THE CHALLENGES OF CURBING CORRUPTION IN KENYA: A CASE OF THE ETHICS AND ANTI-CORRUPTION COMMISSION

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DECLARATION

I, the undersigned, declare that this project is my original work and that it has not been presented in any other university or institution for any academic award.

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                                                Date 14|11|2013..............

DEDICATION

This study is dedicated to my lovely wife Petronillah Nyaboke and our lovely sons; Carldon Aming'a Kenyoru and Gregory Paul Kenyoru, for the support and peace of mind they accorded to me during my studies. May the almighty God grant them the spirit and energy to write similar exemplary papers in future.

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ABSTRACT

This study's objective was to assess the challenges of curbing corruption in Kenya especially over the period from 2008 to 2012 with a focus on how the Ethics and Anti-Corruption Commission has positioned itself to overcome those challenges. In order to achieve the objectives of this study - to examine the challenges the anti-graft agency is facing in curbing corruption in Kenya – data was collected through the use of questionnaires, interviews, literature searches and observations.

The research established that EACC faces a number of challenges ranging from lack of political will and government commitment to lack of prosecutorial powers to be able to management any given case from beginning to its logical conclusion. From the study it is also evident that it takes time, reliable political will and public support to succeed in the war against corruption.

The study recommends that the fight against corruption can be pursued in phases where it graduates from investigation and prosecution to education and prevention. Curbing corruption, also, should be a collective and inclusive effort.

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ABBREVIATIONS

ACECA	-	Anti-Corruption and Economic Crimes Act
ACPU	-	Anti-Corruption Police Unit
CAJ	-	Commission on Administrative on Justice
CID	-	Criminal Investigations Department
CPI	-	Corruption Perception Index
CPIB	-	Corrupt Practices Investigation Bureau
CPIB	-	Corrupt Practices Investigation Bureau
DPP	-	Director of Public Prosecutions
EACC	-	Ethics and Anti-Corruption Commission
EMU	-	Efficiency Monitoring Unit
GoK	-	Government of Kenya
ICAC	-	Independent Commission against Corruption
IGG	-	Inspector General of Government
KACA	-	Kenya Anti-Corruption Authority
KACC	-	Kenya Anti-Corruption Commission
LoK	-	Laws of Kenya
OAG	-	Office of the Auditor General
REPPS	-	Research, Education, Policy and Preventive Services
TI	-	Transparency International
WB	-	World Bank

CHAPTER ONE: BACKGROUND TO THE STUDY

1.0 Introduction

This chapter provides background information to this study and examines the existing body of knowledge on the topic under review. In the chapter there is a statement of the research problem under which there is a discussion of the knowledge gap that exists which will make this study useful. This chapter also contains research questions which helped in data collection whose analysis facilitated in realizing the objectives of the study.

1.1 Corruption

Corruption has been defined variously, with the World Bank defining it as an abuse of public office for private gain (WB, 2004). This definition, however, limits corruption to the actions of public officials. Transparency International defines corruption as the abuse of entrusted power for private gain (TI, 2012). Corruption is also defined broadly as dishonest or illegal behaviour, especially of people in authority (Hornby, 2000). Cases of corruption in both the public and private sectors have been prevalent in all societies albeit at different levels.

Curbing corruption requires economic and political interventional measures as well as institutional reforms in public administration. Political good will is necessary for implementing reforms. This makes corruption is a problem which all governments, at any level of development, have to deal with. Unfortunately bureaucrats and politicians in Africa promote perverse economic policies, while impoverishing most of society. That provides concentrated and significant benefits to the national elites and interest groups (WB, 2004).

In some countries, corruption is said to have become a part of everyday life. So much so that people who refuse to cooperate with corrupt officials are barred from receiving government contracts, for example. As a result, people find it necessary to bribe public officials in order to carry on business. To date corruption, is prevalent in most of the African nations, Kenya inclusive (Mbaku, 1998).

Corruption in Kenya seems to "permeate the entire socio-economic and political fabric". The entire Kenyan public is 'encapsulated in corruption' (Kibwana, Wanjala and Oketch-Owiti, 1996). Kenya, with a score of 27, is ranked 139 out of 174 countries worldwide alongside Nigeria, Nepal, and Pakistan, as countries where corruption is still rampant. The Corruption Perceptions Index scores countries on a scale from zero (highly corrupt) to a hundred (very clean). While no country has a perfect score, two-thirds of countries score below 50, indicating they suffer from a serious corruption problem (TI, 2012).

Corruption is extremely costly to any economy and has remained one of the main causes of poverty in Kenya and a "major impediment to Kenya's economic development" (Kibwana, et al 1996). Anglo-Leasing, which occurred between 1997 and 2003 involving nearly $750 million and the Goldenberg which occurred between 1990 and 1993 involving nearly $490 million are Kenya's two grand corruption cases that have cost the country's economy and tax payers over $1 billion.

Corruption and corrupt leaders have deepened poverty and made it difficult for ordinary people to get ahead since corruption affects the poor more than the rest in society. This is normally the

result of two things: first the poor suffer the most from the inadequate services resulting from corruption, and second, the poor are the most powerless to resist the demands of corrupt officials (Mullei, 2000). It is in the economic arena where both the causes and effects of corruption are more pronounced and manifested (Kibwana, et al, 1996).

The Constitution of Kenya 2010 provides for the establishment of an anti-corruption agency to address the vice. The Ethics and Anti-Corruption Commission (EACC), thereof established, is headed by a Chairman assisted by two other commissioners who assists the Chairman in discharging duties when absent. The Commission has four Directorates which are Investigation and Asset Tracing, Legal Services and Asset Recovery, Research, Education, Policy and Preventive Services (REPPS) as well as Finance and Administration (GoK, 2010).

Kenya's anti-corruption commission is mandated, under section 13 of the Anti-Corruption and Economic Crimes Act, to investigate corrupt conduct and activities, prevent the occurrence of corrupt practices, advise public institutions on how to fight corruption, educate the public on the dangers of corruption, enlist public support in fighting corruption and economic crime as well as facilitate the smooth recovery of ill-gotten wealth (GoK, 2003).

1.2 Statement of the research problem

The Corruption Perception Index 2012 ranks Kenya 139th out of 176 countries, tied closely with Azerbaijan, Nepal, Nigeria and Pakistan as countries where corruption is rampant. It is estimated that the average urban Kenyan pays 16 bribes per month. Most of these bribes are fairly small

but large ones are also taken with bribes worth over Ksh50,000 accounting for 41 per cent of the total value (CPI, 2012).

In the first President Jomo Kenyatta's government and that his successor President Daniel Moi, corruption became part of the survival strategy and a means for the distribution of political patronage. For example, by the end of the Moi presidency in 2002, corruption had really become a way of life (Kibwana, K., Akivanga, S., Mute, L., and Odhiambo, M. (2001).

A number of agencies that have since been formed to fight corruption include the Police Anti-Corruption Squad (1991), the Kenya Anti-Corruption Authority (KACA, 1997), and the Kenya Anti-Corruption Police Unit (2001). Later, there was the Kenya Anti-Corruption Commission which was established in 2003 by the Anti-Corruption and Economic Crimes Act, 2003. All these were for the purposes of investigating corruption and economic crime, preventing corruption, and educating the public. In 2011, the constitution established the EACC. In order to strengthen the agency the Constitution stipulated that the commission thereof established was given a higher status and more powers than the previous ones.

The commission, which is a focus of this study - EACC - was established as conceived under Chapter 15 of the Constitution. Among other provisions including the determination of office bearers and their terms of service, the constitution spells out the reporting structure of the commission like any others and independent offices. It stipulates that as soon as practicable at the end of every financial year, each commission and holders of independent offices shall submit

a report to the President and to Parliament. This means the Commissions are answerable only to those two institutions. That creates some form of independence for objective operation.

This study seeks to establish the missing link in the fight against corruption that has led the country to be poorly ranked in the fight against corruption. This is in a bid to ensure that institutions tasked to fight graft strategize well, lest they continue to fail. Based on the above arguments, therefore, this study critically examined the challenges of curbing corruption in Kenya, a case of the Ethics and Anti-Corruption Commission.

1.3 Research questions

This study was guided by the following research questions:-

1) What challenges has EACC faced in a bid to fight corruption in Kenya?

2) How has EACC addressed these challenges in curbing corruption?

3) In what ways can institutions fighting corruption be enhanced to discharge their mandate?

1.4 Objectives of the study

The main objective of the study was to establish the challenges of fighting graft in Kenya with a specific focus on the Ethics and Anti-Corruption Commission (EACC). The specific objectives included:-

i. To assess EACC's performance given the challenges experienced while fighting corruption in Kenya.

ii. To examine the strategies by the EACC to overcome the identified challenges.

iii.　To determine ways of enhancing the capacity of institutions tasked with fighting corruption in Kenya.

1.5 Justification of the study

Corruption hinders development anywhere in the world. It is a vice, therefore, that has to be eliminated from society. In Kenya, the Ethics and Anti-Corruption Commission is tasked with the onerous task to eliminate this vice. EACC, therefore, is meant to play an important role in the development of Kenya's economy through its preventive, investigative and corruption fighting efforts. Towards this end, the agency closely collaborates with other institutions like the Director of Public Prosecution (DPP) office and the Judiciary to deliver its mandate.

This study sought to establish what challenges institutions tasked to fight corruption faces which hinders them from realising their objectives. This is after the realization that despite the existence of such agencies before, corruption has continued to exist. Addressing such challenges, would eliminate any barrier to an anti-corruption agencies achieving its objectives. This is the gap that this study seeks to fill.

This study will benefit the government and those concerned with the fight against corruption as they would know how to respond to increased corruption which often affects public service delivery. They would also know, beforehand, the challenges facing EACC while fighting corruption in Kenya as discussed later in this study.

This researcher went a long way in advancing ways of overcoming EACC challenges if the country is to succeed in the fight against corruption. The government should, therefore, be better equipped in providing direction as to how to establish an institution that will succeed in the fight against corruption. The government of Kenya, and indeed other governments, can use the findings from this research, to aid in formulating policies that will guide objective and professional fight against corruption in a country. This will also go a long way in enabling the agencies tasked to mitigate corruption effectively contribute to the realization of Kenya's Vision 2030 by providing a conducive environment for businesses to flourish. This will, in turn, lead to increased employment opportunities as well increased government revenues.

The findings of this study will also inform organisations on how to respond to increased corruption which affects their effective operation. On the other hand, this study provides new knowledge to students and scholars interested in appreciating EACC's challenges of fighting corruption in Kenya. This study also contributes to the existing body of knowledge and provides a basis for further research.

1.6 Scope and limitations of the study

The operational nature of the Ethics and Anti-Corruption Commission is such that it rarely shares information regarding what it does and the challenges it faces while discharging its mandate. Accessing information about EACC is therefore a challenge. Aware of this challenge, the researcher devised a way of corroborating information obtained regarding the operations of EACC from staff and management and what is in the public domain regarding the challenges

EACC faces with interviews with leaders of the predecessor organisation, Kenya Anti-Corruption Commission and its Advisory Board.

Most leaders, especially within EACC were not be willing to go on record discussing the challenges arguing that some doing so would put them on a collision course with their immediate supervisors, Parliament and the Presidency. They preferred that their supervisors (Parliament and the Presidency) share these challenges with a third party. However, the officers shared these challenges through interviews after an assurance was given that the information was to be treated with confidentiality and purely for academic purposes. Those interviewed at the senior levels were assured that the researcher would not discuss their details. Similarly, those filling questionnaires were assured that their identity would not be revealed.

Anti-Corruption Agencies are quite selective in the way they divulge information regarding their operations and EACC is no different. However, the study corroborated information gathered from EACC with interviews of officers from other institutions concerned with the fight against corruption like the Department of Public Prosecution and information collected from the public as well as interviews with the former anti-Corruption agency officials.

1.7 Definition of concepts

Corruption: Corruption is lexically defined as the act of corrupting or state of being corrupt. It is a moral perversion; depravity or perversion of integrity. It also refers to bribery. In the context on this study, corruption refers to any abuse of a position of trust in order to gain an undue advantage.

Accountability: This is the act of being responsible to someone or for some action or being answerable. It is the ability of being able to be explained. Accountability is also defined as the obligation of an individual or organization to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property. For purposes of this study, accountability denotes a relationship between a bearer of a right or a legitimate claim and the agents or agencies responsible for fulfilling or respecting that right.

Political Interest: Deth (2000) argues that political interest can be thought of as the "degree to which politics arouses a citizen's curiosity" or "a citizen's attentiveness to politics." The second way to conceptualize political interest is in terms of political salience or "the relative importance of political matters compared with other activities".

Shani (2007) offers an alternative perspective, defining interest as "the motivation to engage in politics," which consists of both the desire to learn about politics and the desire to participate in politics. For the purpose of this study, political interest is defined as the desire to gain control of public administration driven by the politics of an organisation. Politicians usually desire to be able to predict the directors' decision in institutions like the DPP office and corporations like EACC.

Democracy: Democracy is a competitive political system in which competing leaders and organizations define the alternatives of public policy in such a way that the public can participate in the decision-making process (Schattschneider, 1960). Modern political democracy is a system of governance in which rulers are held accountable for their actions in the public realm by

citizens, acting indirectly through the competition and cooperation of their elected representatives (Schmitter and Karl, 1991).

Democracy, as used in this study, refers to the freedom civil servants have to decide what to do with their resources and how they want to be governed in an organisation. There has to be fairness, which is the goal of ensuring everyone gets equal treatment.

Good Governance: Governance refers to the processes and structures through which power and authority are exercised, including the decision-making processes. It is a culture of responsibility, transparency and fairness in an organization. Good governance is about both achieving desired results and achieving them in the right way.

CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

This chapter reviews relevant literature drawn from diverse experiences across the world. The chapter makes reference to relevant current research on curbing corruption especially through the establishment of Anti-Corruption Agencies (ACAs). The review is focused and critical in stating weaknesses and strengths of previous works. It commences from the ratification of the Constitution of Kenya on 4th August, 2010 and its consequent promulgation on 27th August the same year which marked a significant milestone in the establishment of an effective policy and legal framework to support the reform process in Kenya. Key in the reforms is the fight against corruption.

2.1 Renewed expectations

An opinion poll to ascertain Kenyans' expectations on the possibility of reducing corruption levels under the new constitutional dispensation was conducted by the Kenyan chapter of Transparency International. The survey, among other areas, sought to establish the extent to which Kenyans perceived corruption as a key issue in their local and national arena, determine the proportion of Kenyans who believed that the new constitution would effectively tackle corruption, gauge the expectations of Kenyans on the key governance institutions tasked with steering anti-corruption efforts under the new constitution and assess what Kenyans foresee as the major impediment to successfully combat corruption under the new dispensation (TI Kenya, 2010).

The TI-Kenya survey further sought to evaluate the extent to which Kenyans appreciate their individual role in supporting anti-corruption efforts. From that survey, it was evident that Kenya was yet to win the war against corruption as 97 per cent of the respondents said that corruption was still a key problem in the country. Hope for success in curbing corruption remained with a majority of Kenyans, 75 per cent, expressing optimism that the country's new constitution will effectively support anti-corruption efforts.

Kenya's new constitution established the Ethics and Anti-Corruption Commission (EACC) as the channel through which the government will lead the anti-corruption crusade. The EACC is the focus of this study. What the TI-K study did not establish are what challenges EACC faces as it fights corruption in Kenya as well as explore the strategies the Commission has put forward to address the challenges it faces in the fight against corruption. That is the gap this study seeks to bridge.

2.2 Containing graft

A World Bank (2004) report indicates that the magnitude and negative impact that corruption exerts on businesses may be declining in many countries in the region. The report also shows that small private firms encounter higher levels of corruption. Although that report underscores the importance of policy and institutional reforms in achieving long-term success in the fight against corruption, the long-term sustainability of recent improvements is not certain and the challenges ahead remain formidable.

Since 1995, Transparency International has always issued an annual Corruption Perception Index (CPI) besides publishing an annual Global Corruption Report, a Global Corruption Barometer

and a Bribe Payers Index. TI does not undertake investigations on single cases of corruption or expose individual cases. However, their reports have gone a long way to discourage corruption in a number of countries, albeit in low scale, for fear of making it to the list of shame.

In Kenya, the subject of corruption has attracted a number of studies. The nature, extent, causes and impact of corruption have been studied and several recommendations made on how the vice can be curbed. Through their research, Kibwana, Akivanga, Mute, and Odhiambo (2001), brings out the issues of corruption to the public domain in Kenya. This is in regard to the type, level and areas where corruption thrives most. However, the researchers did not assess the challenges specific agencies tasked to fight corruption, like EACC, an area that this research, now, focuses on.

Any discussion regarding corruption in Kenya remained muted and almost subversive up until before 1995. Although many people knew that corruption was endemic and was rising at such a rate that it threatened to tear Kenya's socio-economic and political fabric apart, it was considered imprudent, particularly for those in official circles to openly discuss corruption (Kibwana et al, 2001).

The corrupt prospered and were rewarded with plum government appointments and often received ululations in public for being perceived as development conscious leaders. The few principled incorruptible leaders became pariahs in their own society, vilified, punished and often victims of punitive transfers and sometimes wanton outright dismissals from their public jobs (Wanjohi, 2011).

To date, corruption has permeated every government sector all over the world, Kenya included. For instance, there is increasing interest among policymakers, planners and donors in how corruption affects access to services in the country and what can be done to combat corruption in the nation (Kibwana, 2001). Corruption is higher in countries pursuing an active industrial policy as it reduces total investment, distorts its composition, and reduces the quality of a country's infrastructure. The combined impact of these changes on economic growth is bound to be negative and substantial. Countries that are more corrupt tend to be poorer and grow slower (Ades and Di Tella, 1997). While Ades et al focused their study on the impact of corruption to a country, this study focused on the challenges EACC faces in fighting corruption in Kenya.

2.3 Anti-Corruption Agencies

The fight against corruption remains a challenge to policymakers worldwide. Strategies and institutional responses to the vice have remained varied, but in recent decades most governments have resorted to establishing anti-corruption agencies (ACAs). In so doing, a number of questions, however, have remained unanswered. The questions include; how much authority should such an agency be given, which specific powers do the ACA's need to effectively perform their functions, how big should the agencies – and their jurisdiction – be, what should be expected of such an agency, and how will it be known whether the agency has been successful; all of which have remained unanswered (Meagre, 2004).

Quah (1999) says that there are two main approaches in creating an ACA: the single-agency approach and the multiple-agency approach. The single agency approach involves placing the

key anti-corruption resources and capabilities within one single organisation. By multiple-agency approach it means that the two countries established additional agencies with specific anti-corruption responsibilities that either did not previously exist or were scattered among departments.

Countries such as the US and India have chosen to strengthen anti-corruption capabilities in government by spreading powers across multiple agencies as opposed to establishing a single ACA. They adopted this strategy to avoid setting up a single strong "lead" agency in the anticorruption crusade. Their justification was that in so doing, the many agencies created posed a lower risk than a single-agency approach of upsetting the balance and separation of governmental powers.

According to Quah (1999), the advantage of the single agency approach is that it provides a 'strong lead' on anti-corruption activities and can reduce the problems of coordination which can bedevil anti-corruption efforts in countries with a number of agencies involved in anti-corruption work. Despite encompassing a range of functions these single-agency models nonetheless must still interact with other agencies involved in the broader fight against corruption.

In Kenya such agencies include the Commission on Administrative Justice (Ombudsman), the Director of Public Prosecution and the Office of the Auditor General (OAG). A possible negative impact of these single-agency models, however, flows from the fact that as a single-agency they possess an extraordinary wide range of powers and so represent a threat if they themselves are 'taken over' by vested interests (Quah, 1999).

The multiple-agency approach in some respects helps overcome this issue of providing a target of take-over by vested interests as its powers and resources are spread over a range of organisations, argues Quah, however adding that the difficulty with pursuing a multi-agency approach is that it can fall prey to the very issues of low levels of coordination and collaboration that underlay the need for an ACA in the first place. Given this, while a multi-agency approach can be seen as constituting a form of ACA it will not necessarily improve the functioning of a country's integrity system if increased levels of coordination and collaboration are not achieved by the agencies involved in the integrity network.

A majority of countries, therefore, have adopted a single agency approach. Kenya, too, took that approach. That explains why this study took a case study approach of one such an agency – EACC – which was established by the Constitution of Kenya 2010 (GoK, 2010).

Meagre (2004) says that the underlying rationale for establishing an ACA is the assumption that it will not itself be tainted by corruption or political intrusion. An ACA is expected to resolve coordination problems among multiple agencies through vertical integration especially in countries that prefer a multiple-agency approach. According to meagre, an ACA should be situated in such a way that it can centralize all necessary information and intelligence about corruption so as to assert leadership in the fight against corruption. This suggests that the main expected outcome of an ACA should be an overall improvement in the performance of anti-corruption functions.

Quah (1999) argues that various agencies have often relied on different strategies to deliver their mandate. Giving an example of Singapore, Quah says that the country's overall strategy included the introduction of incentives that would encourage many to join in the fight against corruption including regular review of civil servant salary levels across government – initiatives that were coordinated by the Corrupt Practices Investigation Bureau (CPIB) which was established in 1952 with a specific mandate of investigation and prevention of corruption activities. Also important in the set-up of an ACA is its cross-agency relationships.

2.4 Country examples

Anti-corruption agencies depend, to a large degree, on cooperation from sister agencies. Securing this cooperation means either positioning the ACA at a point of maximum influence or providing it other tools for encouraging – or extracting – help. Hong Kong and Singapore imposed stringent legal duties of cooperation on government and the public. The Malaysian ACA follows a similar pattern, and it has benefited from both government and civic cooperation.

In Australia, the Independent Commission against Corruption (ICAC) which was established in 1989 works with other agencies to assess and identify corruption risks through the analysis of complaints made by individuals and reports made by Chief Executive Officers of public authorities and through research into the nature of corruption risks. ICAC, among other mandates also investigates corrupt conduct not just to make findings about individuals, but to examine the circumstances that allowed the corruption to occur and builds corruption resistance by providing advice, information and training to remedy potential or real problems, by tailoring solutions to

address major risks or assist targeted sectors and by working with the public sector to build their capacity to identify and deal with corruption risks.

Following challenges of accountability where the agency itself is involved in corrupt activities, amendments were made to the Act that established the agency to ensure the proper and effective performance of its functions, make it accountable to people and help it resolve problems that diminish their effectiveness as well as avoid abuses of power. The 1996 amendment to the ICAC Ordinance strengthened the citizen oversight committees as well as the role of the judiciary in authorizing search warrants.

The 1996 amendment created what has come to be termed as most innovative and well-known of ICAC's accountability mechanisms: citizen oversight boards, known as Advisory Committees. These are appointed by the Governor, but consist of some 40 members, and are headed by private citizens (as required by the amended Ordinance). There are four such committees: the Advisory Committee on Corruption, which oversees general policy and direction of ICAC; and one committee dedicated to oversight of each of ICAC's departments -- the Operations Review Committee, Corruption Prevention Advisory Committee, and Citizens Advisory Committee on Community Relations (ICAC, 2012).

Sedigh and Ruzindana, (1999) says that the Ugandan Office of the Inspector General of Government (IGG), which was established in 1986, has been able to draw on cross-agency cooperation. According to the duo, the IGG office is helped by its authority to enforce the

Leadership Code of Conduct across government, and the Inspector General's role as chair of the National Coordinating Committee overseeing the government's anti-corruption action plan.

The Ugandan IGG additionally has the function of reviewing official asset-declarations and has the authority to commence prosecutions against senior officials found to be corrupt. The Ugandan, the constitution provides for the formal independence of the IGG. The Inspector General and the Deputy IG are to be appointed by the President with the approval of Parliament to a four-year term (renewable once), and can be removed only for specified causes by consent of the President and a Parliamentary tribunal.

In Tanzania, the *Taasisi ya Kuzuia Rushwa* or Prevention and Combating of Corruption Bureau (PCCB), which was established in its current form in 1991, had to be strengthened in 1995 so as to overcome the challenges it was facing while fighting corruption. Its predecessor, the Anti-Corruption Squad, came into being in 1975, under Act No. 16 of 1971. In 1995, then newly-elected President Benjamin Mkapa restructured and strengthened the PCCB which had been suffering from the fact that it essentially played the role of another police department, with a weak institutional network that limited its independent functions (PCCB, 2012).

Other challenges included that fact that the agency's role was not publicly known and that applicable civil service conditions then made it difficult to recruit professional and committed staff increasing outrage about corruption leading into the election period, combined with the inadequacies of the PCCB as then constituted which led to the appointment of the Presidential

Commission of Enquiry Against Corruption (known as the Warioba Commission) to examine the problems and form strategies to address them.

The Commission's report created a sensation, and its momentum helped carry President Mkapa into office, where he took some early dramatic steps such as declaring his own assets and dismissing over 1,000 government employees on suspicion of corruption. Among many recommendations given by the Commission was to make the agency independent in its performance – including autonomy in recruitment, a separate budget, and power to investigate and prosecute without political interference by the government (Sedigh and Muganda, 1999).

Anti-corruption strategy in Philippines had to be reinforced by a committed leadership and able management skills to implement the programs and sustain the progress. Continued reengineering of the bureaucracy proved necessary with reforms focused not only on achieving efficiency and effectiveness, but also instilling a culture of rules in the system (APEC, 2006).

2.5 Kenya's case

In Kenya the official fight against corruption dates back to 1956 with the enactment of the now defunct Prevention of Corruption Act (formerly Cap. 65, LoK). This statute was in operation from August 1956 to May 2003. Initially, the Prevention of Corruption Act (Cap. 65) was enforced by the Police Department, notably the Anti-Corruption Squad constituted in 1993. The Squad was disbanded in 1995 before it could make any significant impact. Amendment of the Prevention of Corruption Act (Cap 65, LoK) in early 1997 led to the creation of the Kenya Anti-Corruption Authority (KACA) in the same year (GoK, 1956).

Challenges were to have KACA which could not make much progress in the fight against corruption in Kenya. The culmination was to be in 2000, December 22, when the High Court, in a case of *Gachiengo V Republic (2000) 1 EA 52(CAK)*, made a ruling that the existence of KACA undermined the powers conferred on both the Attorney General and the Commissioner of Police by the Constitution of the Republic of Kenya. In addition, the High Court held that the statutory provisions establishing the Authority were in conflict with the Constitution. That spelt the death of KACA and the whole fight against corruption. In August the following year, an Anti-Corruption Police Unit (ACPU) was created by Executive Order in a bid to revive the fight against corruption (GoK, 2001).

Operating under the Criminal Investigations Department (CID) of the Police, ACPU took over KACA's mantle in September, 2001 and performed this function until the creation of the Kenya Anti-Corruption Commission (KACC). KACC was a public body established under the Anti-Corruption and Economic Crimes Act (ACECA) No. 3 of 2003. April, 2003 saw Parliament enact two pieces of legislation namely; the Anti-Corruption and Economic Crimes Act (ACECA) No. 3 of 2003 and the Public Officer Ethics Act, No 4 of 2003 which became operational on 2nd May, 2003.

Section 70 of the (ACECA) repealed the Prevention of Corruption Act (Cap. 65) while the Anti-Corruption and Economic Crimes Act established KACC. The Act also established the Kenya Anti-Corruption Advisory Board, an unincorporated body comprising persons nominated by a cross-section of stakeholders. The Advisory Board made recommendations for appointment of a

Director and Assistant Directors of KACC. It also advised the commission generally on how to exercise its powers and performance of its functions under the Act (KACC, 2003).

Parliament was, again, to disband KACC on 24th August, 2011, in line with the requirements for change as stipulated in the Constitution, 2010. The Ethics and Anti-Corruption Commission (EACC) was established after then President Mwai Kibaki signed the Ethics and Anti-Corruption Act into law. It is this Ethics and Anti-Corruption Commission (EACC) that was established on 5th September, 2011 whose challenges in fighting corruption, this study is interrogating.

The early anti-corruption agency had a specific mandate to deal with corruption and had the leeway to cooperate with any other agency, as it deemed appropriate, in the discharge of its mandate. This was because section 12 of the Anti-Corruption and Economic Crimes Act provided that the Commission may, in the performance of its functions, work in cooperation with any person or body that it thinks appropriate.

There are a number of bodies or agencies that the Commission has the liberty to co-operate with includeding the Controller and Auditor-General, the Director of the Criminal Investigation Department (CID), Police, Efficiency Monitoring Unit (EMU), the Attorney General's Office, the Judiciary, Parliament, Department of Governance and Ethics, and the National Anti-Corruption Campaign Steering Committee. Due to lack of proper coordination, the fight against corruption soon ran into a near halt which caused the country to abandon the multi-agency approach and decided to establish a single agency (EACC, 2013).

Transparency International continues to rank Kenya poorly in as far as the elimination of corruption is concerned. Kenya, with a score of 27 last year, is ranked 139 out of 174 countries worldwide, an indication, according to TI that the country's fight against corruption by EACC still faces challenges (TI, 2012).

2.6 ACA's success

Kaufmann (1998) says that the conditions for the success of ACAs appear to have nothing to do with setting up a formal program or an ACA. What is required is; public order, political stability, the absence of macroeconomic crisis or crippling distortions, existence of a link between political gain and anti-corruption success and some basic features of the rule of law.

According to Kaufmann, if these conditions are weak or are non-existent, as is often the case in many of the developing countries, the dimensions of corruption could easily overwhelm an anti-corruption program. In such a scenario, new policies and agencies cannot cure thoroughly unsound governance environments despite the fact that new policies have been known to address corrupt areas, even deeply corrupt ones, but within an environment that is otherwise sound.

Meagher (2005) expresses concern over the difficulty to sustain an effective anti-corruption campaign, however, adding that over time as public institutions' governance evolve, they gain expertise and will be able to mount a serious anti-corruption campaign. According to him, this is critical in a country's development because short-term success, although sometimes possible in a dysfunctional environment, its achievements are unlikely to outlive an incumbent regime.

On the political dimension, there is no way to attack the corruption problem without raising fundamentally political questions about the ways people – both public and private – pursue and use power, and about the people and standards to which they should be held accountable (Johnston, 1999).

This is most obvious where the state is weak and corruption organized along patrimonial lines. In this case, the distribution of illicit rents may be so systematized that it makes little sense to think of it as a feature of the political system – it is the political system. In another sense, anti-corruption efforts are political by definition: like all reforms, they happen on the plane of politics.

The effort arises from some challenge, whether by strong or weak constituencies, external or internal ones. Depending on the strength of the challenge, it might be possible for the regime to get away with little more than empty gestures. For example, it might set up an ACA with few resources and no scope for independent action. Alternatively, if the challenge seriously threatens the regime's hold on power or brings in a new government with high expectations, then the credibility bar will be set much higher.

An ACA would need resources, sanctions and coercive power, independence, and public accountability. Additional questions arise in the design of the mechanism – whether, for example, to make it a powerful deterrent to the potentially corrupt, to provide insurance for select elites against investigation, or to set up credibility-enhancing features aimed at constituencies such as international aid donors and local NGOs.

The causes and consequences of, and solutions for corruption tend to be intertwined. Consider, for example, the relationship between corruption and the effectiveness of a country's legal system. The level of corruption may begin to rise in response to an external shock for example. The political elite may find the increased income from corruption irresistible. Once corrupted, the elite will attempt to reduce the effectiveness of the legal and judicial systems through manipulation of resource allocation and appointments to key positions.

Reduced resources make it difficult for the legal system to combat corruption, thus allowing corruption to spread even more. Therefore, a weak judicial system becomes a cause as well as a consequence of corruption. The implication is clear. Anti-corruption efforts are not only subject to major limitations and qualifications, but also unavoidably political (Jain, 2001).

Jain further notes that it is important also to note that when political leaders propose to establish an anti-corruption agency, they may have little reason to be candid about their motives and expectations. ACAs are often put forward as the answer to corruption. The stated purpose of an ACA, therefore, is to combat corruption, eradicate it or reduce it to the minimum.

This, however, could get no further than it does to say that an environmental agency is about a clean environment, and a justice ministry is about justice. Reaching the ultimate policy objectives presents complications. These are centrally important, and yet they are often submerged in the policy discourse. Nowhere is this more evident than in the anti-corruption field.

It is for this reason that monitoring performance becomes critical for any ACA. Uganda's IGG for example, reports to Parliament every six months, although these reports are not made public. Kenya's EACC reports to the National Assembly after every three months and the reports are made public. What these reports, especially by EACC, have not been able to capture, which is the focus of this study, are the challenges that they as the combat corruption. This is the knowledge gap that this study seeks to bridge.

2.4 Theoretical framework

This section discusses the theories that this research could be anchored on so as the explain the characteristics of the agency.

2.4.1 Authoritarian theory

Authoritarianism happens when the followers submit too much to the leaders, trust them too much, and give them too much leeway to do whatever they want - which often is something undemocratic, tyrannical and brutal. Authoritarian followers seem to have a "Daddy and mommy know best" attitude toward the government. They do not see laws as social standards that apply to all. Instead, they appear to think that authorities are above the law, and can decide which laws apply to them and which do not - just as parents can when one is young. Although in a democracy no one is supposed to be above the law, authoritarians quite easily put that aside.

That explains why politicians usually want to achieve office and remain there. To them, the best strategy for surviving in office is to give those whose support is needed what they want. This often sends them to the wrong side of the law in as far as integrity is concerned. Most obviously, in the absence of routine ways for citizens to remove leaders from office, questions of who

exactly the supporters of authoritarian leaders are, how satisfied they have to be, and what factors besides satisfaction with regime performance affect their level of acquiescence require empirical investigation. These questions cannot be answered in the abstract or assumed away, as in the study of democratic politics.

The identity and interests of regime supporters varies quite dramatically from one kind of authoritarianism to another. Less obviously, it should not be assumed that the officers, parties, and cliques purporting authoritarian leaders always want to hold office or that, having achieved it they always want to hang onto it. Antidemocratic currents of political thought based on the belief in the validity of authoritarian, totalitarian regimes in which the dictates of one person or of an elite within the state are omnipotent, state power is totally unchecked, the individual and the people are without political rights, and the democratic procedure of free choice is absent. The term is connected with the concept of authoritarianism, which entered general usage in the 20th century and which is used to designate political theories and practices inimical to democracy.

All authoritarian theories are characterized by the antidemocratic treatment of such elements and institutions of political life as the form of government, the political regime, the mutual relations of the government and its subjects, and individual rights and freedoms. The glorification of the supreme ruler and the ruling elite and references to the natural supremacy of the 'betters' and the 'strong,' on the one hand, and to the inability of the masses to decide public and state affairs and to use freedom wisely are also characteristic of authoritarian theories. In such circumstances, the fight against corruption can be a nightmare.

Authoritarian theories can be traced throughout the history of political thought in class society. Examples from the ancient world include Heraclitus' thesis on the necessity of the "betters" ruling over the masses and the arguments of Thrasymachus and Callicles for the right of the 'strongest' over the weak. In modern times the theories justifying absolutism have an authoritarian character. For example, the English philosopher Hobbes (1588–1679), using the alternative of universal anarchy as a threat, argued for the unlimited power of the state in relation to its subjects. The state power of monarchs, according to Hobbes, is monolithic, uncontrolled, and stands above the law while subjects are slaves serving the state.

In German political philosophy of the 18th and 19th centuries authoritarian ideas were widely used as an apology for the Prussian state system and the cult of power. The policies of monopolistic capitalism, the strengthening of political reaction that is characteristic of the period of imperialism and especially of the general crisis of capitalism, and the narrowing of the social base of political power of the bourgeoisie led to the revival of authoritarian theories and culminated in the ideology and practice of fascism. The latest bourgeois theories of the rule of the 'strong man' are tinged with authoritarianism.

Theodor Adorno, Else Frenkel-Brunswik, Daniel Levinson and Nevitt Sanford are the scholars that theorized about a personality type that involved the "potentially fascistic individual". They labelled it the "Authoritarian personality" based on earlier writings by Erich Fromm that used this term. Because the historical influences for their theory included the rise of fascism in the 1930s, World War II, and the Holocaust, a main component of the "authoritarian personality" is being susceptible to anti-Semitic ideology and anti-democratic political beliefs. Their large body

of research (known as the Berkeley studies) focused mainly on prejudice within a psychoanalytic / psychosocial theoretical framework (Adorno, Frenkel-Brunswik, Levinson, Sanford, 1950).

In Kenya, however, there has not been absolute authoritarianism. What have been in existence are a few elements of the characteristics of authoritarianism within the former regimes. This, however, cannot expressly be linked to have posed the major challenge in the fight against corruption. Rather the Elite theory could be the most appropriate.

2.4.2 Elite theory

An elitist theory of government is a theory that describes the power relationships within a society. The theory maintains that a very small group of the elite hold the most power within a government body. Elite theorists argue that most of the top leaders in nearly all key sectors of society are seen as recruited from the same social group. These theorists emphasize the degree to which interlocking corporate and foundation directorates, old school ties and frequent social interaction tend to link together and facilitate coordination between the top leaders in business, government, civic organizations, educational and cultural establishments and the mass media (Johnson, 2005).

According to this theory, the 'power elite' can effectively dictate the main goals if not always the practical means and details for all really important government policy making as well as dominate the activities of the major mass media and educational/cultural organizations in society by virtue of their control over the economic resources of the major business and financial organizations in the country. Their power is seen as based most fundamentally on their personal economic resources and especially on their positions within the top management of the big

corporations, and does not really depend upon their ability to garner mass support through efforts to 'represent' the interests of broader social groups. As this study established, they have a hand in decision making that renders the fight against corruption, in Kenya, ineffective.

The elitist theoreticians differ somewhat among themselves on such questions as how open the power elite is to 'new blood', the exact degree of agreement or disagreement that usually prevails within its ranks, and the degree of genuine concern or lack of it for the broader public welfare that enters into their choices of public policy goals.

However, all such theorists broadly share the notion that it is these few thousand 'movers and shakers' who really run a country and determine the basic directions of public policy, certainly not the manipulated and powerless masses of ordinary voters choosing among candidates at election time. This study, therefore, applied this elite theory and positively tested that it holds.

Elite theory is based on three ideas. First that power lies in position of authority in key economic and political institutions and second that the psychological difference that sets elites apart is that they have personal resources, for instance intelligence and skills, and a vested interest in the government while the rest are incompetent and do not have the capabilities of governing themselves. The elite are resourceful and will strive ˙ make the government to work. Thirdly, the elite have the most to lose if government or state failed (Wright, 1963).

Elite theory's origins lie most clearly in the writings of Gaetano Mosca (1858-1941), Vilfredo Pareto (1848-1923), and Robert Michels (1876-1936). Mosca emphasized the ways in which tiny

minorities out-organize and outwit large majorities, adding that "political classes" – Mosca"s term for political elites – usually have "a certain material, intellectual, or even moral superiority" over those they govern (1923/1939). This theory best captures the study as it would be possibly to understand the challenges EACC faces in its bid to play its mandate given that those at the helm of the institutions are its ultimate decision makers. It is these decisions by the top management, as the study established, that ideally should address any emerging challenges for the anti-graft agency. It is this view that a small group of people actually makes most of the important government decisions that this study based its research endeavours so us to understand what Adam's Smith would term as that 'invisible hand' which influences decisions that are made including at EACC. This is because in public policy and power, elite-based theories speculate that the state is really controlled.

Elite theory in political sociology was advanced in direct response to Marxism. The early elite theorists were conservatives who were opposed not only to socialism, but also to liberal democracy as expressed by any movement which attempted to give the masses of the population a greater influence on political affairs. They argued that elites were necessary and inevitable and that any revolution which pretended to abolish elites would end up by simply replacing them with another.

Elite theorists use two basic lines of argument. First, they argue that certain aspects of human nature make elites inevitable and second that that elites are necessary for any social organization to function effectively. Elite theorists often emphasize differences in inherent abilities as a source of elites. All people are not created equal: some are stronger, more intelligent and more artistic.

Those who have the most of a certain kind of ability constitute a sort of elite such as the elite of chess grand masters or of concert pianists. Of course, not all abilities lead to economic wealth or political power.

However, those people who have the most of the particular abilities which a society rewards become the political elite. In some societies, a talent for corruption may actually be a prerequisite for entering the elite group. Abilities are distributed continuously; that is, there is no sharp division between the people who are at the top with respect to a given ability and those who are on the bottom. Vilfredo Pareto, who was an econometrician as well as an elite theorist, assumed that abilities were distributed on a smooth curve similar to the distribution of income.

A state is run by a series of interconnected state elites; political elite, civil service elite, judicial elite and the military elite, but these elites are, in turn, extremely likely to be influenced by the bourgeoisie and to make policy decisions accordingly (Miliband, 1983). The bourgeoisie, according to Miliband, remains a ruling class.

The weaknesses of the elite theory show an unclear system of how it reaches its goals. It does not explain how it gathers and lumps all the minorities into the same group. It also does not consider the implications of a society that is not run by money but out of concern of future wellbeing of its citizens. The Elite theory, therefore, wrongly assumes inequality as the basis of society.

Elite theory can be further criticised for its failure to recognise the due importance of the people in democratic systems, the importance of the democratic system and the key role played by

public opinion in the determination of the rules, policies, programmes and decisions of the government of a state.

The Elite theory strengths explains group politics by bringing to attention the weaknesses of the people as a whole including minority group politics, that minorities are just the same as everyone else other than the elite. According to this theory, the masses will always be just one diversified group with no means of really getting anything accomplished. That is why only a particular group in society influences politics.

There has been a sociological reasoning of understanding the importance of social stratification that has allowed groups in positions to influence politics. Each and every position that a group holds puts some sort of implication that begins by the distributing of power in the political system. Although the masses elect these officials, the officials' candidature is often determined by the elite who even give them campaign contributions.

It is the elite theory, therefore, that best explained why despite the perceived independence of the agencies that have been fighting corruption, like EACC, such an agency's decision seem not to be in tandem with that independence hence the failure to root corruption out of the country. This is because the power elite often established the basic policy agenda in such areas as national security and economics.

2.5 Research hypothesis

H_1 Failure to address challenges facing EACC has led to the continued existence of corruption in Kenya.

CHAPTER THREE: METHODOLOGY

3.0 Introduction

Research methodology is a system of explicit rules and procedure upon which research is based and against which claims for knowledge are evaluated. This section, therefore, encompasses the research methodology that this study used. The section is broken down into the study location, sources of data, sample and sampling technique, data collection, data analysis and ethical considerations.

This study benefited from both qualitative and quantitative data that was collected to maximize the gathering of requisite information that was used to draw the substantive conclusions discussed later in Chapter Four of this paper. The quantitative data collected was useful in establishing, from EACC employees, their view on the challenges EACC faces while mitigating corruption in Kenya.

The data gave the numerical implications of the study in terms of the percentages of people who think that corruption can be fought differently if there is commitment from both the government and the political class among other inquiries. Qualitative data on the other offered an explanation of the reasons behind the issues raised and how best they can be resolved.

3.1 Study site

The study was carried out in Nairobi at the Ethics and Anti-Corruption Commission (EACC) head office as well as sampled offices that deal with the fight against corruption like the Director of Public Prosecution's office. This was arrived at when the researcher established that the sample from the EACC office was representative of the two office's operations countrywide.

EACC branches outside Nairobi operate making reference to the Head Office. Data from the other sampled offices was used to corroborate that collected from EACC.

3.2 Sources of data

The study used both primary and secondary data. Secondary data was obtained from EACC's publications, journals, and periodicals. These EACC publications used include the strategic plan and the agency's quarterly reports. Data was also extracted from the Anti-Corruption and Economic Crimes Act, Parliamentary Hansards, Parliamentary committee reports and newspaper clippings.

This is because the Parliamentary committees are the ones that vet EACC leadership as stipulated in the Act that forms the agency. Primary data was obtained through interview guides with open-ended questions. The open-ended questions enabled the researcher to collect qualitative data. Detailed questionnaires were also used to collect both quantitative and quantitative data.

3.3 Sampling technique

The target group for this study was EACC employees, former leaders to then Kenya Anti-Corruption Commission and its Advisory Board. Probability sampling was used to select who of the EACC employees would be interview. From the top managers the research benefited with specific information on decision making.

The agency's top management and members of the former KACC Advisory were interviewed to share the knowledge they have regarding EACC. The KACC Advisory Board members were

interviewed because at one point they played a key role in the management of the anti-graft agency. The interviews conducted provided valuable information that guided the study into drawing the credible conclusions discussed in the subsequent chapters. The research had 50 responded, which marked a response rate of 83 per cent.

3.4 Data collection techniques

Informal interviews were conducted with the target sample i.e. members of the KACC Advisory Board. Besides the interviews with EACC top management, detailed questionnaires were administered. Information from interviews was used to corroborate the collected data by the use of questionnaires.

3.5 Data analysis techniques

The data collected was analyzed using content analysis by first grouping the data according to the responses obtained. This applied especially to qualitative data. However, quantitative data was analysed using the Statistical Package for the Social Sciences (SPSS) software. The data was then presented as frequency distribution and percentages, which was later used for further analysis.

Data presentation was done by the use of charts, graphs, percentages and frequency tables. This was to ensure that the gathered information was clearly understood. Inferential statistics was used in drawing conclusions. The study was to test the challenges EACC faces while mitigating corruption in Kenya and how to overcome those challenges.

CHAPTER FOUR:PRESENTATION OF FINDINGS

4.0 Introduction

This chapter explains and analyses data collected relating to the challenges of fighting corruption in Kenya; a case of the Ethics and Anti-Corruption Commission. In this study, employees of EACC and commissioners of the defunct KACC Advisory Board were interviewed. Questionnaires were also used to collect data. The analysis below is based on the specific research questions as were posed to the respondents. A number of factors did emerge but largely the researcher sought to first establish the challenges of fighting corruption in Kenya as experienced by the EACC.

4.1 Challenges of fighting corruption in Kenya – Outsiders' views

The research revealed that a number of challenges were hindering the successful fight against corruption. Those interviewed identified challenges which, in their opinion, make the fight against corruption unsuccessful. They include lack of proper coordination between investigation and prosecution, delays in conclusion of corruption cases, fear to give evidence in corruption cases, lack of support from citizens in the fight against corruption as well as lack of capacity to deal with complex crime in the Kenyan courts which often leads to technical decisions where rulings in the corruption cases are not properly handled.

In an explanation, through follow up interviews, it emerged that the of rulings from the courts particularly on technical issues often leads to staff demotivation especially since EACC is shy of pushing towards resolving the challenges hindering effective fight against corruption like crusading for it to be granted prosecutorial powers. The other challenge, from the collected data,

is that the society thinks that the fight against corruption lies squarely with EACC. However, it is evident that the fight against corruption can only be won when all are involved.

The other challenge is that there is a high employee turnover at EACC which often leads to inadequate number of employees as is the case in the investigation department. Coupled with the high frequency of change at the helm of the anti-graft agency, there is said to be lack of political will, presence of political interference and lack of government commitment in the fight against corruption which has derailed the elimination of the vice in Kenya. Those interviewed argued that since the government takes long to replace leadership at EACC, it is a sign that such a government is less committed to see the institution deliver in its actual mandate.

This has led to the offering and talking of bribes becoming rampant in the country often leading to a culture of impunity, a culture too deep rooted thus making corruption almost seem as a way of live in Kenya. The other challenge that emerged is that the higher authorities prone to corruption are always not clear on their mandate, seniors use their juniors while engaging in corruption and there are a high number of cases of intimidation by supervisors and unclear legal and policy provisions and regulations that are exploited to perpetrate this crime.

The existence of a vast majority of the citizens, especially those living in the rural areas, who are yet to understand the nature and effects of corruption in Kenya, was also cited as a challenge given the damage ignorance inflicts to the economy. This is often reflected through resounding welcomes accorded to the officials who are compelled to resign from their ministerial positions due to corruption allegations levelled against them.

Unequal pay for equal work done, economic and social demands for wealth creation, poverty, historical factors, tribalism, ethnicity and nepotism as well as weak laws and institutions were also cited as the reasons why the fight against corruption is not making much headway in the country.

Corruption takes long to be discovered and it evolves and takes different forms. This needs immediate address which is also hindered by lack of funds, unethical behaviours, fear of reprisals, fear of job security, lack of proper reporting channels, victimization of those who report corruption and lack of transparency.

4.2 Challenges EACC faces in fighting corruption – Insiders' view

Respondents were asked rate the success of EACC in its fight against corruption. It is evident, from their responses, that a majority of EACC employees do not think that their organization is making significant success in the fight against corruption. As evidenced from Table 4.1 below, 62 per cent of the respondents said if there was any success in the fight against corruption, it was to a very low extent. Four per cent said there was no success at all that EACC had recorded in the fight against corruption. Only 14 per cent of those interviewed said that EACC recorded a very high success rate in its fight against corruption. Twenty per cent remained neutral in as far as the success or lack of it of EACC's fight against corruption endeavours is concerned.

Table 4.1: Rate of success in the fight against corruption

Response	Frequency	Percentage	Cumulative Percentage

No success	2	4.0	4.0
Very low	31	62.0	66.0
Neutral	10	20.0	86.0
Very high	7	14.0	100.0
Total	50	100.0	

Source: Research Data, 2013

The respondents were also asked to rate the success of the current style employed by EACC in the fight against corruption. A majority of the respondents disapproved the style of fighting corruption currently employed by EACC. As indicated in Figure 4.1 below, 60 per cent of the respondents said there was a very low probability or none at all that EACC's current style of fighting corruption would lead to any success. Only 14 per cent were hopeful that the current style of fighting corruption would yield results.

Figure 4.1: Rating of the possible success of the current style in fighting corruption
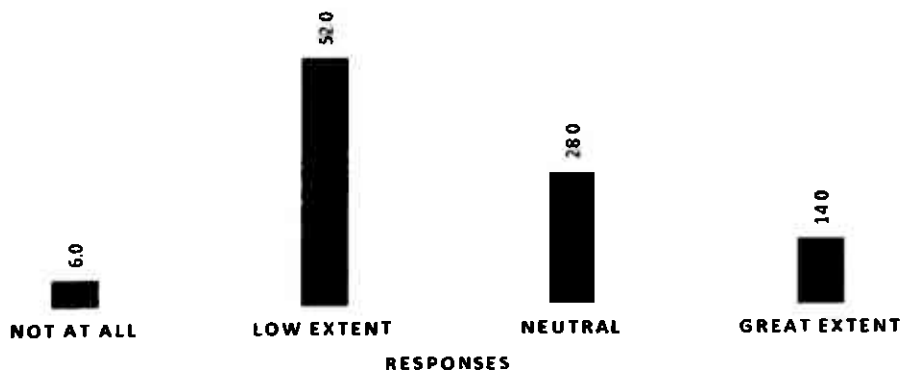
Source: Research Data, 2013

The researcher then thought that EACC lacked creativity in the fight against corruption. The vindication stood out when respondents were asked to EACC's creativity in the war against

corruption. Apparently, EACC has to improve its creativity in fighting corruption as only 18 per cent of the respondents said they are very creative in the fight against corruption. A huge percentage, 46%, thinks that they are fairly creative while 26 per cent remained categorical that EACC is not creative at all in the fight against corruption as shown in Table 4.2 below.

Table 4.2: EACC creative rating in the fight against corruption

Response	Frequency	Percent	Cumulative Percent
Very Creative	9	18.0	18.4
Fairly Creative	23	46.0	65.3
Not Creative	13	26.0	91.8
Don't Know	4	8.0	100.0
Total	50	100.0	

Source: Research Data, 2013

The other challenge, it emerged from interviews, is that the government has not been bold enough to deal conclusively with corrupt senior public service officials. In most cases, the interviewees indicated, corrupt senior government officials are only forced to resign without being prosecuted, despite the availability of rich incriminating evidence. Goldenberg, land-grabbing and Anglo Leasing are some of the scandals mentioned, by those interviewed, regarding which the government has exhibited limited bravery to act. Failure to act, according to those interviewed, demonstrates the existence of a yawning gap between the supposed government commitment to combating corruption and what it is actually on the ground.

This meant that despite establishing institutions such as EACC as well as policy frameworks such the Public Officers Ethics Act of 2003, enforcement is still very weak. EACC, for example, is said to be understaffed and poorly equipped to deal effectively with corruption given that the agency does not have prosecutorial powers. This is because the Act that establishes the Ethics and Anti-Corruption Commission gives the anti-corruption body no teeth to bite and dithers on the question of fines and penalties denying the organization prosecutorial powers, as pointed out from the interviews.

In Section 11 of the Act, the Commission is empowered only to do such things as developing and promoting standards and best practices; developing a code of ethics; receiving complaints; investigating and recommending to the Director of Public Prosecutions any acts of corruption as well as advise; oversee and raise public awareness and establish strategic linkages and partnerships.

Another challenge is that the country's anti-graft agency – EACC – hardly gauges its achievements in its fight against corruption. Respondents were asked to state how often EACC gauges its achievements in the fight against corruption, perhaps, with the aim of improving in any weak areas identified. It, however, emerged that the country's anti-corruption agency hardly gauges its performance. Indeed, according to 59.1 per cent of the respondents surveyed the agency does not gauge its performance at all as indicated in Table 4.3 below. A further 36.4 per cent said if EACC measures its performance, it is a low extent while only 4.5 per cent of the respondents said the agency measures its achievements to a very large extent.

Table 4.3: How often does EACC gauge its achievements in the fight against corruption?
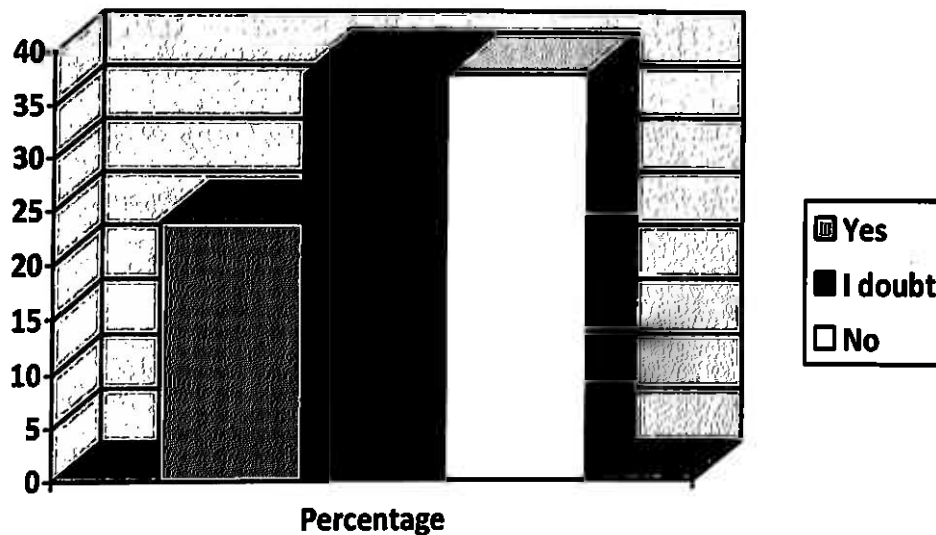
Response	Percentage	Cumulative Percentage
Not at all	59.1	59.1
Low extent	36.4	95.5
Very large extent	4.5	100.0

Source: Research Data, 2013

Respondents were asked to rate management's commitment to resolve challenges brought up by staff and a majority of them felt that the issues they raise are hardly resolved as 33 per cent of the respondents were categorical that their issues are never resolved. Only 22 per cent of the respondents said their concerns are often resolved. This brings into question the resolve to solve those challenges.

Opinion remained divided regarding the management's commitment to resolve issues raised by staff as they undertake their duty of fighting corruption. While 38 per cent of the respondents said that there is management commitment to resolving any challenges raised, an equal percentage doubt such a resolve. However, 24 per cent of the respondents came out categorical that there is no management commitment in its bid to resolve the issues raised by staff of the EACC as indicated in Figure 4.2 below.

Figure 4.2: Is there management's commitment to resolve challenges brought up by staff?

A bar chart with a y-axis labeled from 0 to 40 in increments of 5, and an x-axis labeled "Percentage". A legend shows: Yes, I doubt, No.

Source: Research Data, 2013

In a case where a solution is found by the EACC management for the challenges raised by members of staff, 33 per cent of the respondents said such solutions often do not impact positively on the overall fight against corruption. On the other hand, a much smaller percentage of 23 per cent said the solutions often arrived at did impact positively on their work. A bigger percentage of 49 per cent said sometimes the impact is positive sometimes it is not.

4.3 Strategies EACC employs to overcome its challenges

In order to win the war against corruption, and overcome the challenges it faces, EACC seeks to forge a working relationship with a number of offices including that of the Director of Public Prosecution. Similarly, the anti-corruption agency has previously petitioned Parliament to legislate stronger laws that would aid the fight against corruption, trained staff from various organizations on how to handle the vice when confronted, advocated for non-partisanship and sensitised selected heads of institutions on how to effectively fight graft.

Staff from EACC also visits other institutions sensitizing them on how to deter corruption by employees while ensuring those found guilty are punished. There is a proposal to introduce anti-corruption desks at various government departments accompanied by the introduction of clear policy guidelines on corruption as well as universal enforcement of legal and policy framework all aimed at aiding asset tracking and recovery efforts.

The other response to the challenges of the fight against corruption is through paying equal salary for equal work done and to people with similar qualifications, adherence to laid down procedures and guidelines, following the rules to the letter, avoiding favouritism and rather institute good governance structures instilling good morals. There has also been a deliberate move to ensure that the people tasked to fight corruption are not culprits in one way of the other or do not have vested interests.

4.4 Assisting anti-corruption fighting agencies to succeed

If the agencies designated to fight corruption are to effectively play their mandate, there is need for enhanced public engagement coupled with imposing of tough rules and regulations that would bar people from taking or giving bribes. Similarly, those that are proved to have been involved in the vice must be punished thoroughly.

There is also need for proper funding to the institution designated for the fight against corruption so as to make them completely independent. Their mandate needs to be devolved with enhanced investigation capabilities. Such institutions should be able to undertake civic education to galvanise public support on the fight against corruption, monitor public officers' dealings and work in collaboration with other law enforcement agencies to successively fight the vice.

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter discusses the summary of the findings and draws conclusions. Based on the findings, the research provides practical suggestions and recommendations which, if implemented, would help in dealing with challenges facing the fight against corruption in Kenya. This will take the fight against corruption a notch higher.

5.1 Discussion of findings

In view of the foregoing findings, it is evident that corruption is not an insurmountable problem. It can be completely eliminated if there is sufficient political will and when everybody is involved in the fight. The fight against corruption should not be the exclusive monopoly of bureaucratic elites and EACC. The war on corruption is the duty and obligation of every Kenyan, including Members of Parliament, Senate, National and Country Government leaders. All Kenyans have to own the fight against corruption and to participate actively in it. This is especially so for Kenyans holding positions of power and influence, such as Members of Parliament, Senate, Central and Devolved governments officials.

It is in so doing that the Elite cannot take advantage of the masses and engage or tolerate corrupt activities as it was stated in the Elite Theory. The measures to fight corruption ought to be realistic. Poorly compensated public employees cannot possibly participate effectively in the fight against corruption. They would naturally look for illegal ways to augment their meager

salaries. Role models are imperative for the fight against corruption to succeed. In a situation where the government's top management is involved in corruption, where would subordinate employees get suitable examples to emulate? There is a need, therefore, to organize sensitization seminars/workshops for public employees as well as ordinary citizens on corruption and its adverse effects on the economy and citizens to avoid what is contemplated in the Elite Theory in which this study is anchored.

5.2 Conclusions

The experience of countries that have successfully fought corruption has shown that it takes time, reliable political will and public support to succeed in the war against corruption and economic crimes. This is the testimony of countries such as Hong Kong and Singapore. There, the war on corruption has graduated from Investigation and Prosecution to Education and Prevention as evidenced in the literature reviewed. Kenya is still in the first stage. It is necessary, therefore, to remember that the long-term strategy for success is based on Prevention and Education, rather than closing the door after the horse has bolted – Investigation and Prosecution.

The successful fight against corruption requires the independence of a commission tasked to lead the anti-corruption crusade – EACC – and a clear reporting hierarchy that comprises executive officials, parliamentary authorities, and oversight committees for it. The government, too, must have a commitment to enact reforms that may be politically difficult. In order to execute reform, the government requires negotiations and collaboration with key actors in the government, civil society, and the media.

5.3 Recommendations

1. In order to increase chances of succeeding in the fight against corruption, there is need for a policy shift to accommodate introduction of anti-corruption as a curricular subject in schools.

2. There is need for the government to administer stiffer sentences and penalties for those found guilty.

3. The government should review remuneration of public officers.

4. There is also need to involve religious leaders in the fight against graft.

5. EACC should strengthen their bid to train staff of other institutions on how to fight corruption.

6. The government should strengthen institutions designated to fight corruption and enable them to start the fight against corruption from the top as opposed to from below. That way, by the time the country reaches the middle, great strides would have been made towards eradicating corruption. This is because using the bottom-top approach, the chance of even reaching the middle is very minimal. This, therefore, defeats the very purpose of the fight against corruption.

7. Institutions tasked to fight graft should be given the necessary teeth to bite like granting EACC prosecutorial powers. Coupled with an assurance that the system does not protect the powerful corrupt people, strengthened inter-state relations for support when need

arises, enhanced professionalism as well as proper vetting of officers designated to head the anti-corruption fighting agencies is a recipe for success against corruption.

8. It is also evident from this research that giving EACC independent resources free from either the executive of judiciary, reengineering the judicial system and change of attitude from it is 'our time to eat' way of thinking is very critical in this anti corruption crusade.

). The government should reward whistle blowers and protect them.

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APPENDIX I: Letter of Introduction

University of Nairobi
COLLEGE OF HUMANITIES AND SOCIAL SCIENCES
Department of Political Science & Public Administration

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Nairobi, Kenya.

21/08/2013

The Ethics and Anti-Corruption Commission
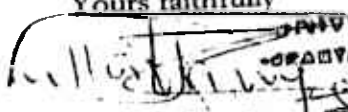NAIROBI

Dear Sir/Madam,

RE: RESEARCH STUDY

This is to request your esteemed institution to grant permission to Mr. Samwel Kumba to conduct a research study for his post-graduate studies.

Mr. Kumba is a duly registered student at the Department of Political Science and Public Administration, University of Nairobi pursuing Master in Public Administration. His research project is based on the challenges of curbing corruption in Kenya: A case of the Ethics and Anti-corruption Commission.

He has completed the first part of his academic work and now ready to begin the final part of his study. This opportunity will give him a practical chance to interview the experts involved in the war against corruption. This exercise is purely for academic purpose and the student is expected to conduct himself with expected decorum, respect and discipline during the exercise.

Thanking you sincerely for support. In case of further clarification feel free to contact the undersigned.

Yours faithfully

Dr. Fred Jonyo,
Senior Lecturer, Dept. of Political Science &
Public Administration

APPENDIX II: Questionnaire

INTRODUCTION

This questionnaire is divided into three sections: 1, 2 and 3. Kindly answer the questions in each section. The data obtained will be used for academic purposes only, and will be treated as confidential as possible. Your participation in facilitating this study is highly appreciated.

Section I: Background Information

1.   Age   :   20-30 ( )   31- 40 ( ) 41-50 ( )   Over 51 ( )

2.   Gender: Male   ( )   Female ( )

3   Highest educational level

     O level ( )   Diploma ( )   Degree ( )   Masters ( )   PhD ( )   other ( )

4.   Current job group:...

5.   Name of your section--

6.   How long have you participated in the anti-corruption crusade?

      (a) Less than 5 years ( )   (b) 10-20 years ( )

      (c) 20-30 years ( )   (d) Over 31 years ( )

7.   Terms of employment

      (a) Permanent and pensionable ( )

      (b) Probationary ( )

      (c) Contract ( )

      (d) Temporary ( )

Section 2: The fight against corruption

1. To what extent is fighting corruption successful in your opinion

   No success ( )   Low extent ( )   Neutral ( )   High extent ( )

2. How would you rate the success of the current style of fighting corruption by EACC?

   No success ( )   Very low ( )   Neutral ( )   Very high ( )

3. To what extent would you say the fight against corruption is achieving its target objective?

   Not at all ( ) Low extent ( )   Neutral ( )   High extent ( )

4. How creative is EACC is the fight against corruption?

   Very creative ( )   Fairly creative ( )   Not creative ( )   Don't know ( )

5. How often does EACC gauge its achievements in the fight against corruption?

   Frequently ( )   Rarely ( )   Never ( )   Don't know ( )

   If Yes please explain the tool EACC uses to measure achievements

   _____

   _____

   _____

   _____

Section 2: The fight against corruption

1. To what extent is fighting corruption successful in your opinion

   No success ( )   Low extent ( )   Neutral   ( )   High extent ( )

2. How would you rate the success of the current style of fighting corruption by EACC?

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3. To what extent would you say the fight against corruption is achieving its target objective?

   Not at all ( )   Low extent ( )   Neutral ( )   High extent   ( )

4. How creative is EACC is the fight against corruption?

   Very creative ( )   Fairly creative ( )   Not creative ( )   Don't know ( )

5. How often does EACC gauge its achievements in the fight against corruption?

   Frequently ( )   Rarely ( )   Never ( )   Don't know ( )

   If Yes please explain the tool EACC uses to measure achievements

   _____

   _____

   _____

From the following statements indicate the extent to which the fight against corruption is realizing its initial objectives.

Scale

Very large extent-5   Large extent-4   Neutral- 3   Low extent-2 Not at all-1

	Very large extent-5	Large extent-4	Neutral-3	Low extent-2	Not at all-1
Clear and defined mission and objectives of EACC	1	2	3	4	5
Offering training for staff to appreciate their role	1	2	3	4	5
Conducive working environment	1	2	3	4	5
Employee involvement in decision making	1	2	3	4	5
Clear responsibilities and obligations of employees	1	2	3	4	5
Accountability and transparency	1	2	3	4	5

SECTION 3

6. What challenges has EACC faced while fighting against corruption in Kenya?

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7. Explain how EACC has addressed these challenges in the fight against corruption

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Thank you for your participation.

Section 2: The fight against corruption

1. To what extent is fighting corruption successful in your opinion

   No success ( )   Low extent ( )   Neutral ( )   High extent ( )

2. How would you rate the success of the current style of fighting corruption by EACC?

   No success ( )   Very low ( )   Neutral ( )   Very high ( )

3. To what extent would you say the fight against corruption is achieving its target objective?

   Not at all ( )   Low extent ( )   Neutral ( )   High extent ( )

4. How creative is EACC is the fight against corruption?

   Very creative ( )   Fairly creative ( )   Not creative ( )   Don't know ( )

5. How often does EACC gauge its achievements in the fight against corruption?

   Frequently ( )   Rarely ( )   Never ( )   Don't know ( )

If Yes please explain the tool EACC uses to measure achievements

_____

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From the following statements indicate the extent to which the fight against corruption is realizing its initial objectives.

Scale

Very large extent-5   Large extent-4   Neutral- 3   Low extent-2 Not at all-1

Clear and defined mission and objectives of EACC	1	2	3	4	5
Offering training for staff to appreciate their role	1	2	3	4	5
Conducive working environment	1	2	3	4	5
Employee involvement in decision making	1	2	3	4	5
Clear responsibilities and obligations of employees	1	2	3	4	5
Accountability and transparency	1	2	3	4	5

SECTION 3

6. What challenges has EACC faced while fighting against corruption in Kenya?

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7. Explain how EACC has addressed these challenges in the fight against corruption

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Thank you for your participation.