

**EFFICACY OF THE POLICY, LEGAL AND INSTITUTIONAL FRAMEWORKS
FOR COMBATING CORRUPTION IN KENYA.**

**BY
OWINY PATRICK BLASIUŠ**

**A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE AWARD OF THE DEGREE OF
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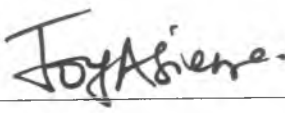
DECLARATION

I, **Owiny Patrick Blasius**, do hereby declare that this Thesis is my original work and has not been submitted to any other University or institution for any award. I hereby now submit the same for the award of Master of Laws Degree of the University of Nairobi.

Signed 
Owiny Patrick Blasius

Date 13/10/09.

This Thesis has been submitted for examination for the award of Master of Laws Degree for which the candidate was registered with my approval as the University Supervisor.

Signed 
Mrs. Joy Kavutsi Asiem
(Supervisor)

Date 16th October 2009

DEDICATION

Dedicated to my wife Wilkister and children Billy and Kevin for their inspiration and encouragement as I undertook the LLM course including the research project.

ACKNOWLEDGEMENTS

First and foremost I feel greatly indebted to my supervisor, Mrs Joy Kavutsi Asiema and the reader Dr. Paul Musili Wambua for their guidance and constructive criticism without which the completion and perfection of this Thesis would be a distant reality. To my parents, Leonard Mbola Nyando and Margaret Opanga, this work is traceable to their introductory advice that hard work actually pays.

Last but not least, I thank almighty God for abundant life and strength bestowed on me throughout the entire period of this course to date.

TABLE OF CASES

1. Christopher Ndarathi Murungaru Vs Kenya Anti-Corruption Commission [2006]eKLR
2. Euro Marine and Others Vs Kenya Anti-Corruption Commission & the Attorney General. Nairobi HCC No. 575 of 2006
3. First Mercantile Securities Ltd Vs Kenya Anti-Corruption Commission. Misc.Appl.No.695 of 2007
4. Julius Meme vs. Republic NBI HCC MISC.APPL.No.495 of 2003
5. Law Society of Kenya Vs Eric Kotut Private Prosecutionno.1 of 1994
6. Midland Finance Securities Ltd & Globatel Inc Vs Attorney General& Kenya Anti-Corruption Commission.NBI. HCC.No.359 of 2007
7. Nedermar Technology BV Ltd. Vs Kenya Anti-Corruption Commission & Attorney General[2008]eKLR
8. Republic Vs. The Judicial Commission of Inquiry into the Goldenberg Affairs & Others Exparte George Saitoti HC Misc.Appl. No.102 of 2006
9. Republic Vs Gachiengo 2001 EA 67

LIST OF STATUTES

International instruments

1. United Nations Convention against Corruption
2. African Union Convention on preventing and combating Corruption

Domestic Legislation

1. The Constitution of Kenya
2. Anti-Corruption and Economic Crimes Act, 2003
3. The Commission of Inquiry Act, Cap 102 Laws of Kenya
4. Election Offences Act, Chapter 66 Laws of Kenya
5. The Government Financial Management Act, 2004
6. The Penal Code Chapter 63 Laws of Kenya
7. Police Act, Cap. 84 Laws of Kenya
8. Political Parties Act, 2007
9. Public Audit Act, 2003
10. Public Officer Ethics Act, 2003
11. Public Procurement and Disposal Act, 2005
12. Privatization Act, 2005

LIST OF ACRONYMS

ACECA	Anti-Corruption and Economic Crimes Act
AG	Attorney General
ACPU	Anti-Corruption Police Unit
CLARION	Centre for Law and Research International
DPP	Director of Public Prosecution
EMU	Efficiency Monitoring Unit
ERS	Economic Recovery Strategy
ICPAK	Institute of Certified Public Accountants of Kenya
IEC	Independent Electoral Commission
IGG	Inspector General of Government
KANU	Kenya African National Union
KACA	Kenya Anti-Corruption Authority
KACC	Kenya Anti-Corruption Commission
KEC	Kenya Episcopal Conference
KENAO	Kenya National Audit Office
KNAC	Kenya National Audit Commission
MP	Member of Parliament
MTP	Medium Term Plan
NCCCK	National Council of Churches
NARC	National Rainbow Coalition
NGO's	Non-Governmental Organizations
PAC	Public Accounts Committee
PCSC	Public Complaints Standing Committee
PIC	Public Investment Committee
POEA	Public Officer Ethics Act
PPOA	Public Procurement Oversight Authority
TI	Transparency International
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UK	United Kingdom

ABSTRACT

This study sets out to examine the efficacy of the policy, legal and institutional frameworks for combating corruption in Kenya. There is no doubt that corruption is the greatest impediment to economic growth, prosperity and reduction of poverty. The central argument of this study is that sound policy, legal and institutional frameworks is a prerequisite for effective and successful war against corruption. Descriptive analysis of secondary data on policy, legal and institutional frameworks reveals that; first, there is no written National Anti-Corruption Policy in Kenya. This has led to disharmony, overlaps and duplicity among the various institutions tasked to fight corruption. Secondly, the laws in place to tackle corruption have inherent flaws and gaps which render them ineffective. The conclusion derived from this study is that, for any meaningful fight against corruption in Kenya there is need to have an appropriate policy, legal and institutional frameworks. The study recommends formulation of appropriate policy, review and harmony of anti-corruption laws, and strengthening of the legal and institutional structures in place to fight corruption.

TABLE OF CONTENTS

Title page.....	i
Declaration.....	ii
Dedication.....	iii
Acknowledgements.....	iv
Table of cases.....	v
List of Statutes.....	vi
List of Acronyms.....	vii
Abstract.....	viii

CHAPTER ONE

1.0 Introduction.....	1
1.1 Background to the Study.....	1
1.2 Statement of the Problem.....	2
1.3 Objective of the Study.....	3
1.4 Justification of the Study.....	3
1.5 Theoretical and Conceptual Framework.....	4
1.6 Literature Review.....	8
1.7 Hypotheses.....	19
1.8 Research Questions.....	19
1.9 Research Methodology.....	19
1.10 Limitations of the Study.....	19
1.11 Chapter Breakdown.....	20

CHAPTER TWO

2.0 The Policy Framework for anti- corruption in Kenya.....	22
2.1 Introduction.....	22
2.2 Definition of policy.....	22
2.3 Overview of the policy framework.....	23
2.4 Conclusion.....	24

CHAPTER THREE

3.0 The Legal Framework to fight corruption in Kenya.....	26
3.1 Introduction.....	26

3.2 The Penal Code Cap.63.....	26
3.2.1 Offences.....	26
3.2.2 Weaknesses in the legislative framework of Cap. 63.....	26
3.3 The Anti-Corruption and Economic Crimes Act, 2003.....	27
3.3.1 Purpose and scope of the Act.....	27
3.3.2 Bodies created.....	27
3.3.3 Definition of corruption	28
3.3.4 Special magistrates.....	29
3.3.5 Kenya Anti-Corruption Commission.....	30
3.3.6 Mandate of Kenya Anti-Corruption Commission.....	31
3.3.7 Offences.....	31
3.3.8 Weaknesses in the legislative framework of Anti-Corruption and Economic Crimes Act.....	32
3.4 Public Officer Ethics Act.....	36
3.4.1 Wealth Declaration.....	36
3.4.2 Weaknesses in the legislative framework of Public Officer Ethics Act.....	37
3.4.3 Enforcement of Public Officer Ethics Act.....	39
3.5 The Public Procurement and Disposal Act, 2005.....	40
3.5.1 Bodies created.....	40
3.5.2 Penalties.....	43
3.5.3 Weaknesses in the legislative framework of Public Procurement and Disposal Act,2005.....	43
3.6 Election Offences Act, Cap.66.....	44
3.6.1 Penalties.....	44
3.6.2 Weaknesses in the legislative framework of Cap66.....	44
3.7 The Political Parties Act, 2007.....	45
3.7.1 Weaknesses in the legislative framework of Political Parties Act.....	45
3.8 Public Audit Act, 2003.....	45
3.8.1 Bodies created.....	45
3.8.2 Weaknesses in the legislative framework of Public Audit Act.....	46

3.9 Government Financial Management Act, 2004.....	46
3.10 Privatisation Act, 2005.....	47
3.11 Conclusion.....	47
CHAPTER FOUR	
4.0 The Institutional Framework to fight corruption in Kenya.....	48
4.1 Introduction.....	48
4.2 The Executive.....	48
4.3 The Parliament.....	49
4.4 Kenya Anti-Corruption Commission.....	51
4.5 The Police.....	53
4.6 The Judiciary.....	53
4.7 The Attorney General.....	55
4.8 The Controller and Auditor General.....	57
4.8.1 Functions of Controller and Auditor General.....	57
4.8.2 Weaknesses that limit the role of Controller and Auditor General.....	57
4.9 National Anti-Corruption Campaign Steering Committee.....	58
4.10 Public Complaints Standing Committee.....	59
4.11 Public Procurement Oversight Authority.....	59
4.11.1 Functions of Public Procurement Oversight Authority.....	60
4.11.2 Powers conferred on Public Procurement Oversight Authority.....	60
4.12 Other informal institutions and organizations.....	61
4.12.1 The Media.....	61
4.12.2 Civil Society and Non-Governmental organizations.....	62
4.12.3 Religious/Faith Based Groups.....	62
4.12 Conclusion.....	62
CHAPTER FIVE	
5.0 Conclusion and Recommendations.....	64
5.1 Conclusion.....	64
5.2 Recommendations.....	66
5.2.1 Recommendation on Policy Framework.....	66

5.2.2 Recommendations on Legal Framework.....	67
5.2.3 Recommendations on Institutional Framework.....	68
Bibliography.....	70

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background to the study

Corruption is a disease, a cancer that eats into the cultural, political and economic fabric of society, and destroys the functioning of vital organs. It is one of the greatest challenges of the contemporary world. It undermines good governance, distorts public policy, leads to misallocation of resources, harms development and particularly hurts the poor.¹

From independence to date the issue of corruption has always been highlighted in Kenya by watchdog institutions, politicians and the media. Legislation and institutions have been set up to tackle the vice; however, eradication of the vice has remained an illusion.

Corruption continues to be a serious governance issue in Kenya and global corruption reports reveals that Kenya is still among the leading countries in corruption in the world and efforts by the government to combat the vice are generally perceived as ineffective². Despite enactment of the Anti-corruption legislation and establishment of the relevant institutions to combat corruption in Kenya, a comprehensive attack on the vice remains elusive. From a legal perspective, the following questions emerge as deserving answers: Is there something inherently wrong with anti-corruption legislation that creates or leaves room in the fight against corruption? Is there a problem with the institutional arrangements and enforcement mechanisms, why has the vice continued to be persistent despite the various attempts to eliminate it? These questions deserve elaborate academic inquiry to inform the subject of the study.

This study therefore seeks to investigate the efficacy of the policy, legal and institutional frameworks to fight corruption in Kenya.

¹ Transparency international Report 15th December 1998

² Transparency International: Global Corruption Barometer,2009

1.2 Statement of the Problem

The concern for Kenya is to eradicate corruption which is an obstacle to economic development and prosperity. However, reports appearing in the media and those published by public and private bodies such as the Kenya Anti-Corruption Commission³, National Anti-Corruption Campaign Steering Committee, Transparency International⁴, and Centre for Law and Research International, among others, continuously indicate that corruption still exist in Kenya and afflicts key government departments and the society as a whole despite the legislative and institutional structures put in place to tackle the vice.

In the year 2002 the government, created Ministry of Justice, National Cohesion and Constitutional Affairs⁵ which spearheaded a number of anti-corruption initiatives which included legislative and institutional reforms. The most notable of these measures was the enactment of the Public Officer Ethics Act, 2003 and Anti-Corruption and Economic Crimes Act, 2003.

Despite the legislative and institutional reforms, success in the fight against corruption has remained minimal⁶. There is no national anti-corruption policy to provide a clear roadmap in the fight against corruption. Institutions tasked to fight corruption have been perceived to be ineffective with bodies such as Kenya Anti-Corruption Commission (KACC) continuously expressing lack of ‘teeth’ to bite due to lack of prosecutorial powers and flaws/gaps in the Anti-Corruption and Economic Crimes Act (ACECA) and other related legislation. The situation is further worsened by disharmony among the various institutions charged with the task of fighting corruption. The overall result is that the fight against corruption has not been won

³ Kenya Anti-corruption Commission; National Corruption Perception Survey 2008 p13: Survey findings indicate that the level of corruption has increased when compared to the 2007 and 2006 survey findings 66.7% of the respondents in the 2008 survey felt that the level of corruption is very high as compared to 47.9% and 48% of respondents who indicated that the levels of corruption was very high in 2007 and 2006 respectively.

⁴ Transparency International Kenya: The East Africa Bribery Index,2009 pg11 ;The survey revealed that the overall level of corruption as reflected by the proportion of East Africans from whom a bribe was solicited or expected during service interaction stood at 34.6% for Uganda,17% for Tanzania and 45% in Kenya.

⁵ Renamed Ministry of Justice, National Cohesion and Constitutional Affairs in 2008

⁶ Supra footnote no.4

despite the initiatives and resources put in place to combat the vice. Some of the major corruption scandals in Kenya such as Anglo-leasing and Goldenberg remain unresolved to date. The persistent problem of corruption in Kenya therefore calls for re-examination of policy, legal and institutional frameworks in Kenya to fight corruption.

1.3 Objective of the Study

The broad objective of the study is to examine the efficacy of the existing policy, legal and institutional frameworks to fight corruption in Kenya, with the overall aim of making recommendation for improvement and or intervention.

The specific objectives of the study are:

- a) To analyze the existing policy, legal and institutional frameworks to fight corruption in Kenya.
- b) To identify and analyse the gaps/flaws in the existing policy, legal and institutional frameworks to fight corruption in Kenya.
- c) To make recommendations for policy, legislative and institutional reforms based on the findings.

1.4 Justification of the Study

The justification for this study is based on the fact that corruption as a vice has impacted negatively on the socio-economic and political lives of Kenyans despite the fact that there are legal and institutional structures in place to tackle the same. An assessment of the efficacy of the existing policy, legal and institutional structures in combating corruption is therefore a major justification for this study. The study is also crucial in identifying the gaps and making the necessary recommendations for legal reforms.

1.5 Theoretical and conceptual framework

Definition of Corruption

The term 'corruption' is widely used in literature as well as day-to-day context. There is no precise definition of corruption which applies to all forms, types and degrees of corruption, or which would be accepted universally as covering all acts, which are considered in every jurisdiction as constituting corruption. The word 'corruption' is derived from Latin word 'corruptus' meaning to break. Its derivation emphasizes the destructive effect of corruption on the fabric of society and the fact that its popular meaning encompasses all those situations where agents and public officials break the confidence entrusted to them⁷.

Black's Law Dictionary, defines corruption as "The act of an official or fiduciary person who unlawfully or wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."⁸ In the definition corruption is perceived as misuse of authority for ones benefit or for another person.

Apart from the dictionary definitions of the word corruption, there are what can be generally described as contemporary social science approaches to the phenomenon of corruption. A.J.Heidenheimer⁹ identifies usages that seek to define corruption in terms of two basic models or concepts. He notes that the majority of social science writers base their definitions of corruption on concepts relating to the public office or public interest while others have developed definitions mainly related to demand and supply arguments derived from classical economic theory. J.S.Nye¹⁰ defines corruption in the broader and more operational sense as that 'behavior which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise

⁷ Colin Nicholls, Tim Daniel (et al): Corruption and misuse of public office. Oxford University, Press,2006 pg 1

⁸ Black,H.C. and Garner,B.A (eds),.Black's Law Dictionary,7th edition, West Group publishing, 2000

⁹ A.J.Heidenheimer (ed):political corruption: Readings in Comparative Analysis, New Brunswick:Transaction Books,1978,at 4-6

¹⁰ J.S.Nye ;'Corruption and Political Development: A Cost-Benefit Analysis', American Political Science Review,LX 1,No.2(June 1967), at 416

of certain types of private reading influence. World Bank defines corruption as ‘The abuse of power for personal gain or for the benefit of a group to which one owes allegiance’¹¹

The United Nations Convention against Corruption (UNCAC) does not define corruption. The Convention has taken the approach that a comprehensive definition of corruption was neither necessary nor feasible. Corruption is a fluid concept, signifying different things to different people. More importantly, it is an evolving concept. The Convention is designed to function in a global environment and is geared towards the future. In light of those objectives, and in view of the multifaceted nature of the phenomenon and the consequent difficulty of constructing a legal definition, the Convention adopted a descriptive approach, covering various forms of corruption that exist now, but also enabling States to deal with other forms that may emerge. It requires each state party to adopt legal measures to establish certain criminal offences, including bribery, embezzlement, misappropriation or other diversion of property by public officials, trading in influence, abuse of functions, illicit enrichment, and bribery in the private sector.¹²

As the debate on corruption evolved in the nineties, anew common definition emerged and corruption was then defined as “as an abuse of power by a public official for private gain. The weakness of how corruption was defined in the nineties is that not all corruption necessarily emanates from the abuse of public office. As the concept of corruption continued to develop, definitions gradually changed and shifted emphasis to the abuse of offices of trust, thereby including the public, private as well as the non-governmental sector.”¹³

In all the definitions of corruption given so far, it can be said that corruption is seen as among others, the abuse of public office, abuse of all offices of trust, misappropriation, and private gain among others and can only be defined by its elements and not by conclusive definition.

¹¹ Economic Development Institute of the World Bank, curbing Corruption, Washington, DC; World Bank, 1999.

¹² United Nations Convention against Corruption: article 13-31

¹³ Supra footnote no. 10

Corruption as defined in Kenya

In Kenya corruption can be well understood from the legal perspective where various acts that constitute corruption are provided. The legal regime on corruption in Kenya is contained in various Acts of parliament, the principal law being the Anti-Corruption and Economic Crimes Act,(ACECA)¹⁴ in this legislation, corruption has been given a much wider and an all-encompassing definition. Under the Act, corruption means any of the offences listed or referred to under section 2(1) (a) to (g).Section 2 (1) (a) states that corruption is an offence under sections 39, 44, 46 and 47 of the Act.¹⁵

Other offences that amount to corruption under section 2(1) (b) to (g) are; bribery, fraud, embezzlement or misappropriation of public funds, abuse of office breach of trust, dishonesty in connection with taxation or election to public office.

The Act also makes reference to economic crime. According to section 2 of ACECA, 'economic crime' means (a) an offence under section 45¹⁶; or (b) an offence dishonesty under any written law providing for the maintenance or protection of public revenue. Analysis of economic crime shows that it focuses on fraudulent acquisition of public revenue and property as opposed to other corruption offences. The definition under ACECA shows that corruption is multi-faceted and the statutory definition embraces many ingredients of corruption. From the various definitions rendered, the bottom line, irreducible minimum, appears to be that corruption is abuse of position of trust for private gain.

¹⁴ Ant-Corruption and Economic Crimes Act,2003,S.2

¹⁵Under Sec.39 offences include favouratism or discrimination, receiving rewards or inducement in order to show favouratism, soliciting, accepting to receive an inducement or reward to show favouratism.Offnces under other various provisions include; sec 40 secret inducement for advice, section 41 deceiving principal, section 42 conflict of interest, section 43 improper benefits to trustees for appointment, section 44 Bid rigging, section 46 abuse of office and section 47 dealing with suspect property.

¹⁶ Under section 45 offences include; fraudulent acquisition of public property, service or benefit, disposal of public property,damge of public property, failure to pay taxes ,levies due to public body, making payments for substandard or defective goods or goods not supplied failure to comply with applicable procedures and guidelines relating to procurement,allocation,sale of public property, tendering of contracts and management of funds or incurring expenditure and engaging in a project without prior planning.

Theories on corruption

Scholars studying the subject of corruption have come up with social, economic and political theories about corruption. Two theories stand out significantly in explaining the legal and institutional framework on corruption. These are Economic theory postulated by Rose-Ackerman¹⁷, Shleifer, Vishny¹⁸ and Mauro¹⁹ and Dominant institutional theory by Rose Ackerman.

Economic Theory

The theory considers corruption as behavioral phenomenon occurring between the state and the market domains, or a symptom of dysfunctional governance within the public sector. Economic theory assumes that people and firms respond to incentives by taking into account the probability of apprehension and conviction, and severity of punishment. The theory takes cognizance that ethical attitudes matter and the “temptation threshold” is subject to individual’s moral foundation. The theory stress that, to a lesser or greater degree, people respond to incentives and that changes in corrupt activities occur if the marginal returns from crime exceed the marginal returns from legal occupation by more than the expected value of the penalty. This theory is focuses on behaviour, benefits obtained and the penalty and is relevant in analysis of anti-corruption law and penalty as deterrence to corruption.

The Dominant Institutional Theory

The dominant theory postulated uses institutional analysis to demonstrate the incentives of institutional actors engaging in corrupt behaviour, which is normally a violation of institutional or legal rules. The theory posits that individual officials are rational actors pursuing utility maximization. The decision to engage in corruption to use public resources for private benefit assumes that officials conduct a cost-benefit analysis and find the benefits of corruption to outweigh the costs.

¹⁷ Rose Ackerman, *Corruption: study in Political Economy*, New York: Academic Press, 1978 pp 111-118

¹⁸ Shleifer, and Vishny : *Corruption and Growth*, *Quarterly Journal of economics*, 110, 1995:681-711

¹⁹ Mauro, Paulo, : *Corruption and Growth*, *Quarterly Journal of Economics*, 110, 1995:681-711

The preferences of the officials are utility maximization wealth or political power in most instances. The institutions such as the judiciary structure the costs and benefits to shape the behaviour of the officials, where the benefits are utility maximization and the costs are punishment. If an official is a utility-maximizer and the institutions set the costs of corruption too low (that is likelihood of getting caught and punished is low), the predicted outcome is corrupt behaviour on the part of the official. This account places substantial weight on the ability of institutions to change preferences, or in some cases even establishing them through the institutional incentive structure.

Analysis of the theory leads to the conclusion that mechanisms that increase accountability, either by encouraging punishment of corrupt individuals or by reducing the informational problem related to the government activities, tend to reduce the incidence of corruption. This theory suggests that simply raising the costs of corruption will decrease its occurrence. Therefore, by increasing the rule of law by the creation and enforcement of ant-corruption legislation the cost of corruption are dramatically increased. Thus the relationship between adherence to law and levels of corruption is an inverse relationship: as rule of law measures increase, corruption levels should decrease.

The two theories are relevant in assessing whether the legal and institutional framework in Kenya raise the cost of corruption which leads to decrease in occurrence or otherwise.

1.6 Literature Review

This study does not claim pioneer authorship on subject of corruption. The subject of corruption has been addressed in legal and other social science literature. Consequently the study has been inspired and shall be enriched by a number of writings in this area. For purpose of this study literature review is more biased towards policy, legal and institutional arrangements for combating corruption being the core of the study.

At the global level, the United Nations Convention against Corruption, 2003²⁰ lays a global framework in the fight against corruption. The Convention provides for prevention²¹, criminalization²², international cooperation²³ and asset recovery²⁴ in corruption matters. The instrument provides a general framework on strategy in the fight against corruption, corruption offences, legal and institutional framework required to be put in place by State parties. Kenya having ratified the convention on 12th December, 2003 and domesticated the instrument by enactment of Anti-Corruption and Economic crimes Act,2003 and Public Officer Ethics Act,2003 a scrutiny of the legal and institutional framework can not be complete without the highlights of the Convention. The instrument is therefore a benchmark for assessing the anti-corruption policy, legislation and institutions in Kenya which is the subject of this study.

At the National level, Economic Recovery Strategy for Wealth and Employment Creation (ERS) ²⁵ which was the first National Rainbow Coalition (NARC) government's blueprint document that spelt out various strategies that the government adopted in revamping the economy. One of the pillars of ERS was improvement of governance institutions with specific emphasis to fighting corruption. Measures taken under governance was the creation of the Ministry of Justice and Constitutional

²⁰ United Nation Convention against Corruption,2003(UNCAC)

²¹ Article 5 of the United Nations Convention against Corruption enjoins each State Party to establish and promote effective practices aimed at prevention of corruption. These include model preventive policies, such as establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties. Active involvement of non-governmental, community based organizations and civil society organizations to raise public awareness on corruption.

²² Article 7 of the UN Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. The convention criminalizes not only basic forms of corruption such as bribery and embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption.

²³ Article 43 state parties are bound by the convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders and to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption. Article 43 obliges state parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention.

²⁴ Article 51 provides for the returns of assets to countries of origin as a fundamental principle of the Convention

²⁵ Economic Recovery for Wealth and Employment Creation (ERS) 2003-2007, Government of the Republic of Kenya,2003

Affairs, the enactment of two key pieces of legislation; The Anti-Corruption and Economic Crimes Act,2003 which created the Kenya Anti-Corruption Commission with responsibility to investigate corruption and economic crime. And the Public Officer Ethics Act which provides for codes of conduct for all public officers and compels all officers to declare their wealth including that of their spouses and children. The ERS which came to an end in December, 2007.It is an important literature on the strategies in the fight against corruption in particular when examining the policy, legal and institutional frameworks for anti-corruption in Kenya.

Still at the national level, Kenya²⁶ Vision 2030 document has outlined the long-term national planning strategy with broad goals on economic, social and political pillars which the government intends to implement. The Vision 2030 blue print is motivated by a collective aspiration of a better society by the year 2030.The Vision 2030 was developed to guide national development after Economic Strategy for Wealth and Employment Creation (ERS)(2003-07) came to an end in December,2007.In the Medium Term Plan (MTP)(2008-2012) in particular the thematic area of transparency and accountability, the goals set out by the government are to enact and put into operation all the necessary policy, legal and institutional reforms needed to strengthen public transparency and accountability. The Vision 2030 therefore, provides a basis for the desired policy, legal and institutional frameworks in the fight against corruption in Kenya and is a vital literature for this study. Assessment of policy, legal and institutional frameworks will therefore demonstrate whether the existing legislation and institutions have achieved the intended objectives or not. The recommendations from the current study will therefore enrich Vision 2030 particularly in the area of transparency and accountability.

Other authors have also carried out research on corruption Mullei²⁷ has discussed the definition of corruption, forms and causes of corruption. The author has further

²⁶ Kenya Vision 2030 and First Medium Term Plan (2008-2012),Government of the Republic of Kenya,2007

²⁷ Mullei,A, (Eds) :The Link Between Corruption and Poverty: Lessons from Kenya Case Studies. Nairobi: African Centre for Economic Growth,2000

demonstrated the link between corruption and poverty, corruption in public procurement, tax system and the role of Kenya Ant-corruption Authority (KACA) in the fight against corruption. This study provides a useful literature in understanding the phenomenon of corruption in general and relation to poverty, procurement and tax system. The role of KACA is also highlighted which throws light on nature and mandate of the institutions that have been previously set up to combat corruption. The book was published in 2000 and since then, there have been changes in the legal and institutional framework which this study will address.

Authors such as Rose Ackerman²⁸, Shleifer and Vishny,²⁹ and Mauro³⁰ have advanced economic approach in explaining corruption. In their studies, corruption is considered to be behavioral phenomenon occurring between the state and the market domains. In their Economic theory they argue that people and firms respond to incentives by taking into account the probability of apprehension and conviction, and severity of punishment. The theory stress that, to a lesser or greater degree, people respond to incentives and that changes in corrupt activities occur if the marginal returns from crime exceed the marginal returns from legal occupation by more than the expected value of the penalty. This theory is focused on behaviour, benefits obtained and the penalty and is relevant in analysis of whether anti-corruption law and penalty can deter corruption or not. Further, Rose Ackerman has advanced Dominant Institutional Theory to explain the nature of corruption. She posits that rational, self interested individuals react to institutional incentives when making decisions. If the institution structures the incentives so that the benefits of corruption, wealth/power maximization, outweigh the cost of corruption, namely punishment, individual will commit corrupt acts. In short, corruption is caused by an institutional incentive structure that does not have high enough costs of corruption. Therefore, to inhibit corruption, governments simply need to increase the cost that is the likelihood of being caught and punished. This theory analyses corruption through the institutional approach. The two theories therefore analyses corruption from the

²⁸ Supra footnote no.17

²⁹ Supra footnote no.18

³⁰ Supra footnote no.19

benefits and punishment perspectives and are relevant to this study which seeks to analyse the legal and institutional structures in place to fight corruption.

Amundsen³¹ analyses definitions and concepts of corruption. He has classified various forms of corruption and defines corruption as state society relationship and distinguished between political and bureaucratic corruption. This literature is crucial in analysis of the concept of corruption in abroad perspective.

Kivutha, K (etal)³² discusses legal, political and socioeconomic perspectives of corruption. The study focuses on the efforts that have been made to curb the spread of corruption. The publication can be said to be a pioneer work in the arena of anti-corruption in Kenya. The book examines the definition of corruption, the legal and institutional structures in place to fight corruption. Specifically it has discussed the prevention of corruption Act, Cap 65(Repealed) and the jurisprudence developed in the application of the said law. The study concludes that there is no co-coordinated and scientific programme put in place by the government to tackle corruption. This study provides a good background for the current study which seeks to assess the existing policy, legal and institutional frameworks. The study was conducted in 1996 and since then, there have been changes in anti-corruption legislation and structures established to tackle corruption.

Sihanya³³ provide a critical intellectual appraisal of the legal and political dimension informing the fight against corruption. The book analyses key development in the fight against corruption legal-political context in four years- the two final years of Kenya African Union (KANU) rule(2001 and 2002) and two under the National Rainbow Coalition (NARC) administration (2003 and 2004).The book also interrogates the necessity and efficacy of a multiplicity of anti-corruption institutions. This study provides a useful guide for the current study. The study was conducted in

³¹Amundsen Inge: Research Paper on Definitions and Concepts;Michelsen Institute Development Studies and Human Rights,January,2002

³² Kivutha Kibwana,Smokin Wanjala and Okech Owiti (Eds):The Anatomy of Corruption in Kenya: Legal, Political and Socio-economic Perspectives, Claripress, Nairobi, 1996

³³ Sihanya B, (Eds): Control of Corruption in Kenya: Legal- Political Dimension 2001-2004 Nairobi.Claripress,2005

2004 and since then there have been some new developments in anti-corruption legislation and initiatives in the fight against corruption which the current study will address.

Chweya Ludeki³⁴ has explained irregularity in the Kenyan bureaucracy from the standpoint of the degree of relative mutual autonomy between the legislature and the executive. This has been illustrated by examples of the Goldenberg and Anglo-leasing Affair to demonstrate the strengths and weaknesses of the legislature in the control of the executive. This literature is crucial in examining the oversight role of parliament vis-à-vis the executive in the fight against corruption.

Musili Wambua³⁵ has critically analyzed emerging anti-corruption jurisprudence in Kenyan Courts. He concludes that courts in Kenya have given anti-corruption laws and the constitution a literal interpretation without any regard to the spirit of the law or the 'mischief' the enactments were intended to address. Consequently the process of bringing to justice many suspects of corruption and economic crimes and recovery of public funds has been disrupted. This literature is important since the current study will find out whether what has been found by this author about the courts the courts have changed or not.

Centre for Law and research international³⁶, has highlighted a preliminary outline of anti-corruption initiatives which were being implemented in the year 2001 the report has analyzed the Kenya anti-Corruption Authority and anti-corruption oversight watchdogs such as the parliamentary select committee on corruption, Public accounts Committee and Public Investments committee reports and prosecution by the Attorney General. Although it worth noting that since the publication there have been several changes in the legal and institutional framework on anti-corruption, the

³⁴ Ludeki Chweya (Eds): *The Legislature and the Executive: Mutual Control or Executive Dominance?* Chapter in *The Conduct of Public Service in Kenya*. Claripress, Nairobi, 2008

³⁵ P. Musili Wambua: *Emerging Jurisprudence in the control of irregularities*: Chapter in *The Conduct of Public Service in Kenya*.

³⁶ Centre for Law and Research : *Kenya State of Corruption Report Issue No.1*, Claripress, Nairobi, 2001 p. 6

publication provides a useful insight on the legal and institutional framework in the fight against corruption in Kenya.

Odhiambo³⁷ in their critique of the National Rainbow Coalition Regime (NARC) and Corruption have highlighted the anti-corruption institutions focusing on the war against corruption. The authors opine that the anti-corruption organs and laws are capable of becoming very effective, given the right leadership, adequate human material resources and sufficient operating space. Though this publication was made in 2004 and since then there have been legal and institutional reforms, this literature provides a good basis for assessing the legal and institutional framework that are currently in place.

Ojienda³⁸ analyses various aspects of corruption and diverse approaches against it. Contributions have been made in this book by other authors on; fighting corruption in Kenya in the context of institutional history, legal framework, challenges and expectations. The book therefore, is a good literature that will enrich the current study.

Osogo³⁹ has analyzed corruption in the Constituency Development Fund (CDF) and initiatives taken by the government in combating corruption since, 2002 such as the enactment of the Anti-Corruption and Economic crimes Act (ACECA), Public officer Ethics Act (POEA), and the Public Procurement and Disposal Act, establishment of Kenya Anti –corruption Commission and the National Anti-Corruption Steering Committee. The authors reiterate that despite these initiatives, corruption persists in Kenya with adverse political, economic and social effects on society. The authors have confined their study to the Constituency Development Act and have not analyzed the existing Anti-corruption law or institutions. Despite that omission, this

³⁷ Morris Odhiambo and Winnie Mitullah (Eds): Kenya State of Corruption Report Issue No.11, Claripress, Nairobi, 2004 p. 9

³⁸ Tom O.Ojienda (ed): Anti-Corruption and good governance in East Africa: Laying foundation for reform, Nairobi, LawAfrica, 2007

³⁹ Osogo Ambani and Gerald Wahome: Kenya State of Corruption Report Issue No.14, Claripress, Nairobi, 2007 p. 10

literature is important as it provides a basis for assessing the existing legal and institutional framework in Kenya today.

United Nations Development Programme (UNDP)⁴⁰ comparative study on institutional arrangements to combat corruption provides options on how to design institutional framework that supports implementation of national anti-corruption programmes. The study indicates that most of the Anti-Corruption Agencies apply three pronged strategy of prevention, investigation and education. The study recommends institutional reforms to be considered to strengthen enforcement of Anti-corruption initiatives. The study has highlighted different modalities used in different countries like Australia, Hong Kong, Singapore, Indonesia, Nigeria, Botswana and Tanzania. The study provides a useful overview of different modalities used in different countries, and thus offers a menu of options and solutions for other countries. The institutional arrangements in other countries are important as benchmarks or best practices that can be emulated by Kenya. This study is important as it will enrich on the recommendations on institutional reforms for the present study.

Centre for Democracy and Governance⁴¹ sets out root causes of corruption and identifies range of institutional and societal reforms for anti-corruption. Some of the institutional and legal reforms such as freedom of information legislation, financial disclosure laws, legislative oversights and judicial reforms. This literature highlights the necessary institutional and legal reforms that are necessary to tackle corruption. This study will enrich the current study in terms of recommendations to be made on the legal and institutional framework.

Odhiambo⁴² has analyzed public service accountability and governance in Kenya since independence. The author notes that in Kenya the level of accountability in the

⁴⁰ United Nations Development Programme: Institutional Arrangements to Combat Corruption: Comparative Study, 2005 page 11

⁴¹ Centre for Democracy and Governance: Handbook on fighting Corruption, Technical publication Series, 1999

⁴² Odhiambo, Mbai :Public Service Accountability and Governance in Kenya since independence; African Journal of Political Science (2003), Vol.8.No.1 pg 1

management of public affairs has consistently declined since independence. This is in spite of various legal instruments and watchdog institutions such as the anti-corruption police unit, the judiciary, and the police which are established to regulate and monitor ethical conduct of public officials. The author recommends that there is need to strengthen the watchdog institutions and establishment of National Codes of Ethics, independent anti-corruption body. This literature is important because some of the recommendations made have been implemented. The question posed is that have those changes enhanced accountability? This literature provides a basis for assessing the current policy, legal and institutional framework which is in place. The study also helps to gauge whether there is enhanced accountability in the public service or not.

The Annual Reports⁴³ by the Kenya Anti-Corruption commission have also shown how Kenya Anti-Corruption Commission has carried out its mandate of investigation, advisory and education. The reports on activities or programmes provide a basis for assessing the fight against corruption in Kenya. The reports therefore, provide a rich literature for assessing the enforcement of the Anti-corruption legislation and performance of KACC as the lead institutions tasked to fight corruption. The literature will inform the current study on the recommendations required to effectively tackle corruption.

Nicholls⁴⁴ provide comprehensive and a detailed analysis of the law on the Anti-Terrorism, Crime and Security Act 2001 and the Proceeds of Crime Act 2002, which extend United Kingdom (UK) jurisdiction to corruption offences, committed abroad by UK nationals and incorporated bodies, and strengthen the mechanisms to recover assets and wealth obtained as a result of unlawful activity. The book examines the legal and practical issues relating to the investigation and prosecution of corruption, providing a guide to handling corruption case, including the coverage of international

⁴³ Kenya Anti-Corruption Commission: Annual Reports for the Financial Years 2004/05,2005/06,2006/07 and 2007/08

⁴⁴ Nicholls, Colin, John Hartchard, Martin Polaine, Timothy D.: Corruption and Misuse of Public Office. Oxford University Press. 2006

efforts to combat corruption. However, the book has dwelt on the UK situation which can be emulated by Kenya as a best practice in tackling corruption.

Manion⁴⁵ in an analytically rigorous book, contrasts experiences of mainland China and Hong Kong to explore the pressing question of how governments can transform a culture of widespread corruption to one of clean government. The book examines Hong Kong as the best example of the possibility of reform. Within a few years it achieved a spectacularly successful conversion to clean government. Mainland China illustrates the difficulty of reform. Despite more than two decades of anticorruption reform, corruption in China continues to spread essentially unabated. The author argues that where corruption is already commonplace, the context in which officials and ordinary citizens make choices to transact corruptly (or not) is crucially different from that in which corrupt practices are uncommon. A central feature of this difference is the role of beliefs about the prevalence of corruption and the reliability of government as an enforcer of rules ostensibly constraining official venality. The book explores differences in institutional design choices about anticorruption agencies, appropriate incentive structures, and underlying constitutional designs that contribute to the disparate outcomes in Hong Kong and mainland China. The book provides comprehensive comparative initiatives on fighting corruption that Kenya can emulate.

Other unpublished dissertations have also covered the subject of corruption for instance Kahiu Mbugua⁴⁶ has examined Prevention of corruption Act in light of its inability to stem out corruption; though the said legislation has been repealed the research is crucial as basis for assessing the current legal and institutional structures in place to combat corruption. Kagio⁴⁷ has carried out a study on judiciary and corruption. The study focused on the judiciary as an institution and highlighted areas of corruption. The study was conducted in 1999 and since then there has been changes in law and several reforms have taken place which the current study will

⁴⁵ Manion, Melanie. *Corruption by Design: Building Clean Government in Mainland China and Hong Kong*. Oxford University Press, 2004

⁴⁶ Kahiu Mbugua: *Prevention of Corruption Act: A Horse Without a Rider* LLB Dissertation, unpublished, University of Nairobi, 1981

⁴⁷ Kagio: *The Judiciary and Corruption* LLB Dissertation, unpublished, University of Nairobi, 1999

demonstrate. Musyimi⁴⁸ has focused his study on corruption in the Civil Service. This is one of the key target areas in the fight against corruption. The study was conducted in the year 2006 and since then there have been several reforms in the Civil Service to enhance transparency and accountability which were not there at the time the study was conducted. The current study will point out the key reforms that have been instituted in the civil service to combat corruption. Matagaro⁴⁹ has conducted his study Anti Corruption and public officer Ethics Act. He has examined the various provisions of the penal code, the Election offences Act, Anti-Corruption and Economic Crimes Act and the Public officer Ethics Act, 2003 and highlighted inadequacies in the said pieces of legislation. The study was conducted in 2003 this was the time the two legislation Anti-Corruption and Economic crimes Act, and Public officer Ethics Act had just come into force and had not been fully implemented, since then there have been several amendments to the Anti-Corruption and Economic Crimes Act,2003 and reforms. From the review of dissertations, it is noted that researches on this subject have covered only a specific institution or aspect of the anti-corruption law whereas there have been continuous changes in the law and the institutions. The current study will examine the current state of the law on anti-corruption, policy and the institutional frameworks. From literature review, it is apparent that this study will add knowledge and update the existing literature in the subject under study.

⁴⁸ Musyimi: Corruption in the Civil Service LLB Dissertation ,unpublished, University of Nairobi, ,2006

⁴⁹ Matagaro L.K :The Anti-Corruption and Public Officer Ethics Act; A remedy or Fantasy: LLB Dissertation, Unpublished, University of Nairobi, ,2003

1.7 Hypotheses

The following hypotheses are to be tested:

- 1) If strong policy, legal and institutional frameworks are prerequisite for tackling corruption, then the current policy, legal and institutional frameworks in Kenya are ineffective in combating corruption.
- 2) Corruption in Kenya is a manifestation of policy, institutional and legislative failures.
- 3) Failure to effectively tackle corruption has been associated with weak legislative and institutional frameworks.

1.8 Research Questions

In this research the following key questions are posed:

- a) Which policies, law(s) and institutions are in place to tackle corruption?
- b) Are the existing policies, law(s) and institutions effective in tackling corruption? If not, what reforms are necessary?

1.9 Research Methodology

The study relies significantly on secondary data. This data is gathered from library based materials such as books, articles, published journals, statutes, case law, internet, international and domestic instruments. Other sources include media publications such as newspapers. The data will be analyzed through description.

10.0 Limitations of the Study

Factors such as socio-cultural, economic and political considerations have a bearing on corruption and the fight against corruption. Some of these factors such as political goodwill are non-legal and are therefore outside the scope of this study. The method of data collection is also limited to desk research as opposed to field work on grounds of time available and the cost element.

11.0 Chapter Breakdown

The study is divided into introduction and two substantive chapters and a chapter on conclusion and recommendations. A breakdown of what each of these chapters contain is as follows:

Chapter one: Introduction

The introduction outlines the research project. This is necessary to provide an overview at a glance, of the essence of the research. It covers background to research, statement of the problem, objectives of the research, justification, hypothesis, research questions sought to be answered, methodology to be used ,limitations of the study, theoretical and conceptual framework, literature review and chapter breakdown.

Chapter two: The Policy framework for anti-corruption in Kenya

In this chapter policy framework on anti-corruption in Kenya will be examined and appropriate recommendations made based on the findings.

Chapter three: The Legal Framework to fight corruption in Kenya

This chapter will cover an assessment of the laws in place to fight corruption and offer an analysis of their strengths and weaknesses. Pieces of legislation relating to corruption will be examined to find out whether they have served the purpose for which they were intended.

Chapter Four: The Institutional Framework to fight corruption in Kenya

In this chapter various institutions/agencies (formal and informal) dealing with corruption will be examined .Assessment will be made on their mandates, where they are domiciled, and whether there is harmony, duplicity or overlap in their functions.

Chapter Five : Conclusion and Recommendations

This chapter shall be divided into two parts, the conclusion and recommendations. The conclusion shall test whether the hypotheses of the study and research questions have been answered or otherwise. The recommendations will delve into policy, legislative and institutional reforms, if any that are necessary to combat corruption in Kenya.

CHAPTER TWO

2.0 THE POLICY FRAMEWORK FOR ANTI-CORRUPTION IN KENYA

2.1 Introduction

In this chapter the policy framework for anti- corruption will be examined. Sound policy framework promotes sustainable and coordinated approach in the fight against corruption. The policy helps to lay strong legal and institutional frameworks in tackling corruption. Questions to be addressed in this chapter are; Is there an anti-Corruption Policy and strategy for its achievement? Are the laws being legislated by parliament in pursuance of enforcing that policy? If yes, where is the policy to be found and how is it being implemented? It is important to understand policy at this juncture before addressing the questions posed.

2.2 Definition of policy

The term “policy” is subject to variation in meaning and usage in different context. As encapsulated in the metaphor, “policy is rather like an elephant you can recognize it when you see it, but can not easily define it”⁵⁰. Concise Oxford dictionary⁵¹ defines policy as course or principle of action adopted or proposed by a government, party, business, individual or prudent conduct, or sagacity. The definition suggests that ‘policy’ is a wise course of action. Birkland⁵² defines a policy as a statement by a government of what it intends to do or not to do, such as law, regulation, decision or order or a combination of these. The lack of such statement may also be an implicit statement of policy. Jenkins⁵³ provides a useful definition that focuses on the instrumentality of policy and emphasizes that it should not merely be aspirational, but also within the control of those responsible for making policy. He defines policy as a set of interrelated decisions taken by a political actor or a group of actors concerning the selection of goals and the means of achieving them within a specified situation where these decisions should, in principle, be within power of these actors to achieve. From the definitions it can be said that policy is a set of principles and intentions used

⁵⁰ Thomas Birkland: An introduction to policy process: theories, concepts, and models of public policy making, Sarp. Inc. 2nd ed., 2005 p138

⁵¹ Concise Oxford dictionary 9th edition, Oxford University Press, 1995 pg 1057

⁵² Supra footnote 48 pg 138

⁵³ Jenkins, W :Policy Analysis; A political and Organizational Perspectives: London, Martin Robertson, 1978, pg 15

to guide decision making. Having looked at the definitions on policy, it is necessary to interrogate whether there is existing anti-corruption policy in Kenya.

2.2 Overview of the policy framework

Corruption has many faces and can occur in different forms across all sectors and institutions in Kenya. Hence, there is need for effective, coordinated anti-corruption policies to address the problem strategically. In Kenya there is no National Anti-Corruption Policy which sets out a comprehensive plan on how to tackle corruption. This lacuna has been admitted by the Minister for Justice, National Cohesion and Constitutional Affairs⁵⁴ who acknowledges that “one of the major lessons we have learnt from various good governance initiatives the government has put in place is that anti-corruption efforts and initiatives cannot exist in a policy vacuum. That is why my Ministry is working towards the formulation of a National Anti-Corruption policy, to mainstream the fight against corruption in the management of public affairs and resources and provide an enabling environment for operation of law enforcement agencies.” It is therefore apparent from the statement that in Kenya there is no anti-corruption policy. Countries such as Tanzania and Zambia⁵⁵ have developed anti-corruption policies.

However, despite the absence of national anti-Corruption policy, the government’s intention/expression to fight corruption can be inferred from various statements made by the Head of State for instance in his opening speech of the 9th parliament the president reaffirmed the government’s commitment to fight corruption when he stated that, “I reiterated some of our campaign promises during my inauguration speech. Today marks yet another step towards fulfilling these pledges. We reiterate our commitment towards creating a culture of zero tolerance to corruption in Kenya”⁵⁶ Other government commitments on anti-Corruption are found in the Economic Recovery Strategy for wealth and Employment Creation (ERS)2003-2007. Under ERS

⁵⁴ Keynote address by Hon. Mutula Kilonzo Minister for Justice, National Cohesion and Constitutional Affairs during the induction workshop for the members of the Kenya Anti-Corruption Advisory Board at the Great Rift Valley Lodge and Golf Resort Naivasha on 9th July, 2009 pg 7 accessed on 30.9.2009 at www.kacc.go.ke.

⁵⁵ Zambia National Anti-Corruption Policy launched on the 28th August 2009 www.scibd.com/Zambia-national-Anti-Corruption-Policy,2009

⁵⁶ President Mwai Kibaki’s speech during the State opening of the 9th Parliament, 18th February, 2003

anti-corruption objectives was “strengthening ethics, integrity and anti-corruption”. The specific targets set against this objective includes: Implementing provisions of the Economic Crimes Act; preparing a 5-year Anti-corruption strategy; organizing anti-corruption campaigns including stakeholders and community leaders, to provide autonomy from political interference to departments and institutions fighting corruption; identifying and prosecuting corruption cases and removing from office civil servants involved in corrupt activities⁵⁷. Vision 2030 documents under the pillar of ‘transparency and accountability’ the objective under this pillar is to have a transparent, accountable, ethical and result oriented government institutions. The goal for the 2012(mid term plan) is to enact and operationalise necessary policy, legal and institutional framework needed to strengthen public transparency and accountability. The specific strategies involve: strengthening the legal framework for ethics and integrity; promoting result based management within the public service; encouraging access to information and data; introducing civilian oversight around the key legal, justice and security institutions; and strengthening parliament’s legislative oversight capacity⁵⁸.

Both ERS and Vision 2030 have strategies for fighting corruption however, they are not comprehensive; there is no mention of harmonizing the legal and institutional frameworks. The Vision 2030 in its objectives among others indicates that there are plans to ‘enact and operationalise necessary policy’ this is an acknowledgment that there is no policy on anti-corruption.

2.3 Conclusion

In this chapter the anti-corruption policy framework in Kenya has been examined. From the discussions, it is has emerged that there is no policy on anti-corruption. Although, there have been a number of anti-corruption initiatives undertaken by the government, lack of sound policy framework has lead to disharmony not only among the institutions involved in the fight against corruption but is also on laws relating to corruption in Kenya.Hence, there is a compelling justification for a comprehensive

⁵⁷ End Term Review Economic recovery Strategy for wealth and employment creation (ERS)2003-2007.Government of the Republic of Kenya,2009 pg 158

⁵⁸ Supra footnote 26 pg18

anti-corruption policy. Having looked at the policy framework, the next chapter will delve on the relevant laws for combating corruption in Kenya.

CHAPTER THREE

3.0 THE LEGAL FRAMEWORK TO FIGHT CORRUPTION IN KENYA

3.1 Introduction

This chapter examines the laws in place in Kenya to combat corruption. Their strengths and weaknesses are also identified. The principal legislation enacted to combat corruption is; the Anti-Corruption and Economic Crimes Act, 2003. Other laws that have relevant provisions for anti-corruption are; Public Officer Ethics Act,2003, the Penal Code Cap.63 Laws of Kenya , Public Procurement and Disposal Act,2005, Public Audit Act,2005, Government Financial Management Act,2004, Privatization Act,2005, the Political Parties Act,2007 and Election Offences Act, Cap. 66 Laws of Kenya.

3.2 The Penal Code Cap 63

The penal code is the principal legislation prescribing crimes and their penalties. It provides for arrange of criminal offences that relate to misuse of office, theft by servants and fraud. The statute is therefore important in the fight against corruption.

3.2.1 Offences

The offences created by the Act includes; abuse of office, stealing by persons in the public service⁵⁹, fraudulent false accounting⁶⁰, conspiracy to defraud⁶¹, uttering false documents, and false statements by directors and officers of corporation or company and other related offences. The Statute⁶² specifically creates an offence of abuse of office which is a corruption offence under Anti-corruption and Economic Crimes Act⁶³ this is an offence that can be prosecuted under either of the statutes mentioned.

3.2.2 Weakness in the legislative framework of Cap.63

The apparent weakness in this statute is the definition of the offence of abuse of office which is narrow as compared to the definition provided in the Anti-Corruption and Economic Crimes Act. Under the Penal code, the offence of abuse of office is

⁵⁹ S.280 of the Penal Code Cap 63 Laws of Kenya

⁶⁰ Ibid s.330

⁶¹ Ibid s.317

⁶² Ibid s.101

⁶³ Section 46 of ACECA

committed ‘When any person, being employed in the public service, does or directs to be done, in abuse of authority of his office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour.’ The definition is not very clear on the nature of the arbitrary actions which are prejudicial to the rights of another person. Under Anti-Corruption and Economic Crimes Act ⁶⁴(ACECA), abuse of office is defined as “use of office to improperly confer a benefit to oneself or any one else”. The definition in ACECA is more comprehensive and clear. Lack of clarity in the offence under the Penal Code may lead to persons charged for abuse of office to go scot-free simply because of the ambiguity in definition of the offence. There is need to either harmonize the offences in both statute or repeal the same from the penal code. Despite the duplicity in the offence of abuse of office created under both laws, the Penal code is important in the fight against corruption in view of other several offences created under the said Act which is meant to safeguard private and public property.

3.3 Anti-Corruption and Economic Crimes Act, 2003(ACECA)

This is the principal legislation enacted to combat corruption in Kenya.

3.3.1 Purpose and scope of ACECA

The purpose of the Act is captured in its preamble as “an Act of parliament to provide for the prevention, investigation, and punishment of corruption, economic crime and related offences and for matters incidental thereto and connected therewith”

3.3.2 Bodies created

The Anti-Corruption Act creates a number of institutions which include; the Kenya Anti-Corruption Commission (KACC)⁶⁵; the Kenya Anti-Corruption Advisory Board⁶⁶; and the special magistrates⁶⁷ to try corruption and economic crimes cases.

⁶⁴ Ibid

⁶⁵ S.6 of ACECA

⁶⁶ Ibid s.16

⁶⁷ Ibid s.3

3.3.3 Definition of corruption and offences

Part I of the Anti-Corruption Act comprises definitions. The Act embodies a broad conception of corruption⁶⁸ viz. bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, and breach of trust or an offence involving dishonesty in connection with any tax, rate or impost levied under any Act. It extends to an offence involving dishonesty under any law relating to the election of persons to public office. The most notable aspect of this part is the distinction between corruption and economic crime. The latter is defined as an offence under section 45 or an offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue. Under section 45, it is an offence for a person, fraudulently or otherwise unlawfully (a) to acquire public property or a public service benefit; (b) to mortgage, charge or dispose of any public property; (c) to damage public property or (d) to fail to pay any taxes or any fees, levies or charges payable to any public body or effects or to obtain any exemption, remission, reduction or abatement from payment of any taxes, fees, levies or charges. Further, it is an offence under Section 45 for any officer or person involved in the administration, custody, maintenance, receipt or use of any part of the public revenue or public property to (a) fraudulently make payment or excessive payment from public revenues for substandard or defective goods, goods not supplied or not supplied in full or for services not rendered or not adequately rendered. It is an offence under Section 45 for a person involved in the administration, custody, maintenance, receipt or use of any part of the public revenue or public property to willfully or carelessly fail to comply with any law or applicable procurement procedures or any procedures or guidelines relating to the allocation, sale or disposal of public property, tendering of contracts, management of funds or incurring of expenditures. Lastly, it is an offence under Section 45 for a person involved in the administration, custody, maintenance, receipt or use of any part of the public revenue or public property to engage in a project without prior planning. Further S.47A creates offence of conspiracy or attempts to commit acts of corruption.

⁶⁸ Anti-Corruption & Economic Crimes Act, 2003 Section 2

It appears from the definition that not all acts of corruption involve economic crime. Equally, economic crime need not always involve or amount to corruption. However, for the most part, the consequences of corruption and economic crime are identical. Further, a particular act or omission may amount to both corruption and economic crime. Economic crime may arise from mere imprudence in the management of public property. Like corruption, economic crime invariably involves abuse of public office. However, unlike corruption, economic crime need not involve fraud or other improper motive on the part of the offender. Economic crime need not result in, nor be aimed at, any improper gain on the part of the offender. From the definition, corruption has been given a broad definition and has covered several offences.

3.3.4 Special Magistrates

Part II of the Anti-Corruption Act provides for appointment of special magistrates who are appointed by the Chief Justice. These magistrates have exclusive jurisdiction to try offences specified in the Act.⁶⁹ The special magistrates are obliged, as far as is practicable, to hold the trial of an offence under the Act on a day-to-day basis until completion. The existence and jurisdiction of special magistrates has been challenged in court. In *Prof. Julius Meme v. Republic & Others*,⁷⁰ the applicant was charged with two counts of abuse of office contrary to section 101(1) of the Penal Code. The Anti-Corruption Act had not come into force at the time of the institution of the charges. The charges were laid before the Anti-Corruption Court, which the Chief Justice had established administratively. When the Anti-Corruption Act came into force, the applicant filed a constitutional reference under section 67(1) of the Constitution of Kenya⁷¹ arguing, inter alia, that anti-corruption courts as well as anti-corruption magistrates were unknown to the law ultra vires the Constitution. Further, the applicant argued, the Anti-Corruption Act was unconstitutional in form and application. It was held, inter alia, that the question as to whether the Anti-Corruption Act was unconstitutional in form and application was misconceived as the Act had no relevance to the offence with which the applicant was charged. The charges against the applicant being in respect of section 101 of the Penal Code, stated

⁶⁹ Anti-Corruption & Economic Crimes Act, 2003 Sections 3-5

⁷⁰ High Court of Kenya (Nairobi) Misc. Criminal Application No. 495 of 2003

⁷¹ Chapter 63, Laws of Kenya

the court, had no relationship with the Anti-Corruption Act and therefore it was untenable for the applicant to impugn the Act.

The most notable provisions Part II of the Anti-Corruption Act relate to the procedures and powers of special magistrates. A special magistrate may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstance within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission of the offence. Such pardon, when so tendered, is deemed a pardon for purposes of section 77(6) of the Constitution of Kenya.

3.3.5 Kenya Anti-Corruption Commission (KACC)

Part III of the Anti-Corruption Act establishes the Kenya Anti-Corruption Commission (KACC) and the Kenya Anti-Corruption Advisory Board.

3.3.6 Mandate of KACC

The Kenya Anti-Corruption Commission is created as a body corporate and is mandated⁷² to investigate any matter that in its opinion raises suspicion that that conduct constituting corruption or economic crime, or conduct liable to allow, encourage or cause conduct constituting corruption or economic crime, has occurred or is about to occur. KACC may examine the practices and procedures of public bodies in order to facilitate the discovery of corruption practices and to secure the revision of methods of work or procedures that, in its opinion, may be conducive to corrupt practices.

KACC's function also includes educating the public on the dangers of corruption and economic crime, and enlisting public support in combating corruption and economic crime. The principal function of the Advisory Board is to advise KACC generally on the exercise of its powers and the performance of its functions under the Anti-Corruption Act.

Part IV of the Anti-Corruption Act deals with investigations. The Director or a person authorized by the Director may conduct an investigation on behalf of KACC. While conducting investigations, the Director or an investigator has the powers, privileges

⁷² Supra footnote no.68 s.7

and immunities of a police officer in addition to other powers under the Anti-Corruption Act.⁷³ KACC may by notice in writing require⁷⁴ a person reasonably suspected of corruption or economic crime to furnish within a reasonable time specified in the notice a written statement enumerating his property and the times at which it was acquired, and stating in relating to any property that was acquired at or about the time of the suspected corruption or economic crime. Failure or neglect to comply with the notice is an offence for which the suspect, if convicted, is liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both. The provision for these notices has been challenged to infringe section 77(7) of the Constitution of Kenya, which provides that no person who is tried for a criminal offence shall be compelled to give evidence at the trial. The said provision has been challenged as self incriminating which is contrary to the Constitution. In the case of Dr.Christopher Ndarathi Murungaru Vs Kenya Anti-Corruption Commission⁷⁵ the Court of Appeal granted the subject stay of enforcement of the notice pending the hearing of constitutional application by Dr.Murungaru on the violation of his fundamental rights.

3.3.7 Offences

Part V of the Anti-Corruption Act establishes a number of offences. These include bribing agents, secret inducements for advice, deceiving principal, conflict of interest, improper benefits to trustees for appointments, bid rigging, abuse of office and dealing with suspect property, attempts and conspiracies. A person convicted of an offence under this part is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both. A convict is liable to an additional mandatory fine if, as a result of the conduct constituting the offence, the he received a quantifiable benefit or any other person suffered a quantifiable loss.⁷⁶

The mandatory fine shall be equal to two times the amount of the benefit or loss. If the offence resulted in a benefit and loss, the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

⁷³ Anti-Corruption & Economic Crimes Act,2003 Sections 23-37

⁷⁴ Anti-Corruption &Economic Crimes Act,2003 Section 26

⁷⁵ Christopher Ndarathi Murungaru Vs Kenya Anti-Corruption Commission &Ano(2006)eKLR

⁷⁶ Anti-Corruption &Economic Crimes Act,2003 Sections 38-50

Part VI of the Anti-Corruption Act provides for Compensation and recovery of improper benefits. Section 51 provides that a person who does anything that constitutes corruption or economic crime is liable to anyone who suffers loss as a result for an amount that would be full compensation for the loss suffered. The victim may be a public body or a private individual. A court that convicts a person of corruption or economic crime is obliged to order the convict to pay any amount that he may be liable for under section 51 or 52. Under section 54, the court must also order the convict to give to the rightful owner any property acquired in the course of or as a result of the conduct that constituted the corruption or economic crime an amount equivalent to the value of that property. An order made under section 54 of the Act may be enforced by the person in whose favour it is made as though it were an order made in a civil proceeding.

3.3.8 Weaknesses in the legislative framework of Anti-Corruption and Economic Crimes Act, 2003

Though the Act has been largely hailed for its clear anti-corruption spirit and provisions, the Act contains some glaring weaknesses that may seriously inhibit anti-corruption efforts. Some of the provisions identified are:

a) Limited scope of the Act

Under ACECA, Cooperatives societies are not included as ‘a public body’, yet a lot of corruption and embezzlement does occur within such societies. There is need to include cooperative societies under ACECA since they are financed by public money.

b) Lack of provision for international cooperation

The Anti-Corruption Act does not, for instance, make sufficient provision for international cooperation and technical assistance in the prevention of and fight against corruption, yet Kenya is a signatory to UNCAC. The has made investigations and recovery of assets stashed outside the country by corrupt individuals difficult.

c) Criminalizing corruption in the private sector

The Anti- Corruption Act does not have adequate provisions to criminalize corruption in the private sector. In fact, the Anti-Corruption Act does not adequately address many of the offences, for instance bribery of foreign public officials and officials of

public international organizations, illicit enrichment, laundering of the proceeds of crime, trading in influence and obstruction of justice.

d) Penalties

Though sections 48 on penalties and section 51 on liability to compensation are laudable, they are not far from problematic. Besides failing to address the question of locus standi, a literal reading of section 51 suggests that liability to compensation only arises in respect of such losses as a claimant can quantify. The costs and consequences of corruption can be inter-generational and incapable of monetary quantification. There is need to provide a limit or a guide to quantification.

Further, the penalties prescribed for breach of the provisions of ACECA are too weak and lenient to deter engagement in corruption. For instance, s.48 of ACECA states that a person convicted of an offence under part V of the Act is liable to “a fine not exceeding one million shillings or to imprisonment not exceeding ten years or to both and an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss” unless stiffer penalties are prescribed, corruption will not be a costly affair. The Act should provide for the minimum sentence, to give room to courts to award sentences depending on the merits and circumstances of each case.

e) Lack of prosecutorial Powers by KACC

The fact that the Anti-Corruption Act limits KACC to investigations without prosecutorial powers is a major shortcoming of the Act. It has often been observed that KACC “lacks the teeth” to bite corrupt officials. This is because the Attorney General may decide not to prosecute individuals even after investigations by KACC; the Act is also silent on the timeframe within which the cases forwarded to the AG should be prosecuted.

f) Lack of witness and whistleblowers protection

The Anti-Corruption Act does not embody provisions for protection of witnesses, informers/whistleblowers and victims of corruption and economic crime. It appears that the protection afforded to witnesses under section 65 of the Anti-Corruption Act only extends to protection from disclosure of an informer’s or witness’ identity and protection from legal and disciplinary action. This situation can lead to retaliation or

intimidation for witnesses and experts who give testimony concerning corruption offences. Although the Witness Protection Act, 2006 offers protection for witnesses. The provision for whistle blowers is not explicit and can only be inferred in Section.3 (e) where a witness is defined “as a person, who for any other reason may require protection or other assistance under this Act”. This provision is limited in scope hence there is need to have a comprehensive Whistleblowers legislation.

g) Lack of coordination by KACC and other institutions

There is no coordination in implementing anti-corruption initiatives. Though section 12 of ACECA provides for cooperation between KACC and other bodies, for instance, conflicts have been witnessed between KACC and the office of the Attorney General over files forwarded to the AG’s office for prosecution. Further there seems to be no coordination and harmonization on anti-corruption activities among the institutions tasked to fight corruption in the Country. Though the Act⁷⁷ obliges public bodies and officers to cooperate with KACC, it should be contrasted with multiple constitutional and statutory provisions which provide that certain officers and bodies are not subject to the control and direction of any person or authority. Other than section 12 of the Anti-Corruption Act, whose weaknesses have been demonstrated, there are no known measures in Kenya, legal, policy or administrative, obliging public authorities and officials to assist and cooperate with KACC.

h) Suspension of investigation and asset recovery by KACC

The Statute Law Misc Amendment of 2007 created additional offences and powers to the Kenya Anti-Corruption Commission, however there are still inherent gaps in the additional provisions. Section 25A which empowers the Director of KACC to suspend investigations on corruption and give undertaking where suspect; makes full disclosure of material facts relating to past corruption or economic crime, pays, refunds or deposit with the Commission any money or property irregularly obtained, makes reparation to any person affected by his corrupt conduct, pays for all loss of public property occasioned by his corrupt conduct. The intention to make undertaking should be published in at least two newspapers of national circulation. The implementation of this provision is yet to be seen however, going by the previous

⁷⁷ S.12 of ACECA

cases it may not be realistic for suspects to comply with such conditions which appear onerous. Making compensation for loss of public property, refunds and reparations can be a tall order for suspects. The Act has also allowed for publication of the intention which is a noble idea as the same will be made public, however, the provision falls short of allowing objections or views of the public on the intended cessation of investigations.

i) Appointment of a receiver

Section.56A has provides for appointment of a receiver by KACC at any time with leave of the court, to manage property which is suspected by the commission to have been acquired through corrupt conduct. Aggrieved person can request the commission in writing to set aside the appointment by offering security or applying to court for setting aside or variation. This provision allows the suspect to be kept off the property until the allegations of corruption are determined which is a noble intention. However, the provision is likely to infringe on the individual rights and there are no provision for compensation, for instance if a receiver is appointed and the court finds that the property was not acquired through corrupt means what will be the recourse of a suspect whose property has not been managed well and has lost opportunities. All these are not adequately addressed by the Act.

j) Out of Court settlement

Section 56B empowers KACC to enter into out of court settlement for purpose of asset recovery in the following circumstances; in any matter where it intends to institute civil proceedings it will inform the person to settle the claim within a specified time before filing court proceedings. It may negotiate and enter a settlement with any person whom it intends to bring, or has actually brought, a civil claim or application in court. A settlement under this section shall be registered in court. The provision requires such negotiations to be published in the two newspapers with wide circulation. The essence of publication is to make the public aware of the intention. However, there is no provision for objections or for taking into account views of the public on the settlement. This provision relating to advertisement in the media does not appear to have been complied with in the out of court settlement the case of

disposal of Grand Regency/Laico Hotel that attracted a lot of debate and became a subject of a public inquiry.

The Anti-Corruption Act is a commendable effort to address the menace of graft. However, more still needs to be done to fill in the gaps/flaws identified.

3.4 Public Officer Ethics Act, 2003

The Public Officer Ethics Act (POEA) came to force on 2nd May, 2003. The main object of this legislation is to “[a]dvance the ethics of public officers by providing for a Code of Conduct and Ethics and requiring financial declarations from all public officers.⁷⁸ It is thus intended to inculcate a culture of honesty, hard work and rejection of corruption in the public service. The public Service had over the years become discredited for laxity and apathy. Many public officers had become an obstacle to the delivery of the very services they were employed to render. There was also growing disquiet about the disproportionate accumulation of wealth by some individuals either in public office or occupying positions of influence.

The Act sets out general codes of conduct which promotes values such as professionalism, integrity and respect for the rule of law, and explicitly forbids improper enrichment, conflict of interest, trading in influence, nepotism and sexual harassment.

The Act designates responsible commissions for various categories of public officers, charged with ensuring compliance with and adherence to its provisions. Each of these commissions is required to establish a specific code of conduct and ethics for the public officers under its authority.

3.4.1 Wealth Declaration

The Act⁷⁹ provides for the mandatory declaration of income, assets and liabilities by public officers. The Act requires all public officers to submit to their respective responsible commissions, declarations of income, assets and liabilities within 30 days of appointment as such, bi-annually for the duration of their appointment, and within 30 days of ceasing to function as public officers. This extends to the officers’ spouses

⁷⁸ Public Officer Ethics Act, 2003 Preamble

⁷⁹ Ibid section 26

and dependant children. A public officer making such a declaration is obliged to ensure the declared information is correct. This requirement is intended to check on unexplained and suspicious accumulation of wealth. Corruption is often concluded in an atmosphere of secrecy, complicity and conspiracy of the actors. The disproportional accumulation of wealth could act as the indicator of corrupt conduct and may be relied upon by a judicial tribunal to lead to an inference of corrupt or illicit sources of wealth. Once collected, the declarations of wealth remain confidential and remains only to any applicant who shows to the satisfaction of the responsible commission that he or she has a legitimate interest and good cause in such a declaration⁸⁰ Failure to submit declarations or the submission of false information attracts a fine not exceeding one million shillings or imprisonment for one year or both. The wealth declaration exercise has been conducted for the last three years. Officers who did not comply faced among other sanctions, removal from the payroll. The various responsible commissions are empowered to enforce the general code of conduct including through investigations and taking disciplinary action against errant officers.

3.4.2 Weaknesses in the legislative framework of Public Officer Ethics Act, 2003

a) Confidentiality

One glaring flaw in the Public Officer Ethics Act is the provision that each commission keeps all asset declarations confidential. An amendment introduced in October, 2007 to the effect that declarations are accessible to any applicant who shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in such declaration and notice has to be given to the person who gave the declaration. Despite the amendment and its good intentions, wealth declarations continue to remain practically inaccessible to the public. It is clear that allowing public access to officials' declarations greatly enhances the value of an asset-declaration scheme by facilitating public scrutiny of government and

⁸⁰ Miscellaneous Amendments of 2007 which removed the provision for direct access by police and law enforcement agencies.

government officials, backing up enforcement of the declaration requirements, and promoting public confidence in the declaration system and the government. The most touted disadvantage of a public disclosure requirement is that it can compromise government employees' privacy and personal security. However, in as much as there is need to protect privacy of public officers; the public good outweighs individual interests.

b) Information to be declared

The Public Officer Ethics Act also fails to precisely state what information public officers must declare. This allows corrupt officers too much room to avoid declaration requirements. There is need to establish clearer guidelines that spell out what income, assets, and liabilities that must be declared. This should include all considerable income, assets, and liabilities, whether within or outside Kenya, including vested beneficial interests in trusts, high-value personal property, gifts and use of vehicles or property. The disclosure scheme could also go further and require public officers to declare directorships in companies and other significant external positions, affiliations, and agreements.

c) Review of declarations

The Public Officer Ethics Act does not establish any mechanisms for review of declarations and does not require responsible commissions to include review mechanisms in their administrative procedures. Procedures for review and verification of asset declarations are critical to a disclosure scheme particularly when officials' asset disclosures are not open to public scrutiny. Also, it is not clear whether the various responsible commissions have the capacity, resources, or independence needed for effective administration of asset-disclosure systems. Commissions should establish internal procedures for reviewing asset declarations. They should follow clear procedures that limit individual discretion to prevent inconsistent enforcement and abuse of the disclosure system for personal or political reasons.

d) Non -prosecution of defaulters

The Act imposes a fine of up to Kshs.1 million or imprisonment for a term not exceeding one year or both against any public officer who fails to submit a wealth

declaration. Yet, to date; no serious effort has been made to charge for offences under the Act. In September, 2005 Efficiency Monitoring Unit (EMU) reported that a total of 65 Ministers and 3 Judges had not submitted their declarations⁸¹. The then minister for Justice and constitutional Affairs is reported to have said that “there is nothing to stop the Director of Public Prosecutions from taking these officers to court and charging them in accordance with the law” The newspaper went on to say as follows” The DPP who was present at the meeting announced he would immediately start the process by writing to the judicial, parliamentary and public service Commission asking them to forward the files for legal action to begin.” Further Sunday Nation⁸² carried a headline that “Ministers and MPs defy corruption law” It reported that the ministers and the MPs were among the main defaulters in submitting the wealth declarations. It reported also that the Public service Commission’s Annual report showed that 28,000 civil servants did not declare their wealth. The system has only gone as far as collecting the forms, storing them securely, and declaring a stiff punishment which has not yet been resorted to.

3.4.3 Enforcement of Public Officer Ethics Act

The enactment of the Public Officer Ethics Act, 2003 is commendable in the fight against corruption however; there is need to strengthen the legislative framework and enforcement of the law, first, the Act should be reviewed to focus only on key office holders. At present, the number of officers required to make declarations is too large for individual verification to be done effectively or at all. Secondly, there is need to designate a central authority. Successful enforcement of the asset declaration regime requires an effective monitoring body, with clear mandate, powers, capacity and resources. The regulatory framework needs to mandate a relevant authority to receive and process public officials’ wealth declarations, as well as assess their authenticity, completeness, inaccuracies and inconsistencies. The body should be allocated sufficient resources to ensure adequate record management, investigation and enforcement through a disciplinary regime. Thirdly, access to declarations should be made easier. Fourthly, there is need to embrace information technology in managing

⁸¹ Daily Nation Newspaper of 16th September, 2005

⁸² Sunday Nation of March 29, 2009

the declarations, especially to inter-link the related data and records so that a law enforcement agency, or the public are able to access freely online the registration records such as company registry, registration of persons, lands registry. In particular there should be a mechanism for the tax authorities to compare the declarations made with the tax returns of the officers concerned. Despite the weaknesses, the Public Officer Ethics Act is a useful tool for combating corruption by targeting the performance and behaviour of public officers and there is need to strengthen the legislation and ensure compliance to realize the noble intentions of this law.

3.5 Public Procurement and Disposal Act, 2005

The Public Procurement and Disposal Act, 2005 seeks to ensure transparency and accountability in public procurement; regulate and control practices relating to public procurement in order to promote integrity, fairness and public confidence in public procurement process. The Act provides for procedures for efficient public procurement and for the disposal of unserviceable, obsolete or surplus stores, assets and equipment by public entities and to provide for other related matters

Part I of the act, stipulates among others in s.7 that in case of conflict between the Act and a donor imposed condition, the donor condition shall prevail with respect to a procurement that uses “those funds and not others” This is a peculiar provision where the law expressly allows the donors to use their own conditions. The donor conditions if not transparent can create room for corruption.

3.5.1 Bodies created.

Part II of the Act deals with the establishment of bodies involved in the regulation of public procurement. The bodies created are the Public Procurement Oversight Authority (PPOA), Public Procurement Oversight Advisory Board, and the Public Procurement administrative Review Board.

a) Public procurement authority

The Public Procurement oversight Authority (PPOA) is established as a body corporate and is headed by a Director General appointed by the advisory Board with the approval of parliament. It is charged with ensuring that procurement procedures

are complied with; monitoring the performance of the public procurement system; reporting to the Minister progress made in the implementation of efficient and effective procurement systems.

b) Public Procurement Oversight Board

The Public Procurement Oversight Board is established as unincorporated body. It comprises of nine members appointed by the Minister of Finance and approved by Parliament from persons nominated by prescribed organizations and the Director General. The Board's functions include approving the PPOA's estimates or revenue and expenses, and recommending appointment or termination of the Director General. The approvals by parliament are intended to ensure that the best qualified persons are the ones appointed and to engender public confidence in public procurement and disposal.

c) Public Complaints Review and Appeals Board

The Public Complaints Review and Appeals Board was renamed as Public Procurement Administrative Review Board. It handles disputes arising from complaints raised by the individuals or procurement entities.

d) Organization of public entities

Part iii of the Act deals with the internal organization of public entities as far as procurement is concerned. It requires public entities to establish procedures for the making of decisions, on behalf of the public entity, relating to procurement. In addition they are to ensure that the directions and regulations of the PPOA are complied with. The law requires all public organizations to establish tender committees of not less than five members whose secretary must be a fully qualified professional. The Authority is also allowed to register procurement agents. Procuring entities are at liberty to use procurement agents to carry out procurement proceedings. This may happen where the public entity feels it does not have technical or human capacity to implement a specific procurement in question. It may also be exploited by organizations that do not want to form internal tendering committees.

Part iv of the Act, makes general provisions for procurement by public entities. It highlights the requirement that each procurement entity shall use the open tendering under part V or alternative procurement procedure under part vi. The use of

alternative procurement procedure is qualified; a public entity may only use restricted tendering with written approval of its tender committee and with documented reasons for doing so. Part iii also prohibits the splitting of procurement into two or more components for the purpose of avoiding use of a procurement procedure. This part also outlaws all forms of corruption in procurement; that is to say, payment for goods and services which are not supplied, if supplied they are substandard, defective or overpriced, purchase of goods in excess of requirements, overinvoicing by contractors; classification of tenders as relating to national security; giving bribes and disclosure of confidential information..

Part v sets out requirement for open tendering. It makes provisions for preparation of tender documents, advertisement and invitation to tender, tender security and opening of tenders. Part vi deals with alternative procurement procedures. Part vii of the Act provides for administrative review of procurement procedures. It recognizes that any aggrieved party in a procurement process has a right to seek administrative review of a tender award. The Review Board has powers to nullify the award by the procuring entity and to give directions on what should be done. If any party is aggrieved with the decision of the Review Board an appeal for judicial review lies in the High Court. Part viii gives the PPOA powers to ensure compliance with the Act. It requires public entities to submit information relating to their procurement to the PPOA and in cases of non apparent compliance, the Director may order investigations and appoint an investigator to prepare a report. Public entities aggrieved by the investigators findings and recommendations can apply for review to the Review Board, which shall make its own finding.

Part x deals with the disposal of stores and equipment by public entities. The Act requires the accounting officer of each public entity to take responsibility of fulfilling the Act. Part xi makes miscellaneous provisions for Defence and National security organs are required to comply with the Act with some modifications. Such organs are allowed to use a dual list approach setting apart items subject to open and restricted procurement. The restricted list is subject to a classified audit by the auditor and controller General or his appointee.

3.5.2 Penalties

The general penalty provided in s.137 of the Act is a fine not exceeding Kshs.4 million, imprisonment for a term not exceeding 10 years or both. Corporate offenders are liable to a fine not exceeding kshs.10 million.

Part ix provides for debarment from participating in public procurement. The Director General may, with the approval of the Advisory Board, bar a person from participating in procurement proceedings for up to 5 years. The ground for such punishment are the commission of an offence relating to breach of contract, giving false information about qualifications and refusal to enter into a written contract. A debarred person shall be afforded an opportunity to give reasons why she should not be debarred. Where debarment is confirmed, the aggrieved party may challenge the same in the High Court.

3.5.3 Weaknesses in legislative framework of Public Procurement Act, 2005

Weakness relate to restricted list of items procured by defence and national security organs⁸³ which are not subjected to public tendering can be used as frontiers for corruption as they involve substantial amounts of money and are shrouded in secrecy. The other weakness relate to implementation of the Act. So far, there is no case where procurement entity or an individual has been arraigned in court for violation of the provisions of the Act. There are no cases of debarment of individuals or corporate bodies involved in procurement malpractices.

The procurement law has brought transparency in public procurement which initially was not regulated and is a big contribution to minimizing or eradicating corruption in the public sector if implemented zealously. The law has to be based on clear documented government policy to streamline procurement across the public sector. The officers in the procurement entities need to be people of integrity. The Public Procurement Authority should also flex its muscle and implement the law to the letter to realize the intended objectives

⁸³ S.133 of Public Procurement and Disposal Act, 2005

3.6 Election offences Act Cap 66

The Election Offences Act was enacted by parliament in 1958 to give guidelines that would criminalize certain conduct by candidates, voters and election officials. The objective of the Act is to prevent election offences and corrupt and illegal practices at elections, and for matters incidental thereto and connected therewith⁸⁴. The Act creates a sum total of 27 offences. Out of 27 there is on one offence of bribery⁸⁵ which address bribery by either a voter or the person seeking election. Anti-Corruption and Economic Crimes Act, 2003⁸⁶ in its definition of corruption takes cognizance of Election offences as corruption offence.

3.6.1 Penalties under Cap 66

For the offence of bribery the Election Offences Act, provides a penalty of imprisonment for a term not exceeding five years without option of fine⁸⁷. Under the Anti-Corruption and Economic crimes Act⁸⁸, a similar offence attracts a penalty or a fine not exceeding one million Kenya shillings or imprisonment for a term not exceeding ten years or both.

3.6.2 Weaknesses in the legislative framework of Cap.66

Election offences Act, is crucial in the fight against corruption. The fundamental weakness is in the penalty for bribery which is lenient and is not in tandem with the Principal legislation on corruption (ACECA), hence the need to harmonize the penalties. The independent Electoral Commission (IEC) has proposed Election Bill of 2009 which recommends 5 years jail term or a fine of kshs.1million for anyone convicted of voter bribery. The proposal in the Bill is still not in tandem with ACECA in respect to punishment for bribery.

⁸⁴ Preamble to the Act.

⁸⁵ Section 10 of Election Offences Act

⁸⁶ Section 2(1)g(ii)(b) of ACECA

⁸⁷ Supra footnote 52 section 11

⁸⁸ Supra footnote 50 S.48

3.7 Political Parties Act, 2007

The Political Parties Act, 2007 was passed and came into force on 1st July 2008. The Act provides for registration and funding of political parties. The political parties are registered and regulated by the Registrar of Political Parties. The Act also provides for disclosures of source of funds and funding of political parties. The Act is a good measure by the government to promote transparency and enhance democracy.

3.7.1 Weaknesses in the legislative framework of Political Parties Act, 2007

The Act has some flaws which need to be addressed. The Act has not adequately addressed the disclosure rule; parties can still be able to get funds from various sources some of which can be through corrupt deals. The Act does not impose expenditure limits in party campaigns this can be used as an avenue for spending money obtained through corrupt means. However, some of these weaknesses can be addressed by the rules to be developed by the Registrar of Political Parties and Independent Electoral Commission

3.8 Public Audit Act, 2003

The Act from its preamble provide for Audit of government, state corporations and local Authorities; further provides for economical, efficient and effective performance of the office of the Controller and Auditor-General; and provides for the establishment of the Kenya National Audit office(KENAO) and that of the Kenya National Audit Commission(KNAC), and other related matters.

3.8.1 Bodies created

Section 34 of the Act establishes Kenya National Audit Office, comprising the Controller and Auditor-General and his staff, while section 48 establishes the Kenya national Audit Commission (KNAC), consisting of : (a) the Controller and auditor general; (b) the chairman of the Public accounts Committee(PAC) of the National Assembly; (c) one co-opted member from the Institute of certified Public Accountants of Kenya (ICPAK); (d) the Chairman of the Public service

Commission(PSC); (e) the Attorney General or his nominee; and (f) the Chairman of the Public Investment Committee(PIC). Public Audit Act is further fortified by Section 105 of the Constitution which establishes the office of the controller and Auditor General and his staff, and empowers the officers to obtain all the records, documents, information and even explanations they need from Public Officers and Institutions while discharging their mandate. The Act goes along way in ensuring that all monies appropriated by parliament and disbursed have been applied for the purpose to which they were so appropriated and that expenditures conforms to the authority that governs it. This creates accountability and transparency in government expenditure.

3.8.2 Weaknesses in the legislative framework of the Public Audit Act, 2003

The Public Audit Act has some fundamental weaknesses; the membership of the Chairmen of PAC and PIC in the Kenya National Audit Commission (KNAC) is undesirable as it negates the principle of separation of powers between the executive and the legislature. There is also a problem with implementation of recommendations by KENAO. KENAO relies on PAC and PIC to ensure that their recommendations are implemented. When members of these two committees are ineffective or are compromised or have vested interests, then implementation becomes a major problem. The only option left to the auditors is to continue raising the matters in their reports. The other problem is that at times parliament through PAC and PIC recommends for further investigations and even prosecution of public officers, but the Attorney General does not act or takes too long to act. This encourages impunity. The recommendations if well implemented can act as a preventive measure against corruption.

3.9 Government Financial Management Act, 2004

The Act provide for the management of Government financial affairs, provisions with respect to the Exchequer account and the consolidated fund for appointment and responsibilities of accounting officers for Government resources, receivers of Government revenue, among other issues. The law ensures accountability and

transparency over the management of Government resources/revenue and goes along way towards preventing and curbing corruption.

3.10 Privatisation Act, 2005

The Act provide for privatization of public assets and operations, including public corporations, by establishing the privitisation Commission,requiring the formulation of privatisation programme and other related purposes. The Act also creates the Privatisation Appeals Tribunal to hear disputes and or objections arising from any privatisation of public resources or operations are carried out in a transparent and accountable manner, devoid of corruption. The Act is yet to be fully operationalised, however, if well implemented it will enhance transparency and accountability in the disposal of public assets.

3.11 Conclusion

The chapter has examined the laws relating corruption in Kenya. The finding from the discussions is that there are several laws relating to anti-corruption. However, as discussed there is a problem of duplicity relating to offences for instance those in the penal code and those in Anti-corruption and Economic Crimes Act. There is also disharmony in the penalties provided in the various laws discussed. The major problem identified is the inherent weaknesses in the pieces of legislation discussed which render them ineffective in the fight against corruption. Therefore, there is need to review and strengthen the existing laws and to enact additional legislation to cater for the emerging challenges in the war against corruption. Having examined the existing laws the next chapter will examine the institutional framework put in place to tackle corruption in Kenya.

CHAPTER FOUR

4.0 THE INSTITUTIONAL FRAMEWORK TO FIGHT CORRUPTION IN KENYA

4.1 Introduction

This chapter examines the institutional framework for anti-corruption in Kenya. Both formal and informal institutions are examined. The formal institutions are those established by law or through the government Departments. The non –formal institutions are those that are not necessarily established by the government such as civil society organizations. There are various institutions focusing on the war against corruption those that fall within the executive include; the Ministry of Justice, National Cohesion and Constitutional Affairs he Kenya Anti-Corruption Commission, the Police, the National Anti-Corruption campaign Steering Committee, Public Complaints Standing Committee, Public Procurement Oversight Authority, the office the Auditor General and the Attorney General’s office. Those that fall within the legislature include the Public Accounts Committee, Public Investment Committee and Local Authorities and Funds Accounts Committee while those in the judiciary include anti-corruption courts, High court and Court of Appeal. The informal groups include; the media, civil society, Non Governmental Organizations (NGO’s), and Religious/Faith based organizations.

4.2 The Executive

The Constitution⁸⁹ vests the executive authority in the president. The president has the duty of upholding, safeguarding, executing and maintaining the constitution and the laws of Kenya. This accordingly gives the presidency general powers to act in respect of anti- corruption laws. Some of these powers are conferred in the Anti-corruption and economic crimes Act, 2003 where the President is empowered to appoint the members of the advisory board and directors and assistant directors of the Kenya Anti-Corruption Commission upon approval by parliament. This role is critical and if the executive powers are not properly exercised can prejudice the fight against

⁸⁹ Section 23 of the Constitution.

corruption.⁹⁰ The president is also empowered to under Commissions of Inquiry Act Cap.102 Laws of Kenya to establish a commission to conduct investigations including probes into alleged corruption. Some of such commissions relate to irregularly acquired land⁹¹, Goldenberg Inquiry and Grand Regency/Laico Hotel scandals. The results some of the inquiries at times are never made public thus defeating the principle of transparency and accountability in the fight against corruption⁹².

4.3 Parliament

a) The oversight role

The Constitution⁹³ establishes the Parliament of Kenya consisting of the President and the national assembly. Parliament offers a very conducive forum for addressing the problem of corruption. Parliament is mandated to monitor expenditure of all public funds. Broadly the constitution vests in parliament powers to make laws. Parliament plays a crucial anti-corruption role through the agency of legislative watch dog committees, debates on motions and vetting processes. Through the legislative process, Parliament⁹⁴ since may,2003 enacted a number of ant-corruption Statutes such as Anti-Corruption and Economic crimes Act,2003,Public Officer Ethics Act,2003,Audit Act,2003,Public Procurement and Disposal Act,2005,Privatization Act,2005 and the Government Financial Management Act,2004.

Parliament is charged with responsibility of assessing and evaluating the activities of government. The oversight role is executed through parliamentary committees which oversee different ministries and departments of government as well as state enterprises. The Public Accounts Committee (PAC)⁹⁵, Public Investment Committee

⁹⁰ Gazette Notice No.9301 and 9300 dated 31st August,2009 which has caused protest and collision between Parliament and the Executive (Presidency) over the re-appointment of the Director and assistant Directors of the Kenya Ant-corruption Commission.

⁹¹ Commission of Inquiry on illegal and irregular allocation of public land established on july 2003 and was chaired by Mr..Ndungu hence commonly referred to as 'Ndungu Land Commission'

⁹² Report of the Commission of Inquiry into the sale of Grand Regency Hotel was submitted to the President and to date the same has not been made public.

⁹³ S.30 of the Constitution of Kenya

⁹⁴ Supra footnote no.19pp 104

⁹⁵ Standing Order no.187 Kenya National Assembly Standing Orders Adopted by the National Assembly on 10th December,2008

⁹⁶(PIC) and Local Authorities and Funds Accounts Committee⁹⁷ examine how government finances have been spent in each financial year. Parliament through this Committee examines the Auditor General report, published annually, on the compliance and performance of public institutions. Where there are queries the committees calls the accounting Officers of affected institutions to appear before it and account for the expenditure queried by the Auditor general. The Public Accounts Committee then submits its report on the account to the house. Persons who are found to have embezzled public funds are not only recommended for investigation and subsequent prosecution but are also barred from holding public office.⁹⁸

Apart from standing Committees, ad hoc anti-corruption committees have been set up by the National Assembly to probe allegations of corruption in public institutions for instance the Musikari Kombo ad hoc committee on corruption established in 1997 which produced the 'list of shame in 1998. This committee sent a strong message to the Government to deal with corrupt individuals. Further, Parliament has established Local Authorities and Funds Accounts committee which oversees the expenditure of funds disbursed to the local authorities.

b) The Vetting role

Parliament also has an important role to play in the implementation of anti-corruption and Economic crimes Act. It is a requirement under the Act⁹⁹, that nominees for appointment to the Kenya Anti-Corruption Commission Advisory Board and KACC are vetted by the National Assembly and then the names of successful candidates are submitted to the President for formal appointment. The two bodies are independent and are only accountable to parliament¹⁰⁰.

Similarly under the same Act, Parliament is entitled to scrutinize the performance of KACC and the Attorney General through submission of regular reports on cases of corruption and economic crimes which have been investigated and prosecuted¹⁰¹.

⁹⁶ Ibid standing order no.188

⁹⁷ Ibid standing order no,189

⁹⁸ Ibid

⁹⁹ Section 8(3) of ACECA

¹⁰⁰ Ibid Ss.10,18 and 2nd Sch.to ACECA

¹⁰¹ Ibid ss36 and 37

Although parliament has been playing a key role in fighting corruption, through its watch dog committees, it has been accused of being unable, unwilling or reluctant to check and balance activities of government.¹⁰²

Despite the commendable work by the committees there are shortcomings which are; recommendations in the reports by Controller and Auditor General¹⁰³ as well as reports by PIC and PAC have been in some cases ignored or not implemented by the Government. The reports of the Controller and Auditor General as well as PIC and PAC reports, are never released on time thus rendering them least useful. Such delay enables many corrupt public officers to escape the noose and erodes the capacity of parliament through PAC to fight corruption¹⁰⁴.

4.4 The Kenya Anti-Corruption Commission

The Kenya Anti-Corruption Commission (KACC) was established on 2nd may, 2003 after the enactment and gazettment of the Ant-Corruption and Economic Crimes Act, 2003, the Commission replaced and then incorporated the Anti-Corruption Police Unit (ACPU) which had earlier replaced the defunct Kenya Anti-Corruption Authority. Under the Act, KACC has been allocated wide-range of functions in the fight against corruption¹⁰⁵ which include investigation of corruption or economic crimes, asset recovery, prevention through advisory, and examination of practices and procedures of public bodies that may be prone or provide loopholes for corruption and advise such bodies on how to seal the loopholes. The Commission is also mandated to educate the public on the dangers of corruption and seek their support in the fight against corruption.

As an advisory body, the Commission may at the request of any person or body, offer advice and other assistance on ways of eliminating corrupt practices. The Commission bears the mandate of educating the public on the dangers of corruption and economic crimes and to enlist their support in combating corruption in the country. With reference to restitution, the Commission has powers to investigate the extent of liability for the loss or damage to any public property, and institute civil

¹⁰²A.Mohhidin, 'Regional overview of the Impact of Failures of Accountability on poor people', A paper submitted for UNDP Report, December 2001, at p17.

¹⁰³ Sec 105 of the Constituion.

¹⁰⁴ Saturday Nation, February 21, 2004, p2 col .5

¹⁰⁵ S.7 of ACECA

proceedings against any person for the recovery of such property or for compensation. The Commission may also apply to the Court for a preservation order, prohibiting the transfer, sale, disposal or any dealing with property acquired through corrupt means. The first schedule to the Act¹⁰⁶ lays down an elaborate process of appointment and removal of the officials of the Commission, which is meant to shield the process of fighting corruption from actions of the Executive which may at times be dictated by the exigencies of political expediency. It is also designed to protect the holders of the offices from removal on flimsy grounds, totally unrelated to their competence or performance of their duties in investigating corruption.

To effectively deliver its mandate, the Commission is organized into four directorates: the Directorates of Investigation and Assets Tracing; Legal Services and Asset Recovery; Research, Education, Policy and Preventive Services; and the Directorate of Finance and Administration. In this regard, the Commission's prevention and education programmes include conducting seminars, trainings and meetings on corruption, creation and distribution of information and education materials, and sending out anti-corruption messages through radio programmes. It has also conducted an examination of systems, policies, procedures and practices of various public institutions. The Commission is also empowered to partner with other agencies in the fight against corruption.

To encourage anonymous reporting of corrupt activities, the Commission has rolled out an internet based whistle blowing system that protects the identity of whistle blowers. This electronic reporting system is a break from the traditional methods of email, fax, mobile phone short message service, telephone calls and letters to KACC. This system of corruption reporting, known as Business Keeper Monitor System (BKMS) is currently accessible in the KACC website.

On the down side, lack of prosecutorial powers by KACC has hampered the struggle against graft. KACC therefore, investigates and forwards the files to the Attorney General for prosecution. This arrangement at times has led to blame game between

¹⁰⁶ Ibid Section 8

the Attorney General's office and KACC on the files forwarded which delays prosecutions. This scenario has led to KACC to clamour for prosecutorial powers.

The Commission is mandated to forge partnerships with other agencies or persons; there is no clear mechanism for implementing this partnership. Further the commission is mandated to carry out public education and similar role is being carried out by National Anti-Corruption Campaign Steering Committee (NASC), however, there is no clear coordination in carrying out this task¹⁰⁷. Undoubtedly, however KACC is vested with immense powers to fight all aspects of corruption in Kenya which if well exercised, would realize a considerable improvement in the fight against corruption in Kenya.

4.5 The Police

The police Act¹⁰⁸ provides for the functions, organization and discipline of the police Service and the Kenya police reserve. The Act specifies the functions of the Force as maintenance of law and order, the preservation of peace, the protection of life and property, prevention and detection of crime, the apprehension of offenders and enforcement of all laws and regulations with which it is charged¹⁰⁹. Police is charged to enforce all the laws including ant-corruption law.

4.6 The Judiciary

The elimination of corruption calls for an effective judicial system .The Constitution¹¹⁰ provides for the independence of the judiciary and prohibits any interference with the courts or judicial officers in the exercise of their judicial function. The judiciary plays a vital role in the application and interpretation of anti-corruption laws. The nature of punishment passed can either be deter or encourage corruption. As discussed in the economic theory those who engage in corruption will always carry out the cost- benefit analysis which posits that; If the costs are high that is the likelihood of being caught and punished ,corruption will decrease.

¹⁰⁷ See; National Anti-corruption campaign Steering Committee strategic Plan pg 7, where coordination of of KACC and NACSC has been observed as a challenge.

¹⁰⁸ Police Act, Chapter 84 Laws of Kenya

¹⁰⁹ Section 14 (1) of the police Act.

¹¹⁰ Section 60 of the constitution

The Anti-corruption and Economic crimes Act¹¹¹ provides for the creation of special courts and magistrates. The Chief justice is empowered to appoint the magistrates to preside over the anti-corruption courts. The said courts are expected to expeditiously handle corruption cases. However, the subordinate's courts have not been able to expeditiously hear the cases this is due to numerous applications in the High court for judicial reviews and constitutional references made by accused persons. This scenario leads to delay in finalizing corruption cases.

The role of the judiciary in the fight against corruption can be concluded from the jurisprudence so far developed by the courts arising from various cases. The guidelines that courts should adopt in interpreting statutes are well documented. However, Kenyan courts have interpreted the legislation on corruption in away that gives the language of the statute an extremely narrow and restrictive interpretation and thereby defeated the intention of the legislation. A case in point is the court's interpretation is *Gachiengo v. Republic* (2001 1EA67) the High Court interpreted the Constitution in a manner that made the Prevention of Corruption Act inconsistent with the Constitution thereby rendered the Act void. In *Republic v. The judicial Commission of Inquiry into the Goldenberg Affair & Others Exparte George Saitoti* HC Misc.Civ.App.102 of 2006(The Saitoti Case).The Bosire Commission¹¹² made recommendations for 14 individuals to be either prosecuted or for the Attorney General to sue to recover the money lost in the Goldenberg Affair. Minister moved to court to block the impending prosecution and was granted leave to file judicial review proceedings where he sought to quash the findings, remarks and decisions in the Bosire Report and to prohibit the AG or any other person from preferring criminal charges against him in respect of the Goldenberg Affair. Three Judge Bench concluded upon hearing the main application that the Commission had in its remarks, findings, and conclusions regarding the applicant made errors of fact and law and granted the prayers sought. This was a major blow to the prosecution of individuals that were implicated in the Goldenberg Affair.

¹¹¹ Section 3 of ACECA

¹¹² Republic of Kenya, Report of the Judicial Commission of Inquiry into the Goldenberg Affair; Chairman Justice Bosire, 2005 pg 300

Other decisions from the courts that express judicial attitude towards the fight against corruption are found in the cases such as Nairobi Petition No. 390 of 2006 Nedemer technology BV Ltd Vs KACC \$AG, NBI HCC Pet.No 359 of 2007 Midland Finance and Security Ltd,Globotel Inc.Vs AG \$KACC and Nbi HCC No.575 of 2006 Euro Marine & others Vs KACC &AG in all these cases the courts have halted investigations by KACC which in effect stopped investigations into the Anglo-leasing contracts on the ground that the contracts were of security nature and their investigation would jeopardize national security and that the said contracts had been approved by the Attorney General and therefore KACC as an organ of the executive branch of government was bound by the opinion of the Attorney General. In Nbi Misc Appl. No.695 of 2007 First Mercantile securities Vs KACC the court prohibited the Commission from seeking or obtaining International Mutual legal Assistance or even using any information obtained through such mutual legal assistance thus barring investigations into the international aspects of the Anglo-leasing contracts. From the foregoing, it is apparent that the courts have given anti-corruption laws and the constitution a literal interpretation without any regard to the spirit of the law or the mischief the enactments were intended to address. Consequently the process of bringing to justice many suspects of corruption and economic crimes and recovery of lost public funds and assets have been disrupted.

4.7 The Attorney General

The Attorney General plays an indispensable role in implementing some of the anti-corruption law in terms of prosecution. Under s.26 of the Constitution, the Attorney General is the repository of all prosecutorial powers. Hence the Attorney General is empowered to prosecute all corruption and economic crimes under ACECA¹¹³. The Kenya Anti-Corruption is mandated to investigate all corruption and Economic Crimes cases and forwards evidence gathered to the Attorney General for prosecution¹¹⁴.The Attorney General is required by the Act to prepare and submit to the National Assembly annual reports on the number of corruption and economic

¹¹³ Crimes under S.2of ACECA

¹¹⁴ Sec.7 of ACECA

crimes cases prosecuted¹¹⁵. The Anti-Corruption, Serious Fraud and Asset Forfeiture Unit within the office of Director of Public Prosecutions have been set up as a specialized prosecution unit to deal with corruption, serious crime, fraud and asset forfeiture.¹¹⁶

The fact that the Anti-Corruption Act limits KACC to investigations without prosecutorial powers is a major shortcoming of the Act. It has often been observed that KACC “lacks the teeth” to bite corrupt officials. This is because the Attorney General may decide not to prosecute individuals even after investigations by KACC, the Act is also silent on the timeframe within which the cases forwarded to the AG should be prosecuted. The exclusive nature of the Attorney General’s powers under the Kenyan Constitution and the wide discretion enjoyed by the Attorney General in instituting or terminating criminal proceedings can be an obstacle in the fight against corruption especially where the Attorney General simply decides not to prosecute or simply returns the files to Kenya Anti-Corruption Commission that the evidence is not sufficient. In some cases the AG may enter *nolle prosequi* to terminate corruption charges. For instance it has been observed¹¹⁷ that the office of the Attorney General has often used the constitutional power of *nolle prosequi* to terminate charges against corruption and economic crimes under tenuous circumstances. The practice was the subject of criticism in the report of the Bosire Commission¹¹⁸. The Commission stated in part: “we have given an outlay of the manner in which the State Law office dealt with the Goldenberg scam. We have noted that it was engaged in ostensibly selective prosecutions. There is no cogent evidence however to enable us state with any degree of certainty whether these actions and omissions were designed or coincidental. They could have been caused through sheer negligence and inattention. They could have been an orchestrated cover-up intended to aid and abet the culprits of the Goldenberg scam or to subvert the cause of justice”. In the *Law Society of Kenya v. Eric Kotut and Others*¹¹⁹ an independent prosecution against some suspects in the Goldenberg case stopped when the AG when the AG successfully applied to be joined as *Amicus*

¹¹⁵ Ibid Sec 37.

¹¹⁶ Organizational structure for State Law office

¹¹⁷ Supra note no.35

¹¹⁸ Supra no 112 pg 272-280

¹¹⁹ *Law Society of Kenya v. Eric Kotut & 5 Others Private Prosecution No.1 of 1994*

Curae and subsequently raised an objection that Law Society of Kenya lacked locus standi in the case. The cases demonstrate that the office of the AG has tended to manipulate the system of justice and in a sense undermined the operations of the courts of law in the dispensation of justice. In absence of proper legal arrangements between the Attorney General and the Kenya Anti-Corruption Commission, there is likelihood of conflict and exchanges in the manner of the execution of roles. The Attorney General office also faces challenges such inadequate office space facility, equipments and human capacity which factors impacts negatively on service delivery¹²⁰. The Attorney Generals Office is a key institution in the fight against corruption however, the problems highlighted, hinders harmonious working relationship between the AG and other institutions. There is also no proper coordination and reporting structure between the AGs Office and KACC which is likely to affect prosecution of corruption cases.

4.8 Controller and Auditor General

4.8.1 Functions of Controller and Auditor General

The office of the Controller and Auditor General (C&AG) is established by the Constitution¹²¹. The office is empowered to audit and report on public accounts of all public institutions and present findings to parliament for analysis and debate. The accounts are audited at the end of each financial year. The report is supposed to indicate among other, details of whether government resources have been managed lawfully. The report is important for the conduct of parliamentary investigations into the government expenditure. Indeed the report is the deliberations by PAC which in turn makes its report to the whole house. The Controller and Auditor General is therefore crucial in ensuring that there is transparency and accountability in public expenditure which is key in detecting and preventing corrupt practices.

4.8.2 Weaknesses that inhibit the role of Controller and Auditor General

The major weakness is that the auditing capacity of C&AG is weak mostly due to understaffing this makes the annual reports to be always in arrears. The delay may lead to some culprits who may have been involved in corrupt practices to get away with it.

¹²⁰ State Law Office Strategic Plan 2007

¹²¹ S.105 of the Constitution

The Controller and Auditor General is that it has no power to arrest or prosecute but simply points out aspects of financial mismanagement, which may lead to the initiation of investigations. It is upon other bodies to which the reports are presented to take up the matters raised. The likelihood of the referral bodies failing to take appropriate action cannot be ruled out. The inability of the C&AG's office to function properly in turn undermines the ability of the parliament to exercise its constitutional control over government expenditure. However, the Controller and Auditor General act as check in prevention and detection of corruption.

4.9 National Anti-Corruption Campaign Steering committee (NACSC)

National Anti-corruption campaign Steering committee was established by the president in May 2004 through Gazette notice No.4124 of 28th May, 2004. The functions of the committee as outlined in the Gazette as; to undertake nationwide public education, sensitization and awareness creation campaigns aimed at effecting fundamental changes in the attitudes, behaviour, practices and culture of Kenyans towards corruption. The membership comprise of representatives from the government, religious organizations, media civil society, universities, women's organizations and the private sector. The committee is mandated to work closely with the Kenya Anti-Corruption Commission and the Kenya ant-corruption advisory Board. The committee reports to the president by preparing quarterly reports to the president. The Committee is under the Ministry of Justice, national Cohesion and constitutional Affairs. The representatives of the committee appointed in 2004 were to serve for five years. Through Gazette Notice No.8738 of 14th august, 2009 the President made appointments of new members to the committee and all members are suppose to serve for two years.

From the Gazette notice the core mandate of the committee is to create public awareness about corruption and attitude change. The Committee is mandated to work closely with KACC and other agencies. From the mandates of NACSC and KACC¹²² the two agencies share a common mandate of public education which is a clear case of duplication of functions. Whereas the committee is mandated to work closely with KACC and other agencies there is no clear framework on how this arrangement is to be implemented.

¹²² Section 7 of ACECA

However, despite the anomalies the functions of the committee of public awareness and attitude change are crucial in the fight against corruption

4.10 The Public Complaints Standing Committee

The Public Complaint Standing Committee (PCSC) was established by the president through Kenya Gazette Notice No.5826 of 2007 on 29th June 2007. The Committee is under the Ministry of Justice National Cohesion and Constitutional Affairs. The Committee comprises five members; four are appointed by the president while the Executive Director, who heads the Secretariat, is appointed by the Minister for Justice, National Cohesion and constitutional affairs¹²³ the PCSC performs the functions of the institution of Ombudsman which include receiving and taking appropriate action on complaints by citizens against public officers and public institutions.

The PCSC is mandated also to inquire into allegations of misuse of office, corruption, unethical conduct, breach of integrity, maladministration, delay, injustice, discourtesy, inattention, incompetence, misbehaviour, inefficiency and ineptitude in the public sector. The PCSC listens to the complaint and takes the necessary step. The PCSC is also required to publish quarterly reports for public information on the number and nature of complaints received and the action taken by the Committee.

Examination of the roles point out that PCSC is mandated to receive reports on corruption. However, no provision is made or mechanism on how to handle the reports on corruption received. There is no cross reference to other institutions that are tasked to investigate corruption. PCSC is a key institution in the fight against corruption since it focuses on conduct of public officers and institutions.

4.11 Public Procurement Oversight Authority

The Public procurement Oversight Authority (PPOA) is created under part 11 of the Public Procurement and Disposal Act, 2005 PPOA is charged with the responsibility of implementing the Act. The PPOA is headed is headed by A director General appointed by the Advisory Board with the approval of parliament. It is charged with ensuring procurement procedures are complied with; monitoring the performance of

¹²³ Bronchure by PCSC: Huduma Bora ni Wajibu Wetu. Je, Umehudumiwa Vyema.

public procurement system; reporting to the Minister progress made in the implementation of efficient and effective procurement systems.

4.11.1 Functions of PPOA

The PPOA is required to accomplish its role, among other means, through preparation of manuals, providing assistance and advice to public procurement entities and facilitation of training and professional development of public procurement staff. Essentially, the authority does not with actual procurement and disposal, but has the powers to regulate all procurement processes.

4.11.2 Powers conferred on PPOA

Part 111 of the Act gives the authority wide powers to ensure compliance. The Director General is given powers to order investigation of procurement proceedings whether there has been of this Act, the regulations or any directions of Authority. The Act¹²⁴ empowers the Director, after considering a report of an investigator and is satisfied that there has been a breach of this Act, the regulations or other direction of the authority may order or do any one or more of the following; direct the procurement entity to take such actions as are necessary to rectify the contravention; cancel the procurement contract, if any; terminate the procurement proceedings; or prepare and submit a summary of the investigators findings and recommendations to the procuring entity and to the Kenya Anti-corruption commission. Before such action the Director shall give the procuring entity or any other person whose legal rights are adversely affected. This provision is good however, it shy away from full implementation of the Act; first the Director is not given the powers to prosecute or recommend to the AG for prosecution of those who have breached the provisions of the Act or regulation. The penal provision is down played in this case and the procuring entity may take advantage of this provision and get away with serious breaches of the Act. Secondly, the act allows the Director General to refer the findings to KACC, this assumes that the findings are related to corruption or economic crimes which KACC have mandate to investigate the provision is good since it explicitly recognizes another institution for purposes of implementation of the

¹²⁴ S.105 of Public Procurement and Disposal Act.,2005

Act. Thirdly PPOA has not been keen on implementing the aspect of prosecution and debarment from participating in procurement proceedings for those who have breached the provisions of the Act as this will send strong signals to all those that are involved in procurement.

From the discussions, the PPOA is a good oversight institution for supervising procuring entities and preventing corruption. The challenge to the success of the Act lies in its implementation by PPOA and procuring entities.

4.12 Other informal Institutions and Organizations

4.12.1 The Media

The media is a central player in the war against corruption in Kenya. In certain cases regarding corruption in the public service, the media often receives the crucial tips before the police or the anti-corruption authorities as ordinary people feel safer talking to the media than to the law enforcement agencies. Without the sustained attention of the media, particularly the print side of it, numerous incidents of corruption in the public service could never have come to light for instance the corruption scandals in the Goldenberg and Anglo-leasing. The possibility of eventual exposure serves as a major deterrent to those who may be tempted to indulge in corruption. Through the media the anti-corruption messages are passed both locally and globally.

Despite the pivotal role played by the media, there is need for a facilitative environment more so free flow of information which has been inhibited by the official Secrets Act this makes it difficult for public officers to release critical information to the media. There is need to enact Freedom of Information Act which will not only allow the media but the entire public to source information without interference from officialdom, and create an environment where information ceases to be classified as official secret depending on the official involved.

Similarly there is need for protection for those who volunteer information on corruption either to the media or law enforcement agencies. In order to give assurance, there is need for the enactment of the Whistle blower protection Act this will go along way in enhancing the independence of the media as informers will feel

to be well protected. An independent media, which is responsible and corruption free, will have a greater impact on the incidence and scope of corruption.

4.12.2 Civil Society and Non- Governmental organizations (NGOs)

The civil society organizations and Non-Governmental organizations have been at the forefront of the anti-corruption war in Kenya. Some of those who have stood out in this arena are; Transparency International (TI) and the Centre For Law and research International (CLARION).TI(Kenya) has been very resourceful in keeping track in keeping track of all major events relating to anti-corruption war locally, regionally¹²⁵ and even internationally. On the other hand, CLARION has adopted amore activist approach through research and advocacy.

4.12.3 Religious/Faith based organizations

Religious based organizations a key role in the fight against corruption. The government has been taken to task over bad governance and corruption. The Key participants in this campaign have been the National Council of Churches (NCCCK), the Kenya Episcopal Conference (KEC) and the Supreme Council of Kenya Muslims. Their protests were expressed through sermons or pastoral letters, religious edicts and exhortations and sometimes protests¹²⁶. Anti-corruption and economic crime has recognized the religious group who nominates a representative to the KACC advisory Board .The faith based group is referred to in the Act¹²⁷ as ‘joint forum of religious organization. With their moral authority, appeal to eternal intervention, geographical reach and goodwill religious organizations play a big role in the fight against corruption.

4.13 Conclusion

This chapter has examined institutional framework for fighting corruption Kenya. The findings are that there are several institutions in the fight against corruption. However, from the discussions it is apparent that the institutions do not work in harmony each institution tend to work in isolation to each other yet they are all meant to tackle corruption. The judiciary in particular has developed jurisprudence that have

¹²⁵ Transparency Internation:Bribery Index East Africa,2009

¹²⁶ Michael Charo Ruwa: Principles of Good Governance:The Church’s Perspective,Nairobi,Paulines Publication Africa,2001

¹²⁷ Section 16 of ACECA

made suspects in corruption cases to go scot free and to enjoy the public funds and assets squandered. The Attorney General has also been given carte blanche to discharge the constitutional powers vested in it inconsistently. The disharmony in the institutional structures caused partly by the legal framework and beaurocracy among the various institutions in the fight against corruption. From the examination of the institutions, there is need to review the law, policy, structure and strategy employed by all the institutions so as to adopt a more coordinated approach to the fight against corruption. Having assessed the institutions in the fight against corruption, the next chapter will delve on the conclusion and recommendations for this study.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The study sought to assess the efficacy of the policy, legal and institutional frameworks to fight corruption in Kenya. The study concludes that there is no written National Anti-Corruption Policy. The policy vacuum has led to disharmony, duplicity and overlaps in the anti-corruption efforts and initiatives carried out by various institutions in the fight against corruption. The study also concludes that there exist laws and institutions to fight corruption however, the same have not effectively dealt with corruption.. The primary issue before offering any solution is to identify where the problem lies. This issue takes us back to the question posed in the introductory chapter of this study. The question is; Are the existing policy, laws and institutions effective in tackling corruption, if not, does the lacunae exist in the policy, prescriptive provisions of law, the enforcement machinery, or is the lacunae outside the legal framework. In its introduction, the study acknowledged the fact that non-legal elements that ordinarily have a bearing or impact in the fight against corruption are outside the scope of its coverage. The study concludes from the findings that failure to effectively tackle corruption in Kenya partly has been a result of lack of a comprehensive national anti-corruption policy which should provide a clear roadmap on the nature of legislation, structures of institutions and strategy for tackling corruption. This has led to conflicts, overlaps and duplicity in the law and institutions which are in the fight against corruption. Having assessed the legal framework, then, this study also concludes that there are some lacunae in the prescriptive elements of the law that not address the subject of corruption well. It is acknowledged that legislative reform ought to be a continuous process for purposes of ensuring that emerging challenges that circumvent the existing law are dealt with.

The study further concludes that the continued prevalence of corruption in Kenya can be traced to the institutional failures and enforcement machinery in the system which is attributed to uncoordinated approaches to the fight against corruption. Having concluded that corruption has continued to prevail due to institutional failure, this

study opines that that responsibility must be apportioned to the various institutions as they contribute to the problem. First the Ministry of Justice, National Cohesion and constitutional Affairs is charged with the responsibility to drive ant-corruption initiatives in the country. It has the responsibility to spearhead the development of appropriate national anti-corruption policy, to harmonize and coordinate legal and institutional framework in the fight against corruption. This apparently has not been done as envisaged from the existing institutional structures which are not in harmony in respect of their mandates and operations.

The study also opines that KACC is a body vested with powers under ACECA to investigate all corruption cases. This study established that if KACC were to flex its muscle and robustly enforce the law, indulgence in corruption will become an expensive affair for Kenyans hence the vice would be brought to minimal levels if not eradicated.

This study also apportions blame to the Office of the Attorney General which is mandated with prosecution of all corruption cases. The office has not expeditiously conducted prosecutions as expected. There is institutional inertia on the part of the Office of the Attorney General to utilize the institutional powers and mandate to prosecute and send a strong signal that there is no tolerance and impunity to corruption.

The Judiciary can not escape the blame, the study found out that courts have come up with jurisprudence on corruption which has been favorable to the suspects and given them leeway to get away public funds and assets acquired through corruption. There are also delays in disposal of cases and laxity on the part of the court to give deterrent sentences. This has impacted negatively in the fight against corruption.

The Study also apportions blame to the Kenya Police. The police is the primary body that is charged with the responsibility of maintaining law and order. However; they carried out their mandate effectively. However, this study confirms the hypothesis that as things stand now, the continued existence of corruption has been caused, not by non existence of laws, but a failure of the enforcement institutions to uphold the law with the consequence that the ideals of integrity, accountability and transparency have been compromised.

The study is also alive to the challenges of fighting corruption in the Grand Coalition Government. After the General Elections in December 2007, the coalition government was formed made up of several political parties. This was facilitated by the enactment of the National Accord and Reconciliation Act, 2008. The political parties have diverse interest, political agenda and vision. This has complicated the fight against corruption. While a common understanding of the need to fight corruption is generally assumed, there are still many in the Grand Coalition government who stand to lose from an effective campaign against corruption. Though outwardly supportive of the fight against corruption, such persons are not enthusiastic in their support in the war against corruption. Some members of parliament in the present government have been implicated in the past and present corruption scandals. Unfortunately, political realities of transition politics necessitate political accommodation of all significant political interest. Hence, this is also drawback in the fight against corruption.

5.2 Recommendations

Having come to the above conclusion, this study proposes a number recommendations on policy, legal and institutional frameworks.

5.2.1 Recommendation on Policy framework

The study concludes that disharmony in the institutional and legal frameworks have been caused by lack of national anti-corruption policy. It is recommended as a matter of priority the Ministry of Justice, National Cohesion and Constitutional Affairs should spearhead the formulation of comprehensive National Anti-Corruption policy which should be discussed and approved by cabinet. The policy should provide a framework for developing ways and means of preventing and combating corruption in a comprehensive, coordinated, inclusive and sustainable manner. This will bring harmony in the laws relating to corruption and enhance coordination among institutions engaged in the fight against corruption.

5.2.2 Recommendations on legal framework

5.2.2.1 Enhancing and harmonizing anti-corruption law and Regulations

The legal framework has many laws and regulations with provisions that foster anti-corruption. However, there exist disharmony and inadequate applicability of the provisions relevant to anti-corruption. It is recommended that Ministry of Justice, National Cohesion and Constitutional Affairs in collaboration with institutions responsible for the fight against corruption should spearhead and provide a framework for harmonizing and strengthening anti-corruption law and regulations.

5.2.2.2 Review and enactment of relevant legislation to fight Corruption.

In order to strengthen the legal framework for anti-corruption there is need for new legislation to strengthen and underpin the anti-corruption struggle. It is recommended that relevant legislation be enacted such as; whistleblower legislation which should include measures to protect whistle blowers from victimization for exposing corrupt and unethical practices and protection against falls reports by whistleblowers and complainants. Other additional pieces of legislation required are; Laws on Anti-Money Laundering and Proceeds of Crime, Mutual Legal Assistance and Freedom of information all these laws are necessary to strengthen capacity of law enforcement institutions to combat corruption, economic crime, fraud and other related forms of crime.

5.2.2.3 Entrenchment of KACC in the Constitution

To be effective, institutions tasked to fight corruption should be independent. The independence entails the security of tenure of office holders and the ability of the institution to carry out its mandate without interference either from the legislature or the executive. This will insulate the anti-corruption bodies(s) against any interference with its powers and functions. The study therefore recommends for entrenchment of KACC in the constitution as found in other jurisdictions like Uganda where constitution establishes some of the institutions that fight corruption and guarantees their autonomy for instance Inspector General of Government (IGG). The

entrenchment will adequately deal with many of the challenges that KACC encounters in court. It will also immunize KACC against constant threats of disbandment

5.2.2.4 Prosecutorial powers for KACC

Lack of prosecutorial powers by KACC not only undermines KACC authority in fighting corruption, but also exposes it to pressures and attempts to marginalize its effectiveness. The public assess KACC performance by the number of cases of ‘big’ and ‘small’ fish arrested, prosecuted and convicted. Constant public demand confirms the need for KACC to have prosecutorial powers. The study therefore recommends that that KACC be granted prosecutorial powers in harmony with the Attorney-General’s constitutional mandate.

5.2.3 Recommendations on institutional framework

5.2.3.1 Coordination among the institutions

The study found that there are uncoordinated approaches, duplicity and in some cases overlaps in mandates among institutions charged to fight corruption which has led to conflicts, confrontations and back passing. It is therefore, recommended that the Ministry of Justice, National Cohesion and Constitutional Affairs should develop and implement framework for coordination of corruption prevention programmes in government agencies, private sector and Non governmental Organizations. Roles of each institution should be made clear and lead agency named to spearhead and coordinate and all anti-corruption initiatives.

5.2.3.2 The Judiciary

The Judiciary as an institution plays a key role in the fight against corruption. There is need for a paradigm shift for the institution to see and deal with corruption as a life threatening crime for all its nefarious effects. It should be condemned strongly in judicial judgments and judicial abhorrence and severe penalties be passed. At the same time transfer guidelines should be developed to ensure that special magistrates handle to conclusion trials they have started without causing undue delays or disruptions. In addition, consideration should be given to the conferment of country-wide jurisdiction to special magistrates similar to that of other resident magistrates in

criminal cases. This will obviate the need for gazettelement upon every transfer of special magistrates. With regard to sentencing, in certain instances sentences meted out by various courts are hardly sufficient to serve as a deterrence to future offenders. While actual sentencing ought to be left to the discretion of the presiding magistrate, a sentencing policy needs to be developed. This will lead to a desirable level of consistency, taking into consideration the individual circumstances of each convict. Above all it is recommended that there is need for expeditious adjudication of corruption cases.

5.2.3.3 Strengthening of institutions

The study also recommends that there is need to enhance capacity of the entire justice system to realize meaningful fight against corruption. More resources, financial and human ought to be availed to the investigative agencies, the prosecutorial services and the judiciary to enable them be more effective. There is need for heavy investment in capacity building in the legal sector as a whole.

5.2.3.4 Enhancement of integrity programmes in all institutions

There is need to enhance the public integrity programmes in various institutions by training and empowering more integrity Assurance officers and the need to set up corruption prevention Committees that should be able to spear head anti-corruption initiatives in various institutions. The study also proposes that there is need to empower community based groups both in the rural and urban areas to act as anti-corruption watchdogs such efforts will go along way in strengthening institutions and in the fight against corruption

5.2.3.5 Continuous public education and awareness on corruption

Enacting the law and establishing anti-corruption institutions may not be enough. There is need create awareness and inculcate an anti-corruption culture in the public. Public awareness and attitude change is critical in the fight against corruption To evolve the said culture, it is recommended that the Kenya Anti-Corruption Commission, National Anti-corruption Steering Committee and the Civil Society Organizations should continuously carry out public education on corruption.

BIBLIOGRAPHY

Books

A.J.Heidenheimer (Ed): Political Corruption: Readings in Comparative Analysis, New Brunswick: Transactions Books, 1978

Amundsen Inge: Research Paper on Definitions and Concepts; Michelsen Institute Development Studies and human Rights, January, 2002

Black H.C and Garner, B.A (Eds), Black's Law Dictionary, 7th edition, West Group Publishing, 2000

Centre for Democracy and Governance: Handbook on fighting Corruption, Technical Publication Series, 1999

Colin Nicholls, Tim Daniel, Martin Polaine and John Hartchard: Corruption and Misuse of Public Office. Oxford University Press, 2006

Chweya Ludeki, (Eds): Conduct of the Public Service in Kenya, Claripress, Nairobi, 2008

Jenkins, W: Policy Analysis; Apolitical and Organizational Perspectives: London, Martin Robertson, 1978

J.S.Nye, Corruption and Political Development: A cost- Benefit Analysis', Political Science Review, LX1, No.2 (June 1967)

Kivutha Kibwana, Lawrence Mute (et al): Anatomy of corruption: Legal and policy intervention (1995-2001)

Kivutha, K (etal): The Anatomy of corruption in Kenya; Legal, Political and Socio-economic Perspectives. Claripress, Nairobi, 1996

Mauro Paolo. The Effects of Corruption on Growth, Investment, and Government Expenditure: Across country analysis "In Kimberly Ann Elliot ed. Corruption and the Global Economy. Washington, DC: Institute for International Economics: 83-87, 1997

Michael Charo Ruwa: Principles of Good governance: The church's perspective, Nairobi, Paulines Publication, Africa, 2001

Morris Odhiambo and Winnie Mitullah (Eds): Kenya State of Corruption report Issue No.11, Claripress, Nairobi, 2004

Mullei, A, (Eds): The Link Between Corruption and Poverty: Lessons from Kenya case studies. Nairobi: African Centre for Economic Growth, 2000

Ojienda Tom (Eds): Anti-Corruption and good governance in East Africa: Laying foundations for reform, Nairobi: Law Africa, 2007

Osogo Ambani and Gerald Wahome: Kenya State of Corruption report Issue No.14, Claripress, Nairobi, 2007

P.Wambua Musili: The Emerging jurisprudence in the Control of Irregularities; In Chweya Ludeki: Conduct of the Public Service in Kenya.

Rose-Ackerman, Susan. Corruption and Government: causes, consequences and reform. Cambridge, England: Cambridge university press, 1999

Sihanya A, (Eds): Control of Corruption in Kenya: Legal and Political Dimension 2001-2004. Claripress, Nairobi, 2005

Thomas Birkland: An introduction to policy Process: theories, concepts and models of public policy making, Sarp, Inc.2nd (Ed), 2005

United Nations development Programme: Institutional Arrangements to combat corruption; Comparative study, 2005

Dissertations

Kagio: The Judiciary and Corruption, LLB Dissertation, unpublished, University of Nairobi, 1999.

Kahiu Mbugua: Prevention of corruption Act: A Horse without a Rider, LLB Dissertation, unpublished, University of Nairobi, 1981

Matagaro L.K: The Anti-Corruption and Public officer ethics Act; A remedy or Fantasy, unpublished, University of Nairobi, 2003

Musyimi: Corruption in the Civil service, LLB Dissertation, unpublished, University of Nairobi, 2006

Journal Articles

Economic Development Institute of the World Bank: Curbing Corruption, Washington DC; World Bank, 1999

Odhambo Mbai: Public service Accountability and Governance in Kenya since independence; African Journal of political science (2003)

Reports

End Term Review of Economic recovery Strategy for Wealth and employment creation (ERS) 2003-2007, Government of the Republic of Kenya, 2009

Kenya Anti-Corruption Commission: National Perception Survey 2006

Kenya Anti-Corruption Commission: National Perception Survey 2007

Kenya Anti-Corruption Commission: National Perception Survey 2008

Kenya Anti-Corruption Commission: Annual Report 2007/2008

Kenya Anti-Corruption Commission: Annual Report 2006/2007

Kenya Anti-corruption Commission: Annual Report 2005/2006

Kenya anti-Corruption Commission: Annual Report 2004/2005

Kenya Bribery Index: Transparency International Kenya 2008

Kenya State of corruption Report Issue No.1 Claripress, Nairobi, 2001

Kenya State of corruption Report Issue No.11 Claripress, Nairobi, 2004

Kenya State of Corruption Report Issue No.14 Claripress, Nairobi, 2007

Kenya Vision 2030, Government of the Republic of Kenya, 2007

Kenya Vision 2030, First Medium Term plan (2008-2012) Government of the Republic of Kenya, 2008

Republic of Kenya, Report of the Judicial Commission of Inquiry into the Goldenberg Affairs, Chairman Bosire, 2005

Transparency International; Bribery Index, East Africa, 2009

Transparency International: Global Corruption Barometer, 2009

Transparency Report 15th December, 1998