes and not fighting corruption.

The Public Investment Committee (PIC) is another anti-corruption watchdog institution at the legislative level whose reports are usually partisan, doctored and often times ignored by the executive. If the outsiders in the form of local stakeholders as well as the donor community have queried the application of public funds, they have quickly been referred to the presence of the moribund PIC. For instance, in January 2014, the Members of Parliament (MPs) were reprimanded by the PIC for talking about the suspect “award of the multi-billion-shilling railway tender..... when they asked President Kenyatta to expose cartels tainting his administration”⁵³. In this case the PIC was actively gagging an important stakeholder constituency by threatening to invoke parliamentary standing orders, so that they can take the official version from the same PIC, which is not necessarily the right information.

At the international level, the observed progressively incremental corruption in Kenya has, especially in the last two decades, forced both the multilateral and bilateral development partners to suspend and in some cases withhold the much needed aid, sitting “Government’s failure” to maintain institutional reforms to curb corruption as well as its failure and in some cases unwillingness to institute compromise anti-corruption measures. Although the government has, arguably, taken considerable steps towards the implementation of the development partners’ recommendations, in addition to its own anti-corruption agenda, available evidence, especially from corruption reports received by the defunct KACC between 2004 and 2010,⁵⁴ shows that corruption in Kenya has been progressively incremental regardless of the awareness created and the streamlining of the reporting mechanisms.

⁵³ Ngirachu, J., **MPs ‘Frustrating’ Railway Probe**, Daily Nation, Tuesday January 28, 2014, p 52.

⁵⁴ Kenya Integrity Forum, (2010), 4th Annual Integrity Review Conference, **National Anti-Corruption Plan: Implementation progress report**, July 2008 – June 2009, p 2.

Although some of these challenges have been addressed to varying degrees of success, the same phenomenon of progressively incremental corruption persistence continues to be observed. This observed phenomenon, in the absence of any other plausible explanation, constitutes the “logframe” in the sense that the donor community is logically convinced that the anti-corruption institutions they required, as a pre-condition for the resumption of aid are in place, the local stakeholders are also logically convinced that the government is ready and willing to fight corruption through appropriate funding and enabling legislative and administrative programmes, and even with all these enablers, the Commission is not able to fight corruption.

In this situation both the Government and the Commission logically reduce themselves to be mere “finger-pointing” outfits, while in the real sense both are knowingly superintending over the progressively incremental corruption. This logframe is, unfortunately, replicated throughout the anti-corruption institutional sub-sectors. It cannot, therefore, be gain-said that all these anti-corruption institutions would have succeeded in their respective mandates, had the logframe been removed. It is also important to keep in mind that these logframes manifestly appear to be strategically superimposed on to this institutional approach to the fight against corruption by the elite as, where, and when conveniently applicable as a rent seeking facility.

In a further resolute effort to eliminate the vice, many countries of the world, Kenya included, have put in place anti-corruption agendas that are generally similar in most respects. In some of these countries and territories such as Hong Kong⁵⁵ and Singapore⁵⁶ these measures have

⁵⁵ Klitgaard, R.(1988), **Controlling Corruption**, University of California Press, Berkeley & Los Angeles, pp98-100.

⁵⁶ Tan Ah Leak, (1996), “**The Experience of Singapore in Combating Corruption**,” in Uganda International Conference on Good Governance in Africa: Empowering Civil Society in the Fight Against Corruption, eds. Petter Langseth and Fiona Simpkins, The World Bank, Washington, p.151.

managed the menace, to the extent of reducing corruption in real terms, while “similar efforts in Kenya have not”.⁵⁷ Even by using the often contested Transparency International’s Global Corruption Index instrument with respect to Kenya for the past five years, one begins to see strong evidence that Kenya is firmly in the trap of corruption and as Seldadyo and De Haan puts it in the *Pacific Economic Review*, “once trapped, it is difficult for a country with a weak legal system to escape from corruption.”⁵⁸

The question here then becomes one of whether Kenya’s legal system is weak or not whereby the pragmatic answer is that Kenya’s legal system is, regrettably, strong on paper but very weak in practice due to the ever-present “Logframe” challenges to policy implementation. One would naturally expect a downward trend in corruption cases and persistence, with an escalation of anti-corruption measures, policies and legislation, which is not the case with regard to Kenya. In fact, in Kenya particularly, corruption seems to have become more entrenched in step with the efforts to curb it.

Thus drawing from the various high profile corruption cases reported by the media, civil society and various whistle blowers organizations and individuals, especially in the last two decades and grounding this proposition on available primary and secondary data, this study argues that contemporary institutional anti-corruption reforms in Kenya have faced a number of unique challenges, courtesy of the above described logframes, among others. This situation has, in effect cast doubts as to whether the available institutional anti-corruption measures, are meant to fight corruption in the first place or meant to please and satisfy certain local and international stakeholders. More specifically, the analysis herein reveals that the implementation of the said

⁵⁷ Transparency International (2009), **Global Corruption Report 2009: Corruption and the Private Sector**, Cambridge University Press, New York, p 5.

⁵⁸ Seldadyo, H. and Jakob De Haan, (2011), **Pacific Economic Review**, 16: 2, p 192.

anti-corruption measures has adopted “Logframe” characteristics. It is within this context that we now turn to the issue of the programmatic approach to the management of corruption in Kenya.

2.3 The Programmatic Approach

Like the institutional approach, the history of the programmatic approach to the management of corruption in Kenya is also a turbulent one and dates back to the colonial era, in the 1920s, but the first concrete step was taken in 1956 with the enactment of the now defunct Prevention of Corruption Act (formerly Cap. 65, LOK).⁵⁹ The purpose of this statutory instrument was to reverse the then prevailing trend of the “inversion of social values that governed the local traditional values.”⁶⁰ This statute was in operation from August 1956 to May 2003. However, this Act did not achieve much as corruption trend then necessitated a different approach and “programme(s)”.⁶¹ The government has therefore, and since 2003, instituted several reform initiatives meant to instill professionalism and fiscal discipline in the way public affairs are managed in order to arrest the progressively incremental and persistent corruption in Kenya.

Towards this end, new laws were enacted to provide a legal framework meant to promote integrity and adherence to ethics in the public sector as well as giving the much needed traction to the war against corruption. Some of these legal instruments include; the Prevention of Corruption Act, 1997 (Cap 65); the Anti-Corruption and Economic Crimes Act, 2003; the Public Officer Ethics Act (2003); the Leadership and Integrity Act, 2012; the Kenya national Audit Act; the Exchequer and Audit Act; the Public Procurement and Disposal Act, 2005; the Privatization Act; the Fiscal Management Act (2008); the Proceeds of Crime and anti-money Laundering Act

⁵⁹ Kenya Anti-Corruption Commission Report 2004/2005, p 1.

⁶⁰ Ibid, p 1.

⁶¹ Kenya Integrity Forum, (2010), 4th Annual Integrity Review Conference, **National Anti-Corruption Plan: Implementation progress report**, July 2008 – June 2009, pp vi – viii.

(2009) and Communications (Amendment) Act (2008). These programmatic anti-corruption legal instruments were enacted with the object of forming the legal framework within the bounds of which the war against corruption was to be conducted. However, evidence on the ground shows that no tangible results have been realized in so far as the war against corruption is concerned, if the figure of 32,502 reported by KACC, mentioned above, is anything to go by.

In an attempt to provide traction where necessary, the war against corruption was firmly anchored in the 2010 constitution by removing previous ambiguities. This basic law has institutionalized anti-corruption policies, in addition to the requirement of financial probity scrutiny of all public officers before they assume duties. However, what the said constitution cannot possibly bring to the table are the political will to fight corruption and the political culture that is manifested in the form of primitive accumulation tendency of the elite class. But even with the 2010 constitution partially implemented, there is a big gap between the enacted law and implementation of the same. The law, in its current form, is well articulated but there is no will, political as well as individual, to destroy the corruption networks. The big question then becomes one of whether the reforms anchored in the 2010 constitution will herald a new beginning. The answer to this question is, unfortunately, in the negative.

Although the answer to above question is in the futuristic domain of “wait-and-see”, the observed trend on the ground is worrying to the level of pessimism. For instance, the Public Procurement and Disposal Act, 2005 (PPDA) created the Public Procurement Oversight Authority (PPOA), an institution meant to disabuse public procurement from corruption. Despite this effort, public procurement is still an area that has been riddled with corruption over the years.

It is no wonder then that public servants are some of the wealthiest people in Kenya, yet their salaries do not match their lifestyles. In this respect, a follow up question comes up in the form of, “what has been done on public procurement to disabuse it from the so called Shady Deals”? For instance, PPOA has recently been on the spot, before the Parliamentary Public Investment Committee (PIC) over procurement impropriety regarding the single-sourcing saga over the KES 1.6 trillion Standard Gauge Railway (SGR) tender from Mombasa to Nairobi, in total disregard of the procurement law. In this case, the procurement was cleverly packaged under Chapter 6 (1) of the Public Procurement and Disposal Act, which exempts the process of competitive procurement, but only refers to a tender wholly funded by a donor or a development partner. The real issue here is that the said procurement should have been done under Chapter 6 (3) of the same Act, which stipulates that if the Government would partially fund the project, then the project should be subjected to the procedures of a competitive procurement. With respect to this tender, the Government of China has undertaken to fund eighty five percent, while fifteen percent will be financed by the Kenya Government. Even the Transport Cabinet Secretary is on record as having told the PIC that “ignoring the procurement laws is standard procedure that the Government follows whenever it is undertaking a project that is funded by development partners”⁶². Here, the Cabinet Secretary was either reading the law selectively or trying very hard to cover up the “logframe” obtaining in this respect.

This is a very logical explanation that in the absence of patriotic whistleblowers such as Mr. Alfred Keter, the Member of Parliament for Nandi Hills constituency, would have passed unnoticed, thus creating a loophole for another massive corruption scandal. But be it as it may, there is credible and compelling evidence that the cost of the project has been inflated to

⁶² Njagih, M. **Chinese set out Terms of Tender, says CS**, The Standard, Tuesday, January 21, 2014, National News, p 2.

allegedly “take care of the interests of the ruling class”. And to add credence to this proposition, three (3) parliamentary committees in addition to the Ethics and Anti-Corruption Commission are running parallel investigations to try and unearth the truth of this matter. The question now remains as “will the said institutions live up to public expectations of performing as per their mandate?” Although the answer to this question is also a wait-and-see case, one need not look further than the precedence set by the said institutions, in the past, to turn in a categorical “NO” as the answer.

Talking of precedence, there has been similar cases of total disregard or selective application of the law, for the purpose of facilitating corruption, even in the previous constitutional dispensation. For instance, even with the Anti-money Laundering Act in place, in November 2006 the Kenya government was accused, in a report by British Broadcasting Corporation (BBC), of failing to act on a banking fraud scam worth USD1.5 billion involving money laundering and tax evasion, reported by whistle-blowers as early as 2004. Investigators believed then that sums worth 10 per cent of Kenya's national income were involved. An auditor's report that followed said the scale of the operations "threatens the stability of the Kenyan economy".⁶³ While money laundering is mostly a transnational criminal activity whereby the foreign economy gains eventually, in this case, the Switzerland's economy is known to gain from the funds deposited in its banks by corrupt African leaders, Kenyans included. From a national interest perspective, this gain would make any government look the other way as the money is being shipped into its economy, and in such a case, the government in question may even actively obstruct or frustrate the local anti-corruption policies.

⁶³ Banking scam threatens Kenya economy. BBC.

Also in May 2011, the Island of Jersey, through the United Kingdom (UK) sought to have two Kenyan nationals, a former finance minister Chrispanus Okemo and a former Managing Director of Kenya Power and Lighting Company (KPLC), Samuel Gichuru, extradited to Jersey to face charges of corruption. Surprisingly, all the ensuing public, legal and diplomatic discourses have so far been silent on actions to be, or taken against those companies and individuals in Jersey with whom the two Kenyan nationals were transacting corruptly with, either by the UK or Jersey authorities. Apparently the reasons as to why these issues have been kept in abeyance is because the national interests of the countries behind these issues cannot be subordinated to those of Kenya, and if they were to be, then the international component of corruption would be dealt a death blow. In the absence of this, the war against corruption in Kenya is technically a futile exercise as things stand now. This is so because the local anti-corruption agencies have been dealing with only its domestic component and even then superficially, while leaving the foreign component unaddressed.

At the local level, the two former public officers on whom there was compelling evidence with regard to both having gained from corruption and having stashed the proceeds away in banks in Jersey to prevent detection. The two have systematically used the courts to evade prosecution. The import of this is that the local courts cannot be trusted as an institution to fight corruption even where there are laws against money laundering. The reason as to why the local courts cannot take action against these two, even where there are anti-money laundering laws, is yet another example of what this study calls “logframe”.

Additionally, even with the legal instruments enumerated above in place, corruption cases continued to be reported across the sectors. For instance, in 2012 a KES 2 billion “fiscal hole” was detected at the treasury, of which the then finance Minister casually explained away as a

mere typing error even with ethics law in place. Also, only a Permanent Secretary and a Director in the Tourism Ministry have been prosecuted over procurement scandals and even these have been released on appeal.

These are indications to the fact that the above legal anti-corruption instruments, and probably many others, were deliberately designed by the elite with embedded technical loopholes in order to facilitate the “letting off the hook” culprits accused under them. The flip side of this proposition is that the policy implementing agency, in this case the Judiciary, is hell-bent to frustrate the war on corruption. Either of these propositions points to a “logframe” even under the “burden of proof” provisions.

But ironically, the Judiciary was strengthened in terms of its capacity by hiring more judicial officers, expanding existing courts and establishing new courts. In addition to this programmatic approach, a judicial “purge” was instituted in 2003 aimed at weeding out corrupt and unsuitable officers from the Judiciary. Further, the Judges’ and Magistrates’ Vetting Board was established in 2012 aimed at weeding the bench of corrupt and incompetent officers. It is interesting to note the “terrible” coincidence and timing between these judicial initiatives and the Anglo Leasing and NHIF scandals respectively. While some heads have been seen to roll in the judiciary, thus restoring institutional credibility, one cannot help identifying a “logframe” in that we now have an arguably credible and working judiciary but the perpetrators of especially the above mentioned corruption scandals have so far not been prosecuted and action taken against them. The number of Judges and Magistrates who opted to retire other than face the panel in the two initiatives tells volumes, under the “guilty are afraid” paradigm. Even the so called “innocent” in the 2003 purge, were not innocent after all because it soon emerged that they used unorthodox

procedures to escape and/or compromise justice, thus necessitating the 2012 constitutional vetting initiative.

In the same timeframe, the Government introduced the Integrated Financial Management Information Systems (IFMIS) in at least thirty ministries for the purpose of strengthening the expenditure commitment control systems and improvement of the budgetary transparency in order to align public resources with national objectives, through the implementation of the Medium-Term Expenditure Framework. In fact, it appears as though these programmatic measures did actually align public resources to pilferage considering the number of reported mega corruption scandals after these measures were put in place.

Further, the government introduced the Performance Contracting and Service Charter facilities as extra management tools, but these measures did not seal the budget leakages. With IFMIS, Performance Contracting and Service Charter facility, the elite are always ready to swear, within the confines of the many workshops they organize, that they have done what it takes to manage corruption. No wonder we now see billboards posted outside government offices, institutions and writings on dustcoats of parking attendants, to the effect that “This is a Corruption Free Zone” while truth is that these are corruption outlets. This is in itself a “logframe” in that money has been spent to display these messages while nothing has changed within the institution or individual parking attendants since all this is “top dressing” to cover the rot within.

On its part, the National Treasury has now turned to experts for advice through tendering in the open market for the “review, re-design and implementation of IFMIS network security.”⁶⁴ Through this measure, it is hoped that IFMIS will be aligned to the new Government Common

⁶⁴ Republic of Kenya, The National Treasury, **Invitation for Expression of Interest (EOI)**, Daily Nation, Monday May 17, 2013, p 21.

Core Network (GCCN) that is designed to support secure transactions, scalability, reliability as well as simple network management.

Similarly, KACC conducted many training and sensitization programmes on anti-corruption, ethics, integrity and good governance in many public institutions, only to ironically have its own director embroiled in a bribery tussle with a member of parliament, an issue that is widely believed to have precipitated the said director's ouster.

Even with all these programmes in place and running, 3,234 and 7,888 suspected corruption cases were reported in the subsequent financial years of 2004 and 2005 respectively. But in a face saving exercise, KACC started categorizing reported suspected corruption cases into those that fall within their mandate and those that do not. For instance, in its 2012-2013 Annual Report, EACC reported to have received and analyzed 3,355 corruption reports, out of which the commission took responsibility of 1,423 as the only ones being under its mandate. This apparent contradiction could only be construed as convenient because EACC is the only body established with the mandate of combating corruption and economic crimes in Kenya. But looking at the above figures of reported cases of corruption, it does not make any economic sense to invest in an institution that presides over the doubling of cases in the middle of the so called sensitization workshops. This is a rather telling "logframe" in the sense that the workshops boil down to being a mere public relations exercises while it is business as usual in terms of corruption.

The State Law Office, on its part, strengthened its capacity and even decentralized Civil Litigation to outstations such as Kisumu, Mombasa, Eldoret, Nyeri and Meru. This was a welcome and overdue move. However, this did not ease the cases backlog at the courts, for the already prosecuted cases, thereby failing to provide deterrence to would be perpetrators of

corruption let alone starting new ones. Interestingly, we had a High Court Judge facing disciplinary proceedings for the second time in one (1) year for not “delivering rulings on time.”⁶⁵ While matters “corruption” are criminal, we have not seen civil litigation matters being referred to these satellite outstations so as to leave Nairobi free in order to deal with corruption cases expeditiously, unless the import of this reform is that only civil litigation matters formed the bulk of the backlog. In the absence of this, we are faced with a cleverly thought out “Logframe” whereby this judicial reform gives the stakeholders the impression that they have even used public fund to prepare the ground for dealing with pending and future corruption cases expeditiously for deterrence purposes, while practically nothing is being done on the ground.

The Kenya Revenue Authority (KRA) introduced Integrated Tax Management Systems (ITMS) that allowed the taxpayers to process Personal Identification Numbers (PIN) on-line and even file Income Tax returns on-line. However, this did not make the Members of Parliament (MPs), for instance, pay taxes on their allowances, but only succeeded in making them collectively hold the executive at ransom when it tried to make them pay taxes. Incidentally, those seeking employment in the public offices are now required to attach clearance and compliance certificates from KRA and the Credit reference Bureau for consideration alongside their applications. However, this has not prevented people with known cases of bankruptcy and tax evasion from assuming public offices through litigation and use of technicalities such as sworn affidavits. Even with ITMS in place and presumably working, we had a senior KRA official in court over allegedly soliciting a KES 8 million bribe in order to help a local company evade a KES 100 million tax bill. This is indicative of the fact that ITMS is designed with some cleverly crafted loopholes which further reinforces the “logframe” proposition that unless otherwise

⁶⁵ Juma, P. **Judge Faces the Sack for Second Time Over Delays**, Daily Nation, August 10, 2013, p 3.

proven, the ITMS is only but a mere public relations exercise meant to hoodwink targeted stakeholders.

In line with this, the Private Sector in partnership with the Ministry of Local Government and the World Bank has carried out a Sub-national ‘Doing Business Indicators’ study aimed at improving business environment in the country. Since then, the thirteen licenses that were required before one could open a business were reduced to six. However, this did not make Kenya catch up with countries in the neighbourhood such as Rwanda in terms of the ease of Doing Business, as Rwanda is currently ranked fifth in the World. All the while, navigating through the remaining six licenses before one could establish a business is still a marketplace of corruption. Meanwhile, the “one-stop-shop” concept of acquiring trading licenses remains a distant mirage courtesy of elite interests. Thus an expensive study is done and a cosmetic reduction of the required licenses is done in order to leave the real and unquestionable rent-seeking avenue open.

The Association of Kenya Insurers (AKI) lobbied and pushed for the development of a standard tender document, but this has not made things any easier, in terms of transparency, even for a constitutional body like the Independent Electoral and Boundaries Commission (IEBC) which had to experience problems during the procurement of the Biometric Voter Registration (BVR) equipment in 2012. This BVR tender was eventually cancelled due to what the IEBC chairman called ‘vested interests’. This term “vested interests” is the other name of “elite interests”. Even the current requirement of allowing public participation in the tendering process has not helped much as procurement contracts continue to be awarded to well-connected companies and individuals in total and blatant disregard of the public procurement regulations as discussed

above. Thus the tendering process has been designed with technical loopholes that will allow secure avenues of corruption.

Towards the same end, the Association of Professional Societies of East Africa has spearheaded the development of code of ethics and conduct for professional bodies, but this has not prevented both private and public buildings from collapsing, across the country, due to poor supervision and negligence on the part of the building contractors and related professionals. In order to check corruption in the building industry, for instance, all contractors are now required to re-register with the National Construction Authority (NCA) in addition to attending training and workshops twice a year. This measure only introduces an extra hurdle in terms of expenditure for the contractors, but it is a well documented fact that the problem has not been the contractors, but professional supervisors.

These programmatic measures in addition to the institutional measures discussed above if successfully implemented are, by any standards, enough in ordinarily circumstances to guarantee positive and tangible changes in the fight against corruption anywhere in the World but unfortunately they have not, in the Kenyan case. The bitter truth is that even with all the above mentioned measures and programmes in place, corruption still persists in Kenya and almost reigns supreme. For instance, during the two Financial Years between 2004 and 2006, the Kenya Anti-Corruption Commission (KACC), received 3,234 and 7,888 reports of suspected corruption cases as mentioned above. The subsequent years were no better either with 8,188 in 2006/2007, 4,485 in 2007/2008, 4,335 in 2008/2009, 4,372 in 2009/2010⁶⁶, 5,230 in 2011/2012 and 3,355 in 2012/2013⁶⁷. It is worthy of note that the apparent drop observed in these figures is accounted for

⁶⁶ Kenya Anti-Corruption Commission, Annual Reports 2004/2005 – 2010.

⁶⁷ Ethics and Anti-Corruption Commission, Annual Report for the FY 2012-2013.

by the fact that during this period, KACC started categorizing which corruption cases do and do not fall within their mandate and jurisdiction, as mentioned earlier. This mandate and jurisdiction claim is another rent-seeking avenue that is put in place by the elite in order to allow for corruption along this thin and blurred line.

It is also important to note that the corruption reports documented by KACC did not include mega corruption scandals such as the Goldenberg, Anglo-Leasing, Maize, Triton, Free Primary Education (FPE), Kazi Kwa Vijana (KKV), National Hospital Insurance Fund (NHIF) and National Housing Corporation (NHC) to mention but a few. Such a finger-pointing exercise is indicative of the presence of a logframe in the sense that, either experience has taught KACC the hard way, that certain corruption cases are better off ‘overlooked’ due to the forces behind them or the institution or some of its members are part and parcel of the conspiracy.

Alongside all the above mentioned programmatic anti-corruption initiatives has been the constant demand for a new constitution that was approved at the referendum on 29 August 2010. This constitution has an in-built anti-corruption strategy of publicly vetting before appointment all “non-elected individuals as heads of ministries”⁶⁸ which was achieved upon the swearing in of the technocratic cabinet secretaries in May 2013. However, this has not prevented grand corruption, if the suspension of a High Court Judge over his conduct in acquitting Goldenberg architect “of all charges related to the Goldenberg scandal on grounds that he would not get a fair trial because the case had dragged on for two decades,”⁶⁹ is anything to go by.

In such an apparently logic defying corruption environment, perhaps it is wise to look for a hidden hand in the whole corruption fiasco, to include considering possible extra-territorial

⁶⁸ Musinguzi, B. **Global Nature of Corruption and the Futile War against it**, Daily Nation, Monday May 20, 2013, DN2, p2.

⁶⁹ Ogemba, P. **JSC calls for Tribunal to Probe Judge**. Daily Nation, Saturday, May18, 2013, P5

underpinnings with a focus on transnational elite factors. This will help identify the loci about which the progressively incremental corruption, even with an escalation in anti-corruption measures, rotates. If done, this will constitute the “Alternative Management of Corruption in Kenya” proposition that this study has advanced.

The current anti-corruption management approaches therefore, suggest a ‘Logical Frame Approach’ (LFA)⁷⁰, in the fight against corruption, as an intervening variable. If a survey in this regard confirms the hypotheses, then therein lies the problem of persistently and progressively incremental corruption in Kenya because it would imply that no combination of anti-corruption measures, both institutional and programmatic, would work as long as the ‘log frame’ exists.

⁷⁰ http://en.wikipedia.org/w/index.php?title=Logical_framework_approach&oldid=464959711 (Retrieved on 24 February, 2012).

CHAPTER THREE

3.0 DATA PRESENTATION, ANALYSIS AND INTERPRETATION

3.1 Introduction

This section discusses the coded data in relation to the research questions, objectives and hypotheses as well as the assumptions of the study. The presentation is in the order of; the confirmation of respondents' expertise in the subject matter under investigation, the respondents understanding and assessment of the current anti-corruption approaches and their lethargy in the management of corruption, the respondents' opinions on the existing variance between the current anti-corruption strategy and the effective management of corruption in Kenya.

3.2 Demographic Information of the Respondents with respect to their expertise and experience in matters of fighting corruption. Here, the respondent's distribution is by field of specialization, education level, working sector, experience and seniority in the institution.

Respondents' fields of specialization	Frequency	Percent
Law/ International Law	2	18.2
Political Science	2	18.2
International Relations/Diplomacy	2	18.2
Journalism	1	9.1
Public Administration	1	9.1
Business Administration	2	18.2
Procurement	1	9.1
Total	11	100.0

Source: Author, 2014

Table 3.2.1: Respondents' fields of specialization

Respondents' Education Levels	Frequency	Percent
Masters	6	54.5

Bachelors	4	36.4
Diploma	1	9.1
Total	11	100.0

Source: Author, 2014

Table 3.2.2: Respondents' Education Levels.

Respondents' Sectors of Experience	Frequency	Percent
International NGO	1	9.1
Non-Governmental Organization (NGO)	1	9.1
Government	8	72.7
Civil society	1	9.1
Total	11	100.0

Source: Author, 2014

Table 3.2.3: Respondents' Sectors of Experience.

Respondents' Length of Experience in the Sectors	Frequency	Percent
Between 15 and 24	1	9.1
Between 10 and 14	1	9.1
Between 5 and 10	7	63.6
Below 5 years	2	18.2
Total	11	100.0

Source: Author, 2014

Table 3.2.4: Respondents' Length of Experience in the Sectors.

Tables 3.2.1- 3.2.4 above show the respondents' distribution by their relevant expertise, using their education level, field of specialization, sector of employment and duration of experience.

The data confirms the eligibility of the respondents in terms of relevant academic qualifications, with 90.9 percent of the respondents having either bachelor or masters degrees, as well as the

working experience, with 81.8 percent of the respondents having a working experience of between 5 to 24 years of service. This supports the expertise, experience and institutional memory qualification requirements. At least 67 percent of the respondents have answered all the questions which further confirm the expertise proposition. The high percentages obtained from this data further supports the judgment sampling technique used, whereby a deliberate choice of respondents was made. This choice was based on their deemed willingness to provide information, as a result of their substantial experience and/or expertise in the study area.

3.3 Categorization of Anti- Corruption Policy Implementing Agencies. A deliberate choice was made at the methodology level to seek experts' opinions from respondents who are currently working in organizations and institutions whose mandate is the implementation of the national anti-corruption policy. In this respect, all the sampled institutions and organizations constitute part of the membership of the Kenya Integrity Forum (KIF) whose mandate is to implement the National Anti-Corruption Plan (NACP) on behalf of the Government of the Republic of Kenya. The information sought across the sample institutions and organizations within the four broad categories of enforcement, watchdog, advocacy, and oversight was whether they have any anti-corruption policy and if so, the major components of those policies. The answers are as tabulated in the tables below:

Whether their organizations/institutions have anti-corruption policy	Frequency	Percent
Yes	8	72.7
No	3	27.3
Total	11	100.0

Source: Author, 2014.

Table 3.3.1: Whether their organizations/ institutions have anti-corruption policy.

Major components of the policies, where applicable	Frequency	Percent
Not indicated	5	45.5

Anti-corruption committee, protection of whistleblowers, reporting corruption issues, handling of corruption cases, corruption Risk Areas	1	9.1
Core values: Independence, teamwork, innovation, professionalism, integrity	1	9.1
Declaration of gifts interests etc	1	9.1
Integrity, Transparency and accountability Article 10 of the Constitution	1	9.1
Integrity, transparency and honesty	1	9.1
Ways of combating the vice as well as measures outlining the consequences of the same	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.3.2: Major components of the policies, where applicable.

Type of organization	Frequency	Percent
Enforcement	2	18.2
Watchdog	5	45.5
Advocacy	3	27.3
Oversight	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.3.3: Type of organization

From Tables 3.3.1 - 3.3.3 above, the data shows that 50 percent and 20 percent of sampled government enforcement and watchdog institutions, respectively, have anti-corruption policies, while sampled civil society and advocacy institution do not have. This indicates lack of convergence in the approach to the war against corruption. Here, unity of purpose is obviously lacking. Since all these institutions constitute the Kenya Integrity Forum (KIF), which is charged with the responsibility of implementing the National Anti-Corruption Plan (NACP), it therefore follows that the anti-corruption programmes emanating from the KIF are likely to have endemic implementation challenges due to the high probability of the membership working at cross-purposes, in a situation where some have while others do not have anti-corruption policies. In the absence of a plausible explanation, this becomes a carefully calculated logframe that leaves room for the perpetration of corruption.

Again looking across the sample institutions, 27.3 percent of them have no anti-corruption policy guiding their operations and even for those who have anti-corruption policies, 81.8 percent show no commonality in the major components of the said policies hence no unity of purpose in the approach to the fight against corruption in so far as these institutions are concerned. This partly supports the lead hypothesis that; the current anti-corruption policy implementation agencies are for purposes other than the management of corruption in Kenya, in that those institutions charged with the oversight, advocacy, watch-dog and enforcement of the National Anti-Corruption Plan (NACP), under the umbrella of the Kenya Integrity Forum (KIF) do not demonstrate any unity of purpose in their collective “mandate”⁷¹. For instance, the forum, in its July 2008 – June 2009 National Anti-Corruption Plan (NACP) implementation progress report, published a number of “Achievements/Outcomes” and no mention of failures or challenges, right in the middle of the triton fuel, the Maize, Kazi Kwa Vijana and the NHIF financial scandals. This confirms the presence of a direct relationship between the lack of implementation of the anti-corruption policy and the increase of corruption in Kenya.

3.4 Corruption Trends in Kenya. The respondents were asked about their understanding of the corruption trends in the country with respect to the reasons as to why corruption has increased or decreased, according to individual conviction.

Why corruption has increased/decreased	Frequency	Percent
Not indicated	4	36.4
Action by Anti-corruption agencies the cases are forwarded to.	1	9.1
Efforts to fight corruption in line with performance contracting have been put in place, The organization is a member of Kenya Leadership and Integrity Forum (KLIF), a multi-sectoral initiative to fight corruption - it has implemented the National Anti-Corruption Plan (NACP), Reported cases have been investigated and appropriate steps taken.	1	9.1

⁷¹ Kenya Integrity Forum (2010), **National Anti-Corruption Plan; Implementation Progress report July 2008 – June 2009**, p vi.

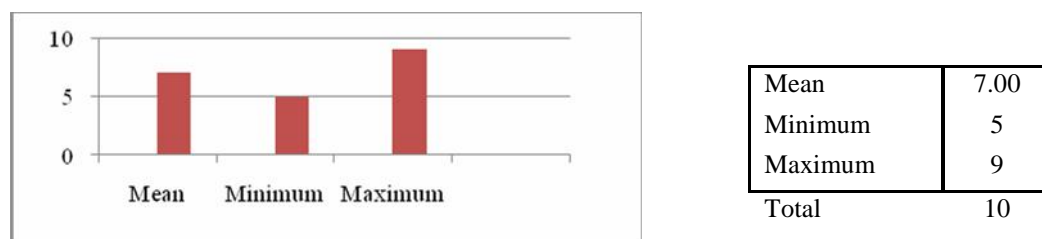
Establishment of anti corruption policies.	1	9.1
Impunity at various levels of authority - made worse by politicization of every issue no matter the merit.	1	9.1
Increase in revenue collection.	1	9.1
Increased awareness on the mandate of our commission/ increased incidents of impunity and failure to streamline operation in the public sector.	1	9.1
The new constitution article 229, chapter 6 of the constitution, punitive action for offenders.	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.4.1: Why corruption has increased/decreased.

Table 3.4.1 above shows the respondents' conviction on the reasons as to why cases of corruption have reduced or increased at least from their personal and institutions' perspectives. Again here we have divergent views, even where the institutions are within same general categories such as watch-dog, oversight, advocacy, enforcement, and so on. This is indicative of the fact that these institutions have been reading from different scripts and/or working at cross-purposes, in so far as the implementation of the anti-corruption policy in Kenya is concerned. Additionally, this suggests lack of common understanding of the problem at hand by operatives in the same sector. For instance, saluting is the same everywhere and every time, regardless of whether one is in Kenya Wildlife Service (KWS), prisons, police or military. In a similar manner, dealing with and identifying corruption should be the same, within the membership of KIF, regardless of whether one is in advocacy, oversight, watchdog or enforcement sub-sector. This confirms the lead objective and hypothesis regarding the disconnect between the anti-corruption policy implementation and the management of corruption and the anti-corruption implementation approach as it affects the management of corruption, respectively, in Kenya.

3.5 Self-assessment profile in terms of performance. The respondents were asked to assess their own institutions/organizations' performance in terms of implementing the anti-corruption policy, on a scale of 1 - 10.



Source: Author, 2014

Table 3.5.1: Self assessment on how institutions/organizations have been performing.

Table 3.5.1 shows a self-assessment scorecard, whereby the respondents score the performance of their institutions at 7, on average, in the fight against corruption. This means that as participant experts, they believe their institutions are doing above average in terms of what they are established to do. However, this does not attract commensurate results in the reduction or eradication of corruption in the country. The import here, cuts across both the objectives and hypotheses of this study by way of confirming them, and further suggests the presence of a logframe, as an intervening variable that undermines the effective management of corruption in Kenya. The removal of such logframes will constitute an alternative approach to the management of corruption in Kenya.

3.6 Reported Cases of Corruption and what was done about them. The respondents were asked to give information on corruption cases that have been reported to their institutions/organizations, in terms of types, action taken and explanations on the failures.

Types of Corruption Cases.	Frequency	Percent
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Not indicated	4	36.4
Allegation of bribery	1	9.1
Institutional government related	1	9.1
Land grabbing and reprisal in public organizations	1	9.1
Managerial based corruption	1	9.1
Non adherence to procurement and disposals Act; Inconsistencies in employment; Promotion of non qualified staff	1	9.1
Petty and Grand - petty constitute 90 percent of the complaints.	1	9.1
Soliciting and/or accepting bribes to consider some issues favourably	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.6.1: Types of corruption cases that have been reported to these organizations.

What these organizations have done to reduce/mitigate corruption cases	Frequency	Percent
Not indicated	2	18.2
1. Investigate and recommend appropriate action. 2. Conducting systemic investigations seal corruption loopholes. 3. Conducting training for public officers and assisting public institutions to set up complaints handling mechanisms.	1	9.1
Continued sensitization and warnings during staff meetings	1	9.1
Hired procurement and human resource specialist; Strengthened the department with adequate personnel	1	9.1
Implementation of service charter, Making service charter accessible/display, Punishment of corruption cases, Making registration information available/ accessible.	1	9.1
Install systems that will check any cases of corruption	1	9.1
Policy Advocacy - strengthening of EACC	1	9.1
Policy advocacy, development of anti-corruption policy and legislation, training of anti-corruption to government institutions	1	9.1
Research, advocacy etc	1	9.1
Training the personnel by holding annual workshops	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.6.2: What these organizations have done to reduce/mitigate corruption cases.

Explanations on the failures.	Frequency	Percent
Not indicated	7	63.6
Lack of evidence.	1	9.1
Most failures are caused as a result of poor investigation and conflict between EACC and DPPs Offices.	1	9.1

Nobody is willing to own up, no incentive have been proposed so far.	1	9.1
Still ongoing.	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.6.3: Explanations on the failures.

Tables 3.6.1 – 3.6.3 present data on corruption allegations that have been reported to these institutions and organizations, what they have done about them and what explains the observed failures. From this data, it becomes clear that a variety of corruption cases are reported to most of these institutions and organizations, and they do take remedial measures as required, but this is not reflected in the expected reduction in corruption at the national level. It is therefore paradoxical that these same institutions and organizations, who have stated that they investigate every corruption allegation reported to them, turn around and blame poor investigation and lack of evidence, among others, to be the reasons behind the poor management of corruption. These are self-indictment statements since none of them has blamed institutions such as the judiciary, suggesting that the, would be, due process ends at their level. This confirms both the objectives and hypotheses put forward in this study.

3.7 On resources dedicated by these institutions towards the fight against corruption.

The respondents were asked whether their institutions/organizations do dedicate financial and human resources towards the fight against corruption.

Does your institution/organization dedicate specific offices towards fighting corruption?	Frequency	Percent
Yes	6	75.0
No	2	25.0
Total	8	100.0

Source: Author, 2014.

Table 3.7.1: Establishment of specific offices in these organizations that deal with corruption and corruption related activities.

Does your institution/organization dedicate specific budgets towards	Frequency	
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fighting corruption?		Percent
Yes	3	37.5
No	5	62.5
Total	8	100.0

Source: Author, 2014.

Table 3.7.2: Financial resources allocated the offices fighting corruption in these organizations.

Tables 3.7.1 and 3.7.2 present data on the human and financial resources dedicated by these institutions and organizations towards the fight against corruption, since they do have other mandates besides fighting corruption. In this respect, 25 percent of them do not have personnel dedicated to the fight against corruption while 62.5 percent do not have budgets set aside for the anti-corruption campaign. This is a serious omission because corruption is known to exist inter and even intra-institution as well as the private and public sectors. It therefore becomes difficult to visualize how these institutions and organizations would effectively oversight, advocate, watch and enforce, in tandem with each other, the implementation of the National Anti-Corruption Plan, as per their collective mandate, given these deficiencies in both financial and human resources. This particularly confirms the logframe proposition in that to the untrained observer, they appear and claim through annual reports at the KIF to be doing everything in their power to fight corruption, while they actually do little, if not nothing towards that end.

3.8 Training of personnel dealing with corruption cases. The respondents were asked to give information regarding the training of the personnel within their institutions/organizations who are dealing with corruption related cases.

Comment on the training of the officers charged with the responsibilities of fighting corruption.	Frequency	Percent
Not indicated	4	36.4
Adequately trained	1	9.1
Basic Integrity Training	1	9.1

Knowledge about corruption is abundant but only at the logical and conscious mind. Training should target the unconscious mind as conscious mind controls only 10 percent of behaviour. I strongly recommend comprehensive culture transformation programs as the only effective means.	1	9.1
Most of them do not practically apply the techniques they acquire during training	1	9.1
The committee is put in place and has been trained on anti corruption issues	1	9.1
This is part of our routine work	1	9.1
Well trained on Anti-corruption strategies	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.8.1: Comments on the training of the officers charged with the responsibilities of fighting corruption.

Are the officers well equipped to fight the vice?	Frequency	Percent
Yes	3	37.5
No	5	62.5
Total	8	100.0

Source: Author, 2014.

Table 3.8.2: Whether the officers are well equipped to fight the vice.

Table 3.8.1 and 3.8.2 present the respondents' opinions on the training of the personnel charged with the responsibilities of anti-corruption operations. In this respect, the data shows variance in the course and/or training content to the extent that 62.5 percent of the respondents think that these personnel are ill-equipped for the purpose of fighting corruption. It is therefore becomes paradoxical that most of the respondents acknowledge some sort of training and at the same time think that their personnel are ill-equipped. This further confirms, particularly, the logframe proposition.

3.9 Individual respondents' experiences in the fight against corruption. The respondents were asked to state their hands-on experiences in handling corruption cases.

Have you ever handled any corruption case?	Frequency	Percent
Yes	9	81.8
Not indicated	2	18.2
Total	11	100.0

Source: Author, 2014.

Table 3.9.1: Individual experiences in the fight against corruption.

What was your role?	Frequency	Percent
Not indicated	3	27.3
Advisory and cautioning staff and colleagues on the evils of corruption	1	9.1
Development of policies and anti-corruption legislations	1	9.1
Enforce and implement the policy	1	9.1
Handling complaints, providing advisory service, training of public officers	1	9.1
Liaison Officer of the Civil Society Sector under KLIF	1	9.1
Reported those involved	1	9.1
Reporting and doing special assignments in ministries on corruption	1	9.1
Research and advocacy	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.9.2: Specific role played by individual respondents.

What happened?	Frequency	Percent
Not indicated	6	54.5
Advocacy meetings between TI K and EACC and department of Justice borne the development of the bill	1	9.1
I participate in Technical Committee meetings to strategize the fight against corruption in Kenya; organize International Anti-corruption Day/ national anti-corruption conferences.	1	9.1
Purchase of cemetery land without use of proper procurement rules and regulations	1	9.1
Some officers misappropriate funds	1	9.1
Some people attempted to politicize on basis of tribe, religion, politics and all manner of innuendoes	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.9.3: Details of what happened.

Who were involved in these corruption cases?	Frequency	Percent
Not indicated	6	54.5
EACC, Dept of Justice, NASSC CAJ (Ombudsman)	1	9.1
Ministry chief officers, CCN chief officers	1	9.1
Representatives of all the 14 sectors comprising KLIF	1	9.1

Senior officers	1	9.1
The culprits tribesmen and political bedfellows	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.9.4: Those who were involved in corruption cases.

Tables 3.9.1 – 3.9.4 looks at the respondents’ hands-on experiences in dealing with corruption cases. Most of them (81.8 percent) have, but again we encounter variations in terms of the roles, reportage format and categorization of corruption crimes. This indicates that the training, if any for these respondents, is different for the same operation, even where the institutions are operating at different levels and stages of corruption. Interchangeability, in this case, is practically impossible and hence the understanding of the problem at hand is different across the forum. Taking another example from the security sector, we find that the identification and neutralization of the target is the same, regardless of whether one is in the National Police, National Intelligence Service, Unarmed Guard or the Military. There is a measure of synchronization and joint training in the security sector and this brings about the much needed unity of purpose in the identification of suspects or targets. In a similar manner, the detection and disposal of corruption cases should be standard across the whole spectrum of the Kenya Integrity Forum in so far as they are dealing with the same subject matter of corruption, and in the same country. In this case, however, the respondents have not demonstrated convergence in the manner they perceive matters of corruption, despite the fact that they are in the same country and looking at the same corruption cases, and within the same framework of Kenya Integrity Forum. In fact, during the interview, respondents from the Association of Professional Societies of East Africa (APSEA) and African Centre for Open Governance (AfriCoG) stated that issues of corruption do not fall in their mandate. As a result of this, the respondent from APSEA flatly declined to answer the questionnaire, while the respondent from AfriCoG took three months and

a lot of pleading to answer the questionnaire, and even then, it was partly answered. This further confirms both the objectives and hypotheses of this study.

3.10 Explanations of the prevalence of corruption in Kenya. The respondents were asked to state what, they think, explains the prevalence of corruption in Kenya.

What explanations the prevalence of corruption in Kenya?	Frequency	Percent
Not indicated	2	18.2
Erosion of cultural values, poor governance and leadership especially the political leadership, lack of strict enforcement of the anti-corruption law	1	9.1
Greed	1	9.1
Greediness; Failure to adhere to set rules and guidelines	1	9.1
Impunity	1	9.1
Impunity of persons in responsible positions	1	9.1
Lack of Commitment by government and public officers	1	9.1
Lack of national values, culture and ethics and greed	1	9.1
Poor leadership by the administration	1	9.1
That it has become entrenched in the culture of people and they have accepted it and a part of life and getting things done	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.10.1: Explanations on the prevalence of corruption in Kenya.

Table 3.10.1 presents the respondents' opinions on why corruption is so prevalent in Kenya. Although there is minimal convergence, at 18 percent each, on greed and impunity, 82 percent of the respondents seem to be reading from very different scripts with respect to the reasons behind the prevalence, suggesting serious absence of unity of purpose. This confirms, especially, the lead hypothesis that "the anti-corruption policy implementation approach affects the management of corruption in Kenya".

3.11 Leadership's performance in terms of fighting corruption. The respondents were asked to state their opinion on the leadership's performance in terms of fighting corruption.

The will of the leaders in government in the fight against corruption.	Frequency	Percent
Not indicated	2	18.2
Above average	1	9.1
Arguable/Debatable/Noncommittal	1	9.1
Don't mention - the leadership pipeline is usually clogged with incompetence and arrogance and corruption is only seen if it's being done by the others and not themselves	1	9.1
Little will	1	9.1
No will - They are the ones to legislate on the Acts and Bills to reduce corruption	1	9.1
Not Committed	1	9.1
Political will is key to fighting corruption worldwide. The will in Kenya has never been there except tokenism since it seems to be fashionable to be seen to fight corruption.	1	9.1
There is low commitment to fight corruption	1	9.1
They are very reluctant to fight the vice	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.11.1: Comments on the will of the leaders in government in the fight against corruption.

Leaders' performance	Frequency	Percent
Good	2	18.2
Bad	5	45.5
Average	4	36.4
Total	11	100.0

Source: Author, 2014.

Table 3.11.2: The rating of the leaders' performance.

Tables 3.11.1 and 3.11.2 present the respondents' opinions on the leadership's performance in terms of fighting corruption. In their responses, 63 percent returned a verdict of lack of political will, while out of the 37 percent who think that the will to fight corruption is not an issue, 9.1 percent think that the will to fight corruption is above average while a similar percentage think the issue of will, is debatable. From the same data, only 18 percent of the respondents think the

leadership is good in the fight against corruption. These sub-fifty percent numbers suggest a problem or problems with the implementation method, thus supporting the lead hypothesis.

3.12 Performance of the national anti-corruption institutions and organizations. The respondents were asked about the performance of available anti-corruption institutions.

How is the performance of the police in the fight against corruption?	Frequency	Percent
Good	2	18.2
Bad	5	45.5
Average	4	36.4
Total	11	100.0

Source: Author, 2014.

Table 3.12.1: Performance of the National Police in the fight against corruption.

The performance of the office of the DPP in the fight against corruption?	Frequency	Percent
Good	2	18.2
Bad	6	54.5
Average	3	27.3
Total	11	100.0

Source: Author, 2014.

Table 3.12.2: The performance of the office of the Director of Public Prosecutions in the fight against corruption.

Performance of the Ethics and Anti-Corruption Commission in the fight against corruption?	Frequency	Percent
Good	1	9.1
Bad	5	45.5
Average	5	45.5
Total	11	100.0

Source: Author, 2014.

Table 3.12.3: Performance of the Ethics and Anti-Corruption Commission in the fight against corruption.

Tables 3.12.1 - 3.12.3 present the respondents' opinions on the performances of three anti-corruption institutions namely; the National Police, Director of Public Prosecutions (DPP) and the Ethics and Anti-Corruption Commission (EACC). The data herein indicates that the respondents are less than happy with the performances of the three institutions, at 18.2 percent

and less with a rating of good. This means that the huge budgets, dedicated to the three institutions for the anti-corruption operations, obviously go to purposes other than the fight against corruption, thereby confirming the second hypothesis that “the anti-corruption policy implementing agencies are established for purposes other than the management of corruption in Kenya”.

3.13 Ways through which the fight against corruption can be enhanced. The respondents were asked to suggest four ways each, through which the fight against corruption can be enhanced.

Ways through which the fight against corruption can be enhanced - 1	Frequency	Percent
Not indicated	1	9.1
Allocate more resources to the fight against corruption	1	9.1
Classify crime as economic sabotage and maximum sentence	1	9.1
Empower relevant Commission (E&ACC)	1	9.1
Empowering EACC,	1	9.1
Establishment of anti corruption department	1	9.1
Implement Culture transformation programs across the society, everywhere	1	9.1
Install system that can check corruption	1	9.1
Proper investigation	1	9.1
Punitive measures on perpetrators	1	9.1
Strong political leadership based on ethics,	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.13.1: Suggested ways through which the fight against corruption can be enhanced – 1

Ways through which the fight against corruption can be enhanced - 2	Frequency	Percent
Not indicated	3	27.3
Creation of awareness campaigns	1	9.1
Enacting harsh penalties to those involved	1	9.1
Expand vetting of leaders before they contest/occupy public offices	1	9.1
Political goodwill from the highest office	1	9.1
Proper enforcement	1	9.1
strict enforcement of the law	1	9.1
To not only investigate but also prosecute	1	9.1
Train citizens on good values	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.13.2: Suggested ways through which the fight against corruption can be enhanced – 2.

Ways through which the fight against corruption can be enhanced - 3	Frequency	Percent
Not indicated	8	72.7
Expeditious resolution of matters taken to court - providing timelines	1	9.1
Include anti-corruption issues in school curriculum	1	9.1
Stricter penalties	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.13.3: Suggested ways through which the fight against corruption can be enhanced – 3

Ways through which the fight against corruption can be enhanced – 4	Frequency	Percent
Not indicated	9	81.8
Public education, Institutional renewal and reconfiguration (Public Institutions), reconfiguration of bodies fighting corruption to make them effective.	1	9.1
Punish cases of corruption	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.13.4: Suggested ways through which the fight against corruption can be enhanced – 4.

Tables 3.13.1 – 3.13.4 present the respondents' suggested four ways through which they think the fight against corruption can be enhanced. The data herein shows convergence in several measures namely; public education and training, punishment of perpetrators, and empowerment of the Ethics and Anti-Corruption Commission (EACC). These four areas of convergence

constitute the intervening variables in the management of corruption, and by extension are the logframe impediments that this study is advancing. These are logframes in that the EACC has used large amounts of public funds in public education seminars and education materials and as such they have done what they are expected to do. On his part, the DPP has prosecuted those corruption cases that have been brought before him and EACC has been empowered in terms of investigative capability. However, all these efforts have not brought about a reduction in corruption in a commensurate manner. In the absence of any other plausible explanation one is inclined, and justifiably so, to conclude that all these efforts are meant to facilitate corruption while appearing to fight it on the surface. In such a case, the above mentioned institution and office are reduced to be, but just busy bodies, working apparently very hard but in the real sense are insulating corruption.

Once a strategy is formulated to address especially these negative intervening variables, the numerous logframes that are currently challenging the management of corruption in Kenya will be removed. This confirms the third hypothesis that “a logframe-free anti-corruption strategy constitutes an alternative approach to the management of corruption in Kenya”.

3.14 Understanding of the respondents as to why corruption is still persistent. The respondents were asked to state why corruption is still persistent, even with all the anti-corruption measures currently in place.

Are there adequate anti-corruption institutions in place?	Frequency	Percent
Yes	6	54.5
No	5	45.5
Total	11	100.0

Source: Author, 2014.

Table 3.14.1: Whether there are there adequate anti-corruption institutions in place.

Why is corruption still persistent then?	Frequency	Percent
Not indicated	5	45.5
Lack of commitment	1	9.1
Non prosecution of high voltage corruption cases waters down efforts	1	9.1
The approach of attacking corruption is wrong	1	9.1
The institutional frameworks for the bodies are weak, lack of proper leadership (Oversight Institutions), Lack of/or little political will - politics still determine all matters in Kenya.	1	9.1
The institutions are underfunded	1	9.1
Very Persistent	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.14.2: Why corruption is still persistent.

Tables 3.14.1 and 3.14.2 present the respondents' opinions on whether there are adequate anti-corruption institutions in place and why corruption is still persistent. Here the slight majority at 55/45 percentage points are of the opinion that there are adequate anti-corruption institutions in place. When it comes to their opinions on why corruption still persists, there is no convergence as would be expected, given that all these institutions are fighting the same vice in the same country. But the fact that there is almost a split decision on whether there are enough anti-corruption institutions, suggests that this particular institutional approach is inadequate, thus confirming the first two hypotheses.

3.15 Availability of adequate laws to fight corruption. The respondents were asked whether there are adequate anti-corruption laws in place.

Are available laws adequate in combating corruption?	Frequency	Percent
Yes	6	54.5
No	5	45.5
Total	11	100.0

Source: Author, 2014.

Table 3.15.1: Whether available laws are adequate in combating corruption.

What are the reasons behind the ineffectiveness of these laws?	Frequency	Percent
Not indicated	4	36.4
Lack of prosecution of the culprits	1	9.1
Poor prosecution and blocking the court process, lack of laws to protect whistle-blowers	1	9.1
Poor prosecution and blocking the court process.	1	9.1
Some aspects such as trading in influence and corruption inter - governmental institutions not covered in law, Procedural gaps thus allowing suspects to delay the entire process or make it collapse.	1	9.1
The laws are fragmented and have major gaps in them	1	9.1
The laws are structured in a manner that they can't be applied to 'all'	1	9.1
They are not fully implemented	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.15.2: Reasons behind the ineffectiveness of current anti-corruption laws.

What should be done to ensure their effectiveness?	Frequency	Percent
Not indicated	2	18.2
Guarantee independence of EACC to prosecute	1	9.1
Justice is done to all offenders	1	9.1
Legislative review, strict enforcement.	1	9.1
Provide incentives for reporting corruption to the citizen (mwananchi) instead of paying salaries for people to enrich themselves	1	9.1
Provide limit period to determine corruption cases	1	9.1
Provide limit period to determine corruption cases, Strengthen EACC	1	9.1
Put the right structures in place	1	9.1
Revise the laws and ensure their implementation	1	9.1
The set laws should be implemented to the dot	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.15.3: What should be done to ensure effectiveness of current anti-corruption laws.

Tables 3.15.1 - 3.15.3 present the respondents' opinions on whether there are adequate anti-corruption laws in which case a slight majority, like in the institutions' case above, are of the opinion that there are adequate laws in place. The data shows convergences in the areas of prosecution challenges at 36.4 percent and weak laws at 18.2 percent respectively. When it comes to what should be done to ensure effectiveness of these laws, again we observe limited

convergence around the need for independence of the anti-corruption body and the need for implementation of the already enacted laws at 18.2 percent each. The near split decision here further reinforces the ineffectiveness of the programmatic approach in the management of corruption in Kenya in that parliament has enacted legislations that do not help in the proper management of corruption, meaning that this approach does affect the management of corruption in Kenya.

3.16 Administrative anti-corruption measures in place. The respondents were asked to state their opinions on the adequacy of the current administrative anti-corruption measures.

Are there adequate administrative measures instituted for the purpose of fighting corruption in Kenya?	Frequency	Percent
Yes	4	36.4
No	7	63.6
Total	11	100.0

Source: Author, 2014.

Table 3.16.1: Whether there are adequate administrative measures instituted for the purpose of fighting corruption in Kenya.

Why, are these administrative measures are ineffective?	Frequency	Percent
Not indicated	6	54.5
Culture of corruption is entrenched; admin measures are controlled by people who accept corruption or demand it	1	9.1
Lack of commitment	1	9.1
Lack of will	1	9.1
Non-implementation	1	9.1
They are addressing the problem, imprudently	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.16.2: Why these administrative measures are ineffective.

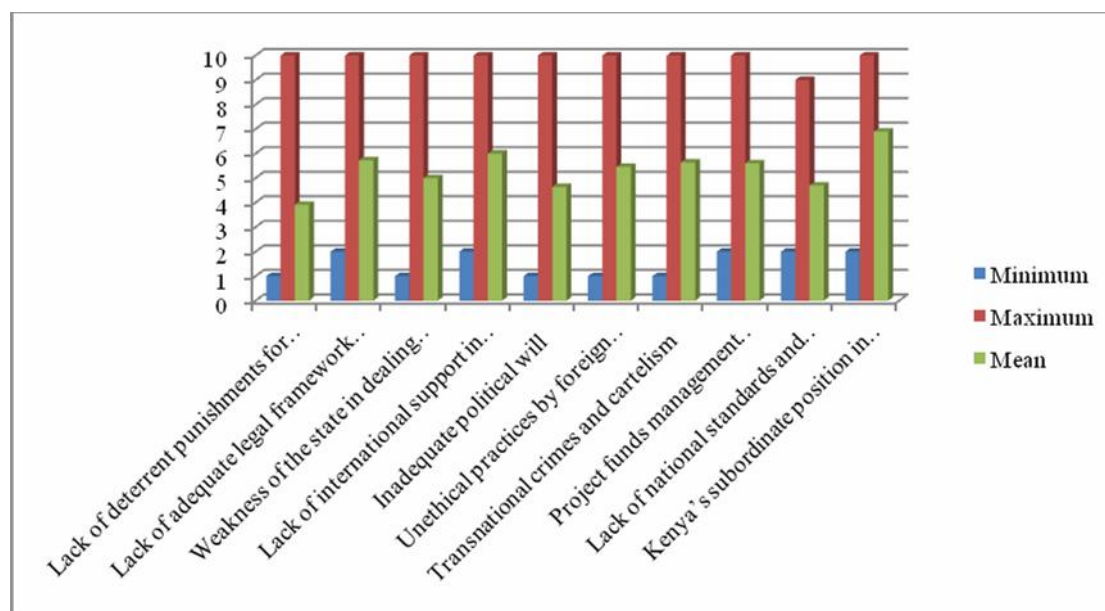
What should be done to ensure their effectiveness?	Frequency	Percent
Not indicated	6	54.5
Adequate human and financial resources	1	9.1
Performance contracting, Political goodwill and capacity building of citizen.	1	9.1
Prudent and creative applications with necessary incentives to fight anti-corruption	1	9.1
Push for implementation and reward those implementing to the letter	1	9.1
Training personnel	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.16.3: Measures that should be taken to ensure the administrative measures' effectiveness.

Tables 3.16.1 - 3.16.3 presents the respondents opinions on whether there are adequate administrative measures instituted for the purpose of fighting corruption in Kenya. In this case, we have a clear majority at 63.6 percent thinking that the measures in place are not adequate. On why the administrative measures in place are not effective, again there is lack of convergence even on a particular or group of issues. As to what should be done to ensure their effectiveness, 18.2 percent of the respondents think the administrative measures in place have implementation challenges. This indicates that in their current form, the anti-corruption administrative measures are inefficient in the management of corruption in Kenya. This combination of factors suggests that, in its current form, the programmatic approach is, by and large, problematic.

3.17 Factors that underwrite the persistence of corruption in Kenya. The respondents were asked to rank the suggested factors in so far as they underwrite corruption in Kenya, on a scale of 1 - 10.



Culpable factors as far as the persistence of corruption is concerned	Minimum	Maximum	Mean
Lack of deterrent punishments for culprits	1	10	3.91
Lack of adequate legal framework to address corruption	2	10	5.73
Weakness of the state in dealing with both local and international perpetrators	1	10	5.00
Lack of international support in the war against corruption	2	10	6.00
Inadequate political will	1	10	4.64
Unethical practices by foreign governments, business people and/or MNCs	1	10	5.45
Transnational crimes and cartelism	1	10	5.64
Project funds management approach used by development partners	2	10	5.60
Lack of national standards and ethical codes against corruption	2	9	4.70
Kenya's subordinate position in the international system's power pecking order	2	10	6.90

Source: Author, 2014.

Table 3.17.1: Factors that underwrite corruption in Kenya.

Table 3.17.1 presents the culpability of certain factors in so far as the persistence of corruption is concerned in Kenya. In this data, Seven (7) out of Ten (10) factors have scored a mean that is

above Five (5). Here, “Kenya’s subordinate position in the International System’s power pecking order” is, with a mean of 6.9, more responsible for the persistence of corruption in Kenya than “lack of deterrence measures for culprits” is, with a mean score of 3.91. Interestingly, systemic oriented factors scored higher, with a mean score of 5 and above, than domestic factors, with a mean score of 4.7 and below. This is a confirmation that corruption in Kenya has strong international dimensions and at the same time puts external sovereignty enforcement capabilities to question. But actors at the international level, such as the donor community and development partners, are the same agencies that demand the implementation of anti-corruption policy, as a precondition for aid and later resume aid without tangible improvement on the corruption scale. This suggests that these preconditions are not informed by a genuine desire to assist in the management of corruption, thus confirming the lead hypothesis.

3.18 State’s internal sovereignty distribution. The respondents were asked to state their conviction regarding the visibility and modes of operation of state institutions across the country.

Is the presence of the state institutions felt in every corner of Kenya?	Frequency	Percent
Yes	3	27.3
No	8	72.7
Total	11	100.0

Source: Author, 2014.

Table 3.18.1: Whether the presence of the state institutions is felt in every corner of Kenya.

Where visible, how efficiently do these institutions apply themselves on the ground?	Frequency	Percent
Satisfactory	1	9.1
Poor	2	18.2
Not applicable	8	72.7
Total	11	100.0

Source: Author, 2014.

Table 3.18.2: How efficiently these state institutions apply themselves on the ground.

What are the attitudes of the employees in these state institutions?	Frequency	Percent
Not indicated	1	9.1
Good	2	18.2
Bad	8	72.7
Total	11	100.0

Source: Author, 2014.

Table 3.18.3: The attitude of the employees in these state institutions.

What is the working relationship between the political class and these state institutions?	Frequency	Percent
Not indicated	1	9.1
Mutually suspicious	5	45.5
Patron-clientele	3	27.3
Indifferent	2	18.2
Total	11	100.0

Source: Author, 2014.

Table 3.18.4: Observed working relationship between the political class and these state institutions.

Reasons for this kind of relationship?	Frequency	Percent
Not indicated	4	36.4
All are suspicious of each other	1	9.1
Each has vested interests	1	9.1
Experience - no trust between the two, political class and the institutions since politicians perpetrate corruption	1	9.1
In most African countries where there was concentration of state power in the core Executive, Patrimonialism and clientelism was the order of the day, and Kenya was no exception. The situation is yet to change	1	9.1
MPs have watered down the anti-corruption law; they have disbanded the anti-corruption commission; and delayed appointment of EACC chair.	1	9.1
Political appointments, nepotism and ethnicity,	1	9.1
Political appointments, nepotism and ethnicity, Disbandment of KACA and replacing with EACC because the former was pointing fingers at politician	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.18.5: Reasons for this kind of relationship.

Tables 3.18.1 – 3.18.5 present data on the visibility of the state and interaction between state institutions and the political class. In this respect, the respondents think that the state is absent or not felt in all of its corners, at 72.7 percent, and even where the state is visible, the efficiency of

how its institutions apply themselves on the ground is rated at a mere 9.1 percent. Even where these state institutions are visible, the attitude of the employees is rated as bad, at 72.7 percent. At the same time, the working relationship between the political class and these state institutions is assessed by the respondents to be “mutually suspicious”, at 45.5 percent, and “patron-clientele”, at 27.3 percent. Clearly the state is not visible and is not uniformly felt throughout the republic. This obviously presents policy implementation challenges. Where these state institutions are required to act as anti-corruption policy implementing agencies, they are simply not doing what they are supposed to do, especially in the far flung areas. Where present, then, they are for purposes other than the management of corruption, such as insulating corruption, through making it impossible to implement the anti-corruption policies and measures.

3.19 Performance of the Government in handling past corruption cases. The respondents were asked to give their opinions on how the government has handled past corruption cases.

How has the executive arm of government handled past corruption cases?	Frequency	Percent
Not indicated	3	27.3
Has performed poorly. Has been half-hearted in fighting corruption and instead fuelled corruption in some instances. Has also failed to take administrative action on reported cases.	1	9.1
Implementation of anti-corruption law/policies	1	9.1
In a partial manner - depending on the culprits political side of the divide	1	9.1
Not well	1	9.1
Poor	3	27.3
Publicly supporting the war on corruption; developing Bills and regulations on the fight	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.19.1: How the executive arm of government has handled past corruption cases.

How has the judiciary arm of government handled past corruption cases?	Frequency	Percent
Not indicated	3	27.3
Average	1	9.1
Listening and determining cases of corruption	1	9.1
Making unclear, contradictory and bad decisions, slow determination of corruption cases, lenient sentences e.g. the Margaret Gachara case in 2004.	1	9.1
Not well	1	9.1
Poor	2	18.2
Prosecution	1	9.1
with very little consideration for public interest - too much ingrained in legal technicalities	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.19.2: How the judicial arm of government has handled past corruption cases.

How has the legislative arm of government handled past corruption cases?	Frequency	Percent
Not indicated	3	27.3
Enacting laws /policies/regulations on the fight	1	9.1
Failure to enact good laws to deal with corruption, Failure to provide oversight due to political and other considerations, failure to debate the reports of institutions that report to them every year. I am not aware of any year that they have debated a report of any oversight body.	1	9.1
Not serious - politics as usual	1	9.1
Not well	1	9.1
Poor	2	18.2
Through legislation and oversight	1	9.1
Worse	1	9.1
Total	11	100.0

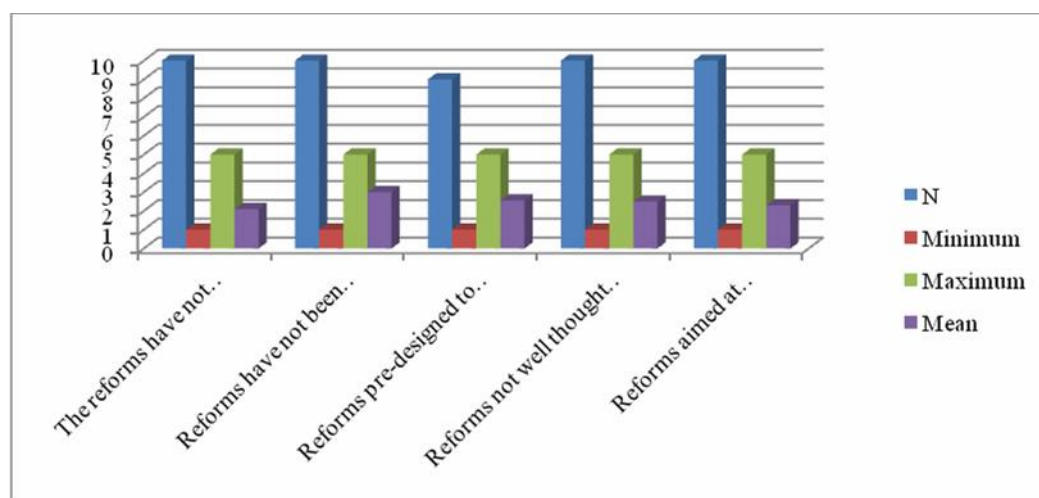
Source: Author, 2014.

Table 3.19.3: How the legislative arm of government has handled past corruption cases.

Tables 3.19.1 – 3.19.3 present the respondents’ opinions on how the different arms of government have handled past corruption cases, whereby they think the performance has been generally poor, with the executive, judiciary and legislature scoring 47.5, 27.3 and 45.5 percentages respectively. This is a damning indictment, especially to the Government as an anti-corruption policy implementing agency, as confirmed by respondents from these watchdog, advocacy, enforcement and oversight civil society institutions. The worst performing are the

executive and the legislature, in that order. The data shows that the approaches adopted by the Government, in the management of corruption have fallen below expectations.

3.20 Failure of past reforms in the management of corruption. The respondents were asked to rank five suggested characteristics of past reforms, on a scale of 1 - 5. The results are as shown below:



Why have the legislative, judicial, institutional, structural and/or administrative reforms that have been enacted since independence, failed to manage corruption?	N	Minimum	Maximum	Mean
The reforms have not been backed up by appropriate political will.	10	1	5	2.10
Reforms have not been aimed at fundamentally changing the institutions.	10	1	5	3.00
Reforms pre-designed to fail-to facilitate corruption when appearing to fight it.	9	1	5	2.56
Reforms not well thought out.	10	1	5	2.50
Reforms aimed at pleasing stakeholders as opposed to fighting corruption.	10	1	5	2.30

Source: Author, 2014.

Table 3.20.1: Why some of the legislative, judicial, institutional, structural and/or administrative reforms that have been enacted since independence, have failed to manage corruption.

Table 3.20.1 presents the respondents' opinions on why the legislative, judicial, institutional, structural and/or administrative reforms, since independence have failed. From the data, the

factor “Policy reforms have not been aimed at fundamentally changing the institutions” seems to be the most fundamental, with a mean score of 3 followed by factor “Policy reforms pre-designed to fail, to facilitate corruption when, on the surface, they appear to be positioned to fight it”, with a mean score of 2.56 and “Policy reforms not well thought out”, with a mean score of 2.5, in that order. The much hyped “Political Will” takes the last slot, according to the respondents. It is, therefore, abundantly clear that the various anti-corruption policy reforms, that have already been enacted, have failed to achieve the intended purposes. This means that this “reform” approach is inadequate and ineffective due to fatigue. Maybe “transformation” would constitute an alternative approach.

3.21 Conflicting of laws and policies. The respondents were asked to either agree or disagree with the propositions that certain laws and policies are undermining the war against corruption.

Official Secrets Act is an impediment to the war against corruption	Frequency	Percent
Not indicated	1	9.1
Strongly agree	3	27.3
Agree	4	36.4
Disagree	2	18.2
Strongly disagree	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.21.1: Official Secrets Act is an impediment to the war against corruption

Is section 65(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 as an impediment to the management of corruption in Kenya?	Frequency	Percent
Not indicated	1	9.1
Strongly agree	4	36.4
Agree	5	45.5
Disagree	1	9.1
Total	11	100.0

Source: Author, 2014.

Table 3.21.2: Section 65(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 is a perpetrator of corruption.

Is allowing civil servants to engage in private business while in office an impediment to the war against corruption?	Frequency	Percent
Not indicated	1	9.1
Strongly agree	2	18.2
Agree	3	27.3
Disagree	5	45.5
Total	11	100.0

Source: Author, 2014.

Table 3.21.3: Allowing civil servants to engage in private business while in office is an impediment to the war against corruption.

Table 3.21.1 – 3.21.3 present the respondents’ opinions on selected two pieces of legislation and one policy in so far as they affect the management of corruption in Kenya. Here the respondents agree that by forbidding government officers to use information gained in the course of their duties in any investigation, the Official secrets Act, (Cap. 187 Laws of Kenya) becomes an impediment to the war against corruption, at 63.7 percent. They also agree that the gap provided, by Section 65(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 in the sense that this law attempts to protect informers (whistle blowers) but at the same time does not penalize those who breach this section has become a serious impediment to the war against corruption in Kenya, at 81.9 percent. However, the same respondents are split at 45.5 percentage points each, for and against, the proposition that by allowing civil servants to engage in private business while in office, as was recommended by the 1971 Ndegwa Commission has all along been an impediment to the war against corruption. By returning these percentages, the respondents are actually indicting some of our laws and administrative policies. The numbers here indicate that the implementation of the said anti-corruption laws affects the management of corruption in Kenya, while the split percentage points indicate the presence of a logframe.

3.22 Intended purposes of available anti-corruption measures and Conditionalities. The

respondents were asked to either agree or disagree with the propositions that certain donor conditionalities and recommended measures are never about fighting corruption per se.

Donor anti-corruption Conditionalities have never been about fighting against corruption but rather about pleasing and justifying the expenditure to the stakeholders in the donor community countries.	Frequency	Percent
Not indicated	1	9.1
Strongly agree	3	27.3
Agree	4	36.4
Disagree	3	27.3
Total	11	100.0

Source: Author, 2014.

Table 3.22.1: Donor anti-corruption Conditionalities have never been about fighting against corruption but rather about pleasing and justifying the expenditure to the stakeholders in the donor community countries.

The local anti-corruption measures that have been put in place by the government have never been about fighting corruption but rather about pleasing both the donor agencies and the local stakeholders.	Frequency	Percent
Not indicated	1	9.1
Strongly agree	2	18.2
Agree	6	54.5
Disagree	2	18.2
Total	11	100.0

Source: Author, 2014.

Table 3.22.2: The local anti-corruption measures that have been put in place by the government have never been about fighting corruption but rather about pleasing both the donor agencies and the local stakeholders.

The local anti-corruption measures have always been pre-designed to fail at some point	Frequency	Percent
Not indicated	1	9.1
Strongly agree	2	18.2
Agree	3	27.3
Disagree	2	18.2
Strongly disagree	3	27.3
Total	11	100.0

Source: Author, 2014.

Table 3.22.3: The local anti-corruption measures have always been pre-designed to fail at some point.

Tables 3.22.1 – 3.22.3 present the respondents’ opinions on selected propositions in so far as they impede the management of corruption in Kenya. They agree with the first proposition, at 63.7 percent, and with the second at 72.7 percent. However, they are split for and against at 45.5 percentage points each, that the local anti-corruption measures have always been pre-designed to fail at some point. This is another indictment on the elite who design these policies, in that they design policies that when implemented, selectively, affect the management of corruption. Again, the split decision here, indicates the presence of a logframe.

CHAPTER FOUR

4.0 SUMMARY, CONCLUSIONS, RECOMMENDATIONS AND SUGGESTIONS FOR FURTHER RESEARCH

4.1 Introduction

This study set out to interrogate, the relationship between the contemporary anti-corruption policy implementation approaches and the management of corruption, the role of anti-corruption policy implementation agencies in the management of corruption and the effect of the logframe in the management of corruption in Kenya, within the framework of available primary data, intellectual and public discourses. In doing so, both secondary and primary data presented in chapters one and two above have illuminated certain factors that explain the phenomenon, in line with both the questions and the hypotheses of the study. Following this, the findings, conclusion and recommendations derived from this exercise are presented in the following three sub-sections.

4.2 Summary of Findings

From the interplay between its stated objectives and the respondents' informed opinions, it has emerged that the Kenya Integrity Forum (KIF), the national anti-corruption strategy implementation organ, is just but a busy body, working very hard with a membership that is largely rudderless. This situation obtains, due to lack of uniting anti-corruption policies that would ensure a purpose driven approach. Such an approach would streamline the management of corruption in Kenya, by way of removing the embedded logframes. It is also this study's finding that:

- a. The institutions within the framework of the KIF, that are charged with the responsibility of implementing the National Anti- Corruption Plan (NACP), are particularly sensitive to what does or does not fall within their ‘specialized’ mandates, hence the collective lack of convergence as well as the unity of purpose in the approach to the fight against corruption in Kenya.
- b. Most of these, supposed implementers of the National Anti-Corruption Plan, do not find it necessary to dedicate financial and human resources to the fight against corruption, even at the individual institutions’ level, in which case the NACP is reduced to being a mere tool for attracting funds that are subsequently used for purposes other than fighting corruption.
- c. Even under a debatably limited political will environment, the national leadership is able and does enact sound anti-corruption policies that end up as ineffective due to the poor performance of the implementing agencies.
- d. Over and above the domestic challenges facing the war against corruption in Kenya, there are transnational factors that interfere with the implementation of the National Anti-Corruption Plan and policies.
- e. The visibility and effect of the state are not apparent and felt equally in all corners of the country and even where they are, there are serious contestations, especially with regard to policy enforcement aspects, that affect the management of corruption.
- f. The government is still performing poorly in the management of corruption in Kenya, long after the enactment of laws on the same, even after the issue of personnel incompetence has been addressed.

- g. Past anti-corruption policy reforms have structural problems, hence their failure to manage corruption in Kenya.
- h. No matter how logical the donor community conditionalities appear, they always carry with them an elitist rent-seeking logframe component.
- i. Some of our laws and administrative policies are working at cross-purposes with our efforts to fight corruption.

4.3 Conclusion

From the interrogation of available intellectual and public discourses, the analysis and interpretation of both primary and secondary data collected on corruption in Kenya, it can be safely concluded that this study's findings have effectively answered the research questions, as derived from the identified research problem and objectively confirmed all the hypothetical assumptions that were put forward at the beginning of this study, within the framework of the stated objectives.

4.4 Recommendations

In view of the findings enumerated above, the following recommendations are made, to the presidency, with respect to the development of an alternative anti-corruption policy that is devoid of embedded logframes:

- a. There is need for the Kenya Integrity Forum to develop a common doctrine and appropriate strategies that are derived from a clear anti-corruption policy framework, within which the sectoral membership will work, in order to focus their efforts in the fight against corruption with measurable and unified sense of purpose.

- b. There is need to deliberately introduce points of intersection within the KIF's sectoral institutions and programmes, in order to do away with the current buck-passing and finger-pointing, in terms of who is supposed to do or not do what, a lacuna that becomes a fertile ground for corruption to thrive in.
- c. There is need to develop and introduce a benchmarked performance contracting strategy, with appropriate sanctions and rewards, if full and timely implementation of the National Anti-Corruption Plan is to be realized.
- d. Since there are adequate and sound anti-corruption policies in place, backed by a leadership that is capable and willing to enact additional policies, if and when called upon to do so, there is need to shift focus to the identification and addressing the current anti-corruption policy implementation logframes.
- e. There is need to re-energize our diplomatic initiatives in order to explore options that will enhance Kenya's position in terms of absorbing and reacting to the ever present transnational factors of corruption, in addition to putting in check the transnational logframes currently facing the anti-corruption policy implementation process locally.
- f. There is also need to devolve both anti-corruption financial and human resources right to the sub-county level, where the implementation of the National Anti-Corruption Plan is needed most.
- g. There is need to integrate anti-corruption training and drills into the education curriculum so that every Kenyan is formally and deliberately made aware of his/her responsibilities and obligations on corruption.

- h. There is need for both the executive and the legislature to collectively look for ways and means of making the existing constitutional anti-corruption measures to be more effective.
- i. There is need to look for more innovative ways with which to transform, rather than reform, our public institutions to be more responsive to the need for better, free and timely public services, and at the same time be less susceptible to corruption.
- j. The decision to source for external funds to finance development projects should be left to parliament and not the executive. All the executive should do is to submit the budget deficit to the peoples' representatives who should then sanction various financing options, like they do in budgetary allocation, and thereafter give directives to the executive. This way the taxpayer will be assured of getting the value for the money borrowed.
- k. There is need to upscale our diplomatic engagements in pursuit of the ease to punish and dismantle, especially, the transnational corruption linkages and networks.
- l. There is need to de-conflict, especially the anti-corruption administrative policies and laws with other laws in the penal code for the smooth management of corruption in Kenya.

4.5 Suggestions for Further Research

Having established the presence of a foreign component of corruption in Kenya, courtesy of transnational elitism and the inability of the Government in the pursuit of especially foreign collaborators of corruption, further research becomes necessary in the following areas:

- a. The re-examination of the rationale behind tying our development to donor funding vis-à-vis exploring other ways of raising similar funds through other more innovative ways that are prone to less corruption.
- b. How to attack the rational choice element of corruption via the route of making it unattractive by raising the opportunity costs of corruption locally.

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