



REPUBLIC OF KENYA

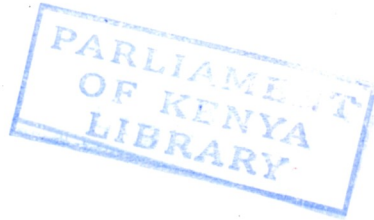


OFFICE OF THE ATTORNEY  
AND  
DEPARTMENT OF JUSTICE

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# **NATIONAL ETHICS AND ANTI-CORRUPTION POLICY**

**OCTOBER, 2018**



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AND  
ANTI-CORRUPTION POLICY**

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## FOREWORD

On 26th March, 2015, during the second *State of the Nation Address* to Parliament, H.E. the President directed the Office the Attorney-General and Department of Justice to initiate a review of the legislative and policy framework for fighting corruption to ensure the effective discharge of constitutional imperatives related to integrity. H.E. the President's action was the tipping point in a longstanding battle to restore the dignity and standing of the country's ethics and integrity record.

The government's previous attempts at legislating standards of ethics and integrity had encountered stiff resistance. As a result, the country battled with grand corruption cases impacting upon development programmes and adversely affecting the country's reputation and ranking. In the recent past, corruption within County Governments has been cited in the audit reports of the Auditor-General and even those of non-state actors.

Following this, a Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, was established vide Gazette Notice No. 2118 of 30th March, 2015. The Task Force was given unfettered space to: review policies, legislation, and administrative procedure on corruption. The Task Force completed its work and submitted its recommendations to the President, who directed that they be implemented fully.

Prior to the establishment of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, the Department of Justice had commenced the process of developing a National Ethics and Anti-Corruption policy. The process was halted to allow the Task Force to complete its work since its recommendations would have a bearing on the policy.

The National Ethics and Anti-Corruption Policy is also anchored on the Political Pillar of Kenya Vision 2030. The MTP II identifies *National Values and Ethics* as one of the cornerstones of the Country's overall development through a value-based system. The elements identified in the Kenya Vision 2030 strategy adhere to our national values and ethics and the same are re-emphasized under Article 10 (National Values and Principles of Governance), Article 232 (Values and Principles of Public Service) and Chapter 6 (Leadership and Integrity) of the Constitution of Kenya, 2010.

The development of this Policy is also informed by the historical developments in the fight against corruption. In 1997, Kenya made considerable strides in the fight against corruption with the amendment of the Prevention of Corruption Act (Cap. 65) which paved way for the establishment of the Kenya Anti-Corruption

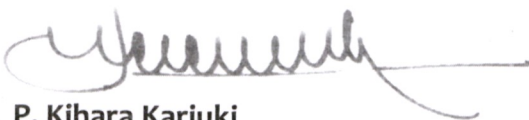
Authority (KACA). However, the war on corruption has not been smooth and has endured numerous legal and administrative challenges. The lack of a coherent strategy has been cited as one of the biggest setbacks to the effectiveness of the fight against corruption.

The period around 2009 presented a critical period in the efforts to fight corruption. During this year Kenya underwent an assessment of her implementation of the provisions of the United Nations Convention against Corruption (UNCAC). The report flagged out the lack of a comprehensive National Anti-Corruption Policy as one of the gaps in Kenya's policy, legal and institutional framework for combating corruption.

This Policy will provide a comprehensive framework for the design and development of an effective legal and institutional framework for fighting corruption and promoting ethics and integrity in Kenya and also ensure effective monitoring and evaluation of the efficacy of anti-corruption measures.

The policy is a product of a collaborative and participatory process and reflections on how to strengthen the legal and institutional framework for the fight against graft particularly with a view to building synergies among institutions, harnessing the collective goodwill of the people of Kenya and stakeholders and re-assigning roles and resources that are available to ensure that we win the war against corruption and not just the battles.

The process of coming up with this National Ethics and Anti-Corruption Policy would not have been possible without the help of a number of persons and institutions who provided the much needed financial, human and other resources. In particular, I would like to register my appreciation to the late Director of Legal Affairs, Mr. John Kithome Tuta (HSC), who selflessly coordinated the different institutions during the process of development, Staff of the Department of Justice, Ethics and Anti-Corruption Commission and its staff, the National Anti-Corruption Campaign Steering Committee and its staff, for going the extra mile to ensure that this policy becomes a reality. My gratitude also goes to the GIZ for both their technical and financial support towards the development of this policy.



**P. Kihara Kariuki**

**ATTORNEY-GENERAL**



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## **ABBREVIATIONS AND ACRONYMS**

ACECA	Anti-Corruption and Economic Crimes Act
AG	Attorney-General
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
DOJ	Department of Justice
EAC	East African Community
EACC	Ethics and Anti-Corruption Commission
EACCA	Ethics and Anti-Corruption Commission Act
EMU	Efficiency Monitoring Unit
GAP	Governance Action Plan
HOPS	Chief of Staff and Head of Public Service
IFMIS	Integrated Financial Management Information System
IPRS	Integrated Population Registration System
KACA	Kenya Anti-Corruption Authority
KACC	Kenya Anti-Corruption Commission
KRA	Kenya Revenue Authority
KENAO	Kenya National Audit Office
KIA	Kenya Institute of Administration
KIF	Kenya Integrity Forum
KLIF	Kenya Leadership and Integrity Forum
KSG	Kenya School of Government
MDGs	Millennium Development Goals
MLA	Mutual Legal Assistance
MTP	Medium Term Plan
MoJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs

NACP	National Anti-Corruption Plan
NARC	National Rainbow Coalition
NACCSC	National Anti-Corruption Campaign Steering Committee
OAG&DOJ	Office of the Attorney General and Department of Justice
ODPP	Office of the Director of Public Prosecutions
OOP	Office of the President
PCSC	Public Complaints Standing Committee
POEA	Public Officer Ethics Act, 2003
PPOA	Public Procurement Oversight Authority
OAG	Office of the Attorney General
TNT	The National Treasury
TGs	Thematic Groups
UN	United Nations
UNCAC	United Nations Convention against Corruption



## OPERATIONALISATION OF TERMS

- Accountability* — A system of internal and external checks and balances aimed at ensuring that public officers carry out their duties properly and are held responsible if they fail to do so.
- Responsibility for the use of resources and the decisions made, as well as the obligation to demonstrate that work has been done in compliance with agreed-upon rules and standards and to report fairly and accurately on performance results vis-a-vis mandated roles and/or plans.
- Bribe* — An inducement whether, monetary or non-monetary, by one person to another person who holds a public or private office with the intention to influence them to act or forego to act as required of them in their official capacity.
- Civil society* — An amalgamation, either formally or informally, of independent, autonomous, voluntary organizations designed to advance collective interests and ideas particularly the promotion citizens' interests and concerns and may include: International and national Non-Governmental Organizations (NGOs); community-based organizations (CBOs); social movements; women's groups; faith-based organizations (FBOs); foundations; youth-led organizations; think tanks and research institutions.
- Code of Conduct and Ethics* — The Specific Code of Conduct and Ethics developed by a public body pursuant to Part II or the General Code of Conduct and Ethics established pursuant to Part III, respectively, of the Public Officer Ethics Act No. 4 of 2003.

- Corruption* — Encompasses dishonest and irregular transaction of official business for direct or indirect personal gain and is perpetrated by individual in formal positions of authority either in public or private spheres, acting either independently or in connivance with clients among ordinary citizens.
- Devolution* — The decentralization of functions, power and resources from the National Government to the forty seven County Governments under the Constitution of Kenya.
- Governance* — The practice and manner of governing.
- Economic crime* — A crime committed with the intention to obtain financial gain or a professional advantage.
- Education* — A process of imparting knowledge.
- Ethics* — The standard of morality that a State or public officer must commit themselves to follow.
- Financial declaration* — Declaration of income, assets and liabilities as provided for under Part IV of the Public Officer Ethics Act No. 4 of 2003.
- Human rights* — Rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity.
- Indicator* — A quantitative or qualitative variable that provides a valid and reliable way to measure achievement, assess performance, or reflect changes connected to an intervention.  
A quantitative metric that provides information to monitor performance, measure achievement and determine accountability.
- Integrity* — Moral virtue or distinguishable character trait in which an individual is free from corruption.

<i>Leadership</i>	—	Exercise of the delegated sovereign power of the people of Kenya by virtue of occupying a State or public office.
<i>Leadership and Integrity Code</i>	—	The General Code prescribed under Part II or the Specific Leadership Code developed by a public body pursuant to Part III of the Leadership and Integrity Act, No. 19 of 2012.
<i>Legitimacy</i>	—	Popular acceptance of the authority of a law, policy or leadership.
<i>Output</i>	—	The direct results/products or deliverables of program/intervention activities.
<i>Policy</i>	—	A set of decisions which are oriented towards a long-term purpose or to a particular problem. A law, regulation, procedure, administrative action, incentive, or voluntary practice of governments and other institutions.
<i>Public officer</i>	—	Any State officer; or any person, other than a State Officer, who holds a public office.
<i>State officer</i>	—	A person holding a State office.
<i>Strategy</i>	—	A method or plan chosen to bring about a desired outcome such as achievement of a goal or solution to a problem.
<i>Responsible Commission</i>	—	A Commission determined under section 3 of the Public Officer Ethics Act No. 4 of 2003 to be the responsible Commission in relation to a public officer.
<i>Transparency</i>	—	Accessibility of public interest data and information held by State and public bodies in a comprehensible, accessible, and timely manner.

*Unexplained wealth* — Assets of a person acquired at or around the time the person was reasonably suspected of corruption or economic crime and whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation.

*Whistleblower* — Any person who has personal knowledge of or access to any data, information, fact or event constituting improper conduct and who makes a disclosure of that information.

A person who in good faith raises alarm over the possibility of wrongdoing by a state or public officer or in a state or public agency with or without the benefits of full facts or having personally witnessed the wrong doing.

*Witness* — Any person who has personal knowledge of or access to any data, information, fact or event constituting improper conduct and who records a statement with the Police or any law enforcement body and/or agrees to be a witness for the State before a Court or tribunal.



## EXECUTIVE SUMMARY

The year 2010 witnessed unprecedented legal, political and social reforms in the country following the adoption of a new Constitution of Kenya on 27th August, 2010. As a result, a number of significant changes were put in place to fight corruption. In spite of the many anti-corruption initiatives Kenya has put in place, corruption has remained rampant and Kenya's ranking in international corruption perception surveys has remained poor.

H.E. the President in his *Second State of the Nation Address* to Parliament (and to the nation) on 26th March, 2015, *inter alia*, denounced the corrupt conduct of some State officers and public officers, and directed that they step aside to pave way for investigations. In the same breath, he directed the Office of the Attorney General and Department of Justice (OAG & DOJ) to coordinate a comprehensive review of the legal, policy and institutional framework for fighting corruption in Kenya, with a view to strengthening the anti-corruption instruments of the state. It was in line with this directive that the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, was established by the Attorney-General, vide Gazette Notice No. 2118 of 30th March, 2015.

While carrying out its assignment, the Task Force established that Kenya has a very elaborate legal and institutional framework for fighting corruption. In terms of institutional arrangements for fighting corruption, Kenya has dedicated anti-corruption bodies, such as EACC and NACCSC. In addition, Kenya has a plethora of other institutions which play a complementary role in the fight against corruption.

In terms of the legal instruments for fighting corruption, the Task Force noted that Kenya has most of the laws required for effective onslaught against corruption but their enforcement has been wanting.

It was noted that in as much as the country needs dedicated anti-corruption agencies, it is imperative that a holistic emphasis and facilitation of the full justice chain be undertaken in order to have an effective and sustained anti-corruption outcome. The need for a dedicated policy framework to support the fight against corruption

cannot be gainsaid. The Task Force recommended that the National Ethics and Anti-Corruption Policy process which had been suspended to allow for the finalisation of the Task Force report be finalized.

In addition, various international and regional anti-corruption instruments that Kenya is a State Party to recognize the need for a policy framework for combating corruption. Article 5 (1) of the United Nations Convention against Corruption (UNCAC), states that, *“Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”* The African Union Convention on Preventing and Combating Corruption requires States Parties, under Article 5 of the Convention, to put in place various legislative and other measures to ensure sustainable fight against corruption. This, therefore, calls for a policy framework for the realization of those state obligations.

The overall objective of this National Ethics and Anti-Corruption Policy is to reduce levels and prevalence of corruption and unethical practices in Kenya by providing a comprehensive, coordinated and integrated framework for the fight against corruption and promotion of ethics.

## **OUTLINE OF THE POLICY**

**Chapter One** provides the historical background on the fight against corruption, policy rationale and objectives.

**Chapter Two** gives an overview of the contextual legal framework for fighting corruption and the challenges faced.

**Chapter Three** focuses on the Institutional Framework for fighting corruption and also the Institutional arrangements. This Chapter examines the various institutions put in place for fighting corruption in Kenya. Article 79 and Chapter Fifteen of the Constitution establishes the Ethics and Anti-Corruption Commission (EACC) which is the national dedicated anti-corruption body. The EACC fights corruption through four main strategies: enforcement (investigations), prevention, public education and asset recovery.



Besides EACC, the other bodies which play a critical role in the fight against corruption are: ODPP and the Judiciary (Anti-Corruption, High Court Division and the Special Magistrates). ODPP prosecutes the corruption and economic crime matters investigated by EACC. On its part, the Judiciary (through the institution of the Special Magistrates) adjudicates over corruption and economic crime cases. In line with the *Organisation of the Government of Kenya* (Presidential Executive Order No. 1 of 2016), OAG&DOJ provides the necessary policy guidance over the development of appropriate anti-corruption laws and policies and coordination of the implementation of various anti-corruption strategies in the Government.

Other institutions which play a critical but complementary role in the fight against corruption include: the Office of the Auditor-General; the Office of the Controller of Budget; the National Treasury; IEBC; Parliament; CAJ; NACCSC; the National Police Service; NIS; DCI; the Mutual Legal Assistance Central Authority (MLACA); PPOA; the Assets Recovery Agency (ARA); FRC, and the Witness Protection Agency (WPA).

**Chapter Four** builds on the institutional arrangements for fighting corruption highlighted in Chapter Three and focuses on the key strategies necessary for enhancing the fight against corruption in Kenya. This Chapter highlights anti-corruption strategies based on principles or best practices drawn from, the Constitution, international and regional anti-corruption instruments such as UNCAC, AUCPCC and inference from other countries worldwide. The strategies are set out in seven broad areas, namely: prevention; Public Education and Awareness Creation; Criminalisation, Law Enforcement and Jurisdiction; Prosecution of Corruption and Economic Crimes; Asset Recovery; International Cooperation, and leadership and integrity.

**Chapter Five** provides the implementation arrangement. It also deals with the issues of resource mobilization and financing, capacity building and also deals with the communication strategy.

**Chapter Six** provides the framework for implementing the Policy.

## CHAPTER ONE: TOWARDS A NATIONAL ETHICS AND ANTI-CORRUPTION POLICY

### 1.1. Introduction

Kenya's development path since independence shows a strong nexus between good governance and social, political, economic and cultural well-being of the nation. In recognition of this, Kenya has over time put in place reforms geared towards improved governance and sustainable development as articulated in various policy blueprints such as Sessional Paper No. 10 of 1965 on *African Socialism and its Application to Planning in Kenya* and Sessional Paper No. 1 of 1986 on *Economic Management for Renewed Growth*. In addition, constitutional reforms including the repeal of Section 2A of the former Constitution of Kenya, that ushered in multi-party democracy in 1991, and the promulgation of the Constitution of Kenya, 2010 have brought broad governance reforms including setting up of dedicated anti-corruption institutions, the embedding of National Values and Principles of Governance, and the promotion of ethical leadership and integrity in the country. Notably, Kenya's Vision 2030 economic development blueprint envisages the promotion of shared values such as integrity, fairness, honesty, excellence, respect and discipline as part of Kenya's identity kit. Adherence to these national values and ethics is a critical cornerstone to achieving the global competitiveness and prosperity Kenya aspires to.

Kenya has also committed to various regional and international instruments for promoting good governance and fighting corruption. These include the United Nations Convention against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption (AUCPCC), and the African Peer Review Mechanism (APRM). By becoming a state Party to these international instruments, Kenya desires to be key actor in the promotion of good governance and anti-corruption principles in the regional and international spheres while also ensuring that her national anti-corruption initiatives meet international standards and best practices.

The development of this National Ethics and Anti-Corruption Policy comes against the backdrop of major reforms that have been



implemented over the years to enhance good governance and promote transparency and accountability. This is also reinforced by government's commitment to develop the policy as per the Presidential directive of 18th March, 2014 and of 31st December 2014, as well as the recommendations of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (2015). The implementation of this Policy is expected to accelerate the realization of Kenya's 2030 Vision of "transparent, accountable, ethical and results-oriented government institutions."

## 1.2. Background

Kenya's pre- and post-independence experience in the fight against corruption shows that the war against corruption has been fraught with many challenges, such as: lack of an overarching policy framework; multiple and uncoordinated anti-corruption initiatives; and insufficient political will. This has resulted in insignificant impact on curbing corruption as evidenced by the high levels of corruption in the country over time coupled with high levels of corruption perception.<sup>1</sup>

Efforts to fight corruption in Kenya date back to 1956, following the enactment of the Prevention of Corruption Ordinance that later became the Prevention of Corruption Act (Cap. 65) at independence. During that period, corruption was treated like any other offence under the Penal Code (Cap. 63) and was investigated and charged by the Police. The Act was later repealed in 2003 following the enactment of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003) (ACECA), which established the Kenya Anti-Corruption Commission (KACC) as the national dedicated agency for the fight against corruption as well as the Kenya Anti-Corruption Advisory Board to provide advice to KACC on the exercise of its functions.

In the post-independence era, the first serious endeavour by the government to establish a dedicated agency to spearhead the fight

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<sup>1</sup> See: Ethics and Anti-Corruption Commission: *National Ethics and Corruption Survey Report, 2015* ([www.eacc.go.ke](http://www.eacc.go.ke)) (accessed on 28th March, 2017).

In the Transparency International *Corruption Perceptions Index, 2016*, Kenya was ranked position 145 out of the 176 countries and territories surveyed -, with a score of 26. See generally:

[https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016).

against corruption started in 1992, following the establishment of the Anti-Corruption Squad within the Kenya Police<sup>2</sup>. However, increased levels of corruption heightened demands for a more transparent and accountable government by Kenyans and a section of development partners. This led to the establishment of an independent anti-corruption body, the Kenya Anti-Corruption Authority (KACA) in 1997, following an amendment to the then Prevention of Corruption Act. KACA was however, declared unconstitutional by the High Court on 22nd December, 2000, following a constitutional reference in the case of *Stephen Mwai Gachiengo & Albert Muthee Kahuria v. Republic*<sup>3</sup> on grounds that it had usurped the prosecutorial powers of the Attorney General<sup>4</sup> and the investigative powers of the Commissioner of Police and that its existence offended the principle of separation of powers in that the Director/Chief Executive of KACA was a Judge of the High Court on secondment.

In August, 2001, the Government sought to amend the Constitution through the Corruption Control Bill, 2001, to pave way for the establishment of the Kenya Corruption Control Authority. Unfortunately, the Bill did not see the light of day. The Government established the Anti-Corruption Police Unit (ACPU) in October, 2001 within the Kenya Police. ACPU was meant to be a stopgap measure in the fight against corruption, pending the reform of the law to provide for another anti-corruption body. The Unit was operational until 2003 when the newly-elected National Rainbow Coalition (NARC) government created the Department of Governance and Ethics<sup>5</sup> in the Office of the President to oversee the implementation of various good governance initiatives. The government also established a Ministry of

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<sup>2</sup> Under the former Constitution of Kenya, the Attorney General was in-charge of criminal prosecutions. However, following the adoption of the new Constitution of Kenya, 2010, the prosecutorial function is exclusively the Director of Public Prosecutions', by virtue of Article 157 of the Constitution.

<sup>3</sup>*Stephen Mwai Gachiengo & Albert Muthee Kahuria v. R* [2000] eKLR

<sup>4</sup>Section 26(3) of the former Constitution of Kenya gave the Attorney General (AG) the power to initiate public prosecutions in criminal matters. For more details on the AG's powers under the former Constitution, see: The former Constitution of Kenya (Revised edition 2008 (2001)): National Council for Law Reporting, Nairobi ([www.kenyalaw.org](http://www.kenyalaw.org))

<sup>5</sup> The Department of Governance and Ethics ceased to exist in 2006/2007 and its functions were shared out between the then Office of the President and the then Ministry of Justice and Constitutional Affairs (MOJCA).

Justice and Constitutional Affairs (MOJCA)<sup>6</sup> to provide policy guidance in the fight against corruption. The Ministry facilitated the enactment of two principal anti-corruption laws namely: the Anti-Corruption and Economic Crimes Act, 2003, and the Public Officer Ethics Act, 2003 (No. 4 of 2003) (POEA). The Anti-Corruption and Economic Crimes Act established the Kenya Anti-Corruption Commission with the mandate to combat corruption through law enforcement, prevention, public education and asset recovery. The Act also provided for appointment of Special Magistrates to adjudicate on corruption and economic crimes cases on priority basis. On its part, POEA sought to promote ethics and integrity among public officers through, inter alia, adherence to various principles of ethics and integrity, a system of financial declarations, and enforcement of Codes of Conduct and Ethics.

In addition, the Government established the National Anti-Corruption Campaign Steering Committee (NACCSC) to complement public education and awareness initiatives against corruption, with a view to creating a cultural renaissance of integrity and anti-corruption. It also established the then Kenya National Audit Office (KENAO) (composed of the Auditor General and his staff) to enhance oversight through independent audit of public institutions. Further, the government set up the Integrity and Anti-Corruption Committee of the Judiciary in 2003 to implement the "radical surgery" initiative designed to improve accountability in the administration of justice.<sup>7</sup>

The various anti-corruption initiatives resulted in arraignment in court of persons involved in corruption. At the same time, the Government also established a Task Force to review all pending bills in

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<sup>6</sup> The Ministry of Justice and Constitutional Affairs (MOJCA) was later renamed, "Ministry of Justice, National Cohesion and Constitutional Affairs" (MOJNCCA) following the formation of the Grand Coalition Government in April, 2008. Subsequently, following the 4th March, 2013 general elections, the new Jubilee Government merged the former MOJNCCA with the then Office of the Attorney General to form the current "Office of the Attorney-General and Department of Justice", vide Presidential Executive Order No. 2/May, 2013 (on the *Organization of the Government of the Republic of Kenya*).

<sup>7</sup> Government of Kenya, (2013) *Interim Report (September 2011 – February 2013) of the Judges and Magistrates Vetting Board – Restoring Confidence in the Judiciary* (Judges and Magistrates Vetting Board: Nairobi, 2013).



government, owing to the realization that some of the so-called pending bills were fraudulent. In Addition, the constitutional review process was jumpstarted while various governance-related laws such as the Public Procurement and Disposal Act, 2005, and the Public Financial Management Act were enacted. In the same period, a Commission to investigate and report on the "Goldenberg Affair" was also established.<sup>8</sup> The overall immediate outcome of these reforms led to improved economic growth.

Notwithstanding the gains made towards good governance in the country, the Post-Election Violence (PEV) of 2007/2008 revealed deep-seated governance challenges that required radical measures to address. The Grand Coalition Government, through the National Peace Accord of 28th February, 2008,<sup>9</sup> undertook various governance reform measures including electoral, judicial, anti-corruption and constitutional reforms<sup>10</sup> as stipulated in the 1<sup>st</sup> Medium Term Plan (2008-2012) of the Kenya Vision 2030.

On 27th August, 2010, the new Constitution of Kenya was promulgated thereby ushering in a strong governance superstructure and a raft of ethics, integrity and anti-corruption measures. Key among them is the entrenchment of a framework of national values and principles of governance under Article 10 thereof. The new Constitution paved way for, inter alia, the enactment of the Ethics and Anti-Corruption Commission Act (No. 22 of 2011) which establishes the Ethics and Anti-Corruption Commission (EACC) pursuant to the provisions of Article 79 of the Constitution, and the enactment of the Leadership and Integrity Act 2012 (No. 19 of 2012) to implement Chapter Six of the Constitution on Leadership and Integrity. Additionally, the Constitution strengthened organs of government,

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<sup>8</sup> Government of Kenya, (2003), *Economic Recovery Strategy for Wealth and Employment Creation 2003-2007*(Ministry of Planning and National Development, Nairobi).

<sup>9</sup> See: National Accord and Reconciliation Act, 2008, which amended the Constitution and created the necessary structures for addressing the 2007-2008 post-election crisis.

<sup>10</sup> See: The reports of the Independent Review Commission (IREC) (the Kriegler Commission), the Commission of Inquiry into the Post-Election Violence (CIPEV) (the Waki Commission), the Task Force on Judicial Reforms (Ouko Commission), and the Truth, Justice and Reconciliation Commission (TJRC) (Kiplagat Commission).

enhanced the principle of separation of powers to ensure transparency, accountability, rule of law and good governance.

The Government elected on 4th March, 2013 committed itself to enhancing unity, economy and openness in the conduct of public affairs in the country. The key commitments included the need to strengthen the Ethics and Anti-Corruption Commission by conferring upon it prosecutorial powers; setting up local anti-corruption boards at county level; banning anyone convicted on corruption charges from working in Government; enacting the necessary legislation to ensure that any Kenyan company found guilty of corrupt practices was liable to have its assets frozen by the courts; banning foreign companies found guilty of corrupt practices from operating in Kenya; introducing an automatic freeze on the assets of anyone indicted on corruption-charges (with appropriate judicial approval); and putting an end to Parliamentary immunity from corruption charges.

The development of this Policy is therefore informed by the historical developments in the fight against corruption since the pre-independence period to date. It defines a comprehensive policy, legal and institutional framework for combating and preventing corruption and promoting ethics and integrity. It also defines and states clear strategies and actions for implementation so as to rid Kenya of corruption and unethical practices in the long term. Ultimately, the Policy seeks to develop and nurture a national culture based on ethics and integrity which is crucial in helping Kenya realise its development goals.

### **1.3. Policy Rationale**

The formal initiatives towards fighting corruption in Kenya started way back in 1956. To date various strategies have been adopted targeting legal and institutional framework for fighting corruption. These have been well-documented in various policy blueprints at the national, sectoral and institutional levels. At the same time, Kenya has ratified and domesticated various international instruments such as the United Nations Convention against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption (AUCPCC), and the African Peer Review Mechanism (APRM).

Notwithstanding these efforts, tangible outcomes are yet to be realized. Corruption levels at the national and devolved levels of government remain high as demonstrated by surveys conducted by EACC<sup>11</sup> and Transparency International.<sup>12</sup> This state of affairs has been compounded by a lack of a systematic, coherent and sustained ethics, integrity and anti-corruption policy that responds to the complexity and the ever-changing changing patterns and manifestations of corruption.

In addition, technological advancement, globalization and emerging trends in trans-national crime present new and emerging challenges to the fight against corruption. Furthermore, Chapter Six of the Constitution sets high thresholds for leadership and integrity with attendant structural and institutional changes to buttress the fight against corruption and promotion of ethics. At the same time, the Constitution introduces the devolved system of government that has seen massive resources and responsibilities transferred to the County Governments. However, the Counties are yet to set up adequate systems and structures of transparency and accountability to safeguard use of resources.<sup>13</sup> Recent reviews of Kenya's implementation of various anti-corruption instruments, such as the United Nations Convention against Corruption (UNCAC),<sup>14</sup> and the

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<sup>11</sup> See: Ethics and Anti-Corruption Commission: *National Ethics and Corruption Survey Report, 2015* ([www.eacc.go.ke](http://www.eacc.go.ke)) (accessed on 28th March, 2017).

<sup>12</sup> See, for example: Transparency International *Corruption Perceptions Index, 2016* ([https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)).

<sup>13</sup> See: Ethics and Anti-Corruption Commission: *Corruption and Ethics in Devolved Services: County Public Officers' Experiences, 2015* ([www.eacc.go.ke](http://www.eacc.go.ke)) (accessed on 28th March, 2017).

<sup>14</sup> See, for instance, the country review report on Kenya's implementation of the United Nations Convention against Corruption (Chapter III (Criminalisation and Law Enforcement), and Chapter IV (International Co-operation), in United Nations Office on Drugs and Crime (UNODC): *The Country Review Report of Kenya* (2015) (available in: [http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2015\\_09\\_28\\_Kenya\\_Final\\_Country\\_Report.pdf](http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2015_09_28_Kenya_Final_Country_Report.pdf)). An Executive Summary of the Report is also available in: <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1506741e.pdf>. See also: <http://www.statelaw.go.ke/wp-content/uploads/2016/12/Kenya-UNCAC-Review-Report-Final-28.09.2015.pdf>



African Peer Review Mechanism (APRM)<sup>15</sup> advocated the need for an over-arching national policy on the fight against corruption in the country.

This Policy undertakes a thorough examination of the legal, policy and institutional framework for fighting corruption in Kenya and provides an effective, coordinated and enforceable anti-corruption policy in keeping with the country's national goals as well as Kenya's obligations under various anti-corruption instruments to which it is a State Party, such as UNCAC and AUCPCC. This will facilitate the realization of the goals of the Kenya Vision 2030 and compliance with Kenya's international obligations as provided for under Article 2(6) and 132(5) of the Constitution.

#### 1.4. Policy Objectives

The overall objective of this National Ethics and Anti-Corruption Policy is to reduce levels and prevalence of corruption and unethical practices in Kenya by providing a comprehensive, coordinated and integrated framework for the fight against corruption and promotion of ethics. The specific objectives of the policy are: -

- a) to enhance co-ordination and synergy of all stakeholders in the fight against corruption;
- b) to generate sufficient and sustained political support for the fight against corruption;
- c) to strengthen the legal and institutional framework for anti-corruption, ethics and integrity;
- d) to enhance public participation and engagement in the war against corruption;
- e) to mainstream ethics and integrity in the management of public affairs;
- f) to intensify efforts towards the fight against corruption in the devolved system of government; and,
- g) to establish an effective monitoring and evaluation framework for anti-corruption initiatives.

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<sup>15</sup> See: The African Peer Review Mechanism: *The Second APRM Review Report on the Republic of Kenya*, (African Union: January, 2017). See also: <http://www.president.go.ke/2017/01/29/kenya-earns-praise-at-26th-aprm-forum/>

### 1.5. Policy Outcomes

This National Ethics and Anti-Corruption Policy puts in place a framework for addressing the challenges faced in the fight against corruption in Kenya. The successful implementation of this Policy will result in the following desired outcomes:-

- a) a coordinated and integrated approach to the fight against corruption involving all stakeholders;
- b) enhanced political support in the fight against corruption;
- c) strengthened legal and institutional framework for anti-corruption, ethics and integrity;
- d) enhanced public participation and engagement in the war against corruption;
- e) structured implementation of various regional and international anti-corruption instruments;
- f) reduced levels and prevalence of corruption and unethical practices in Kenya, and,
- g) intensified and targeted efforts to fight corruption in the devolved system of government.

### 1.6. Policy Development Approach

The Policy was developed in a consultative, participatory and all-inclusive manner involving key stakeholders. A thematic approach was adopted to ensure that critical thematic issues in the fight against corruption were covered. This entailed formation of thematic working groups to formulate various policy statements. The broad thematic areas were: -

- a) legal and institutional framework;
- b) strategies for fighting corruption;
- c) fighting corruption in the national and devolved systems of government; and
- d) cross-cutting good governance issues impacting on the fight against corruption.



## Principles

In recognition of the aspirations of the Government and the people of Kenya to achieve zero tolerance to corruption, this Policy is founded on the following principles:

**(a) Constitutionalism and the Rule of Law:-** This requires compliance with the spirit and the letter of the Constitution, and other laws of the Republic of Kenya, in a manner that safeguards basic fundamental human rights and freedoms.

**(b) Ethical Leadership:-** A committed leadership adhering to national values is a precondition for good governance and zero tolerance to corruption.

**(c) Ethics and ethical conduct:-** is a moral and social norm that requires doing more than complying with laws and regulations, to doing what is right with emphasis on good or goodness in conduct. This is in line with what an organized group determines for itself and expects its members to comply with and uphold.

**(d) Responsibility:** - The fight against corruption is a duty and responsibility of every citizen irrespective of gender, age, creed or orientation, and institution - private and public, as the effects of corruption are not discriminatory.

**(e) Collaboration and Cooperation:-** The fight against corruption requires development and involvement of strategic partnerships and alliances forming integrity networks that facilitate co-ordination of the activities of all the bodies and stakeholders; exchange of relevant information among major stakeholders; and, provision of assistance to one another.

**(f) Accountability and Transparency:-** The involvement of many actors in the fight against corruption calls for high adherence to conduct that guides working relationships. Among this is the need for high level of accountability and transparency in the management of public resources.

**(g) Consistency:** - The fight against corruption entails effectiveness in implementation of measures against corruption through continuous

oversight; review of the performance of the corruption prevention measures; and, making regular proposals on enhancing the effectiveness of the measures to the institution that has implementation authority.

**(h) Participation and Inclusivity:-** All stakeholders will be encouraged and facilitated to participate in all the processes in the fight against corruption.

## CHAPTER TWO: LEGAL FRAMEWORK FOR FIGHTING CORRUPTION

### 2.1. Introduction

The legal framework for fighting corruption encompasses all laws, regulations, codified policies, Executive Orders and institutional arrangements for fighting corruption in the country. A strong legal framework is essential for a successful onslaught on corruption. This Policy seeks to ensure that Kenya has the requisite legal framework for preventing and combating corruption and recovery of corruptly-acquired assets.

### 2.2. Situation Analysis

The most important legal instrument for fighting corruption in Kenya is the Constitution of Kenya. The constitutional foundation for the fight against corruption is hinged on, *inter alia*: Article 10 (National Values and Principles of Governance)<sup>16</sup>, Chapter Six (Leadership and Integrity) and Article 232 (Values and Principles of Public Service). Article 79 of the Constitution provides for the establishment of an independent ethics and anti - corruption commission, thereby paving way for the establishment of the Ethics and Anti-Corruption Commission (EACC) as a constitutional commission with powers and status of a Chapter Fifteen Commission. Additionally, Article 80 provides for the enactment of legislation establishing procedures and mechanisms for the enforcement of Chapter Six of the Constitution. It establishes binding provisions for the adherence to the principles of leadership and integrity set out in the Constitution by targeting State and public officers, whose decisions have far reaching implications on the management of public resources.

Kenya has put in place a number of statutory legal instruments for fighting corruption. The principal anti-corruption laws are;

- i. Anti-Corruption and Economic Crimes Act, No. 3 of 2003,
- ii. Public Officer Ethics Act, No. 4 of 2003,

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<sup>16</sup> On the implementation of the national values and principles of governance (Article 10 of the Constitution): H.E. Uhuru Kenyatta, C.G.H., President and Commander in Chief of the Defence Forces of Kenya: *Annual Report on Measures Taken and Progress Achieved in the Realization of National values and Principles of Governance*, (Gazette Notice No. 2117) *The Kenya Gazette (Special Issue)*, 31<sup>st</sup> March, 2015.

- iii. Ethics and Anti-Corruption Commission Act, No. 22 of 2011,
- iv. Leadership and Integrity Act, No. 19 of 2012
- v. Bribery Act, 2016.

Other laws which complement the fight against corruption include the:

- i. Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009;
- ii. Commission on Administrative Justice Act, No. 23 of 2011;
- iii. Public Procurement and Asset Disposal Act, No. 33 of 2015;
- iv. Witness Protection Act, No. 16 of 2006;
- v. National Police Service Act, No. 11A of 2011;
- vi. Elections Act, No. 24 of 2011;
- vii. Election Offences Act, 2016
- viii. Public Finance Management Act, No. 18 of 2012;
- ix. Political Parties Act, No. 11 of 2011;
- x. Mutual Legal Assistance Act, No. 36 of 2011;
- xi. County Governments Act, No. 17 of 2012;
- xii. National Payment System Act, No. 39 of 2011;
- xiii. Public Appointments (Parliamentary Approval) Act, No. 33 of 2011;
- xiv. Prevention of Organized Crimes Act, No. 6 of 2010;
- xv. Access to Information Act, No. 31 of 2016;
- xvi. Public Audit Act, No. 34 of 2015 and
- xvii. The Penal Code (Cap. 63).

In the same vein, some regulations have been made to support the legal framework for fighting corruption. The regulations include: the Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations (Legal Notice No. 179 of November, 2011), and the Anti-Corruption and Economic Crimes

(Amnesty and Restitution) Regulations, 2011 (Legal Notice No. 44 of 2011), among others.

In addition to the legal instruments considered above, Codes of Conduct and Ethics for various institutions have been developed to govern the conduct of public officers in line with the provisions of the Public Officers Ethics Act, 2003. Further, specific Leadership and Integrity Codes have been developed for State officers serving in various public entities as per the provisions of the Leadership and Integrity Act, 2012. For all civil servants, the Public Service Commission Human Resources Manual and Procedures addresses issues of discipline, ethics and integrity of civil servants.

Besides the municipal laws for fighting corruption, Kenya has is a State Party to the United Nations Convention against Corruption (UNCAC), and the African Union Convention on Preventing and Combating Corruption (AUCPCC).

Evidently, Kenya has ample legal instruments for fighting corruption. Nonetheless, effective enforcement of the laws remains a challenge and in a few cases some of the laws confer conflicting mandates on different institutions. For instance, both ACECA and POCAMLA confer asset recovery functions on EACC and ARA respectively. Consequently, this Policy will seek to enhance efficiency in the fight against corruption by streamlining and harmonizing the legal framework and mainstreaming ethics and integrity in the country.

### **2.3. Challenges**

Some of the challenges which have encumbered the fight against corruption include :

- a) poor observance and enforcement of anti-corruption laws and codes of conduct and ethics;
- b) inherent weaknesses, gaps, deficiencies and ambiguities in the legal framework for fighting corruption in Kenya ;
- c) the legal framework is not evolving as fast as the emerging and evolving corruption practices;
- d) conflicting provisions of the law leading to overlaps of institutional mandates and functions;

- e) Kenya's anti-corruption laws do not criminalize some offences prescribed by international instruments that Kenya is a State Party to, such as the United National Convention against Corruption and the African Union Convention on Preventing and Combating Corruption, for example illicit enrichment and influence peddling ;
- f) lack of domestication of the provisions of some international anti-corruption instruments whose provisions are at variance with the Laws of Kenya; and
- g) the legal framework does not adequately cover institutional cooperation and coordination on the fight against corruption.

## **CHAPTER THREE: INSTITUTIONAL FRAMEWORK FOR FIGHTING CORRUPTION**

### **3.1. Introduction**

Kenya has an elaborate institutional framework for fighting corruption. The national dedicated institution for the fight against corruption is the Ethics and Anti-Corruption Commission (EACC). Besides EACC, there are a number of other public bodies that play a significant complementary role in the fight against corruption, either by dint of constitutional or legal prescription or through Executive Order. Some of these complementary bodies are: the Office of the Director of Public Prosecutions, which prosecutes corruption and economic crime cases investigated by EACC, and the Judiciary (Anti-Corruption and Economic Crime Division) who hear and determine corruption and economic crime cases on a priority basis, in line with the provisions of the Anti-Corruption and Economic Crimes Act (Cap. 65). Some of the other complementary bodies in the fight against corruption are: the National Anti-Corruption Campaign Steering Committee (NACCSC); the Office of the Attorney General and Department of Justice; the Office of the Auditor General; the Office of the Controller of Budget; the Criminal Investigations Department; the Financial Reporting Centre (FRC); the Assets Recovery Agency (ARA); the Public Procurement Regulatory Authority; the Inspectorate of State Corporations, and the Efficiency Monitoring Unit.

### **3.2. Policy Objectives**

1. To provide a mechanism for coordination of anti-corruption programmes in government agencies, private sector and within non-governmental organizations.
2. To enhance transparency and accountability in the exercise of public authority.
3. To streamline cumbersome bureaucratic and complex procedures in public service delivery.
4. To strengthen human, financial and material resource capacity in anti-corruption institutions.
5. To mainstream anti-corruption interventions in routine business of government agencies and the private sector.

### 3.3. Policy Issues

In recognizing that opportunities for and incidences of corruption are as a result of:

- i. uncoordinated approaches to the fight against corruption;
- ii. the high frequency of interaction of individuals at points of service delivery to the public; and
- iii. cumbersome bureaucratic and complex procedures in the provision of public goods and services

### 3.4. Policy Statements and Interventions

The Government shall;

**A. Develop and implement a framework for the coordination of corruption prevention programmes in government agencies, private sector and within non-governmental organizations.**

This intervention will involve developing and implementing a framework for the Ethics and Anti-Corruption Commission (EACC) to facilitate inter-agency coordination of corruption prevention programmes, so that the EACC's role and responsibility is also institutionally and programmatically recognised.

**B. Develop and implement mechanisms for enhancing transparency and accountability in the exercise of public authority.**

This intervention will seek to increase public administration's accountability through; public auditing and Promotion of access to information.

**C. Develop and implement mechanisms for streamlining cumbersome bureaucratic and complex procedures in public service delivery.**

These mechanisms will involve:

- i. Reviewing and revising procedures in order to reduce cumbersome bureaucracy and complexity in public service delivery;



- ii. Developing operational manuals defining procedures for public service delivery.

**D. Develop mechanisms for strengthening human, financial and material resource capacity in anti-corruption institutions**

- i. These interventions will involve strengthening human, financial and material resource capacity with respect to:
  - ii. investigative and prosecutorial skills;
  - iii. corruption prevention skills;
  - iv. networking skills needed to foster inter-agency co-operation;
  - v. requisite material resources; and
  - vi. corruption prevention capacity building for the judiciary.

**E. Mainstream corruption prevention in the routine business of government agencies and the private sector**

This intervention will involve:

- i. introducing Integrity Committees in public departments and at public points of service delivery. Persons in Integrity Committees will be the corruption prevention focal point persons. Such will be officers in the sector with sufficient controlling authority within the reform process;
- ii. strengthening measures for preventing, monitoring and reporting corruption in government agencies where such measures already exist at public points of service delivery;
- iii. reviewing, developing and defining ethical and administrative codes of conduct that prohibit conflicts of interest in order to ensure the proper use of public resources, and promote the highest levels of professionalism; and

- iv. conducting regular education, training and supervision of officials to ensure proper understanding of their responsibilities.

**F. Review, coordinate and implement social mechanisms in the fight against corruption.**

This intervention will involve:

- i. Reviewing existing curricula to incorporate elements of corruption prevention, ethics and integrity in education programmes from primary school to tertiary education, and in the informal school system;
- ii. Establishing and disseminating guidelines for the public on how to report cases of corruption to government law enforcement agencies;
- iii. Publicizing provisions in legislation on corruption prevention, or relevant to corruption prevention;
- iv. Facilitating financial and material support to non-governmental organizations that promote integrity and combat corruption within communities;
- v. Facilitating development and dissemination of sector level corruption prevention policies;
- vi. Promoting citizen participation in corruption prevention; and,
- vii. Enhancing community awareness programmes on corrupt practices before, during and after elections.

**3.5. Institutional Framework**

The institutional framework for anti-corruption in Kenya comprises law enforcement agencies, oversight institutions, policy regulatory institutions, partnerships and other good governance initiatives as classified below:

**3.6. Law Enforcement Agencies**

**3.6.1. Ethics and Anti-Corruption Commission**

The Ethics and Anti-Corruption Commission (EACC) is established pursuant to the provisions of section 3 of the Ethics and Anti-

Corruption Commission Act, 2011. The mandate of the EACC is to combat and prevent corruption and economic crime in Kenya through law enforcement, asset recovery, preventive measures, public education and promotion of standards and practices of ethics and integrity.

### **3.6.2. The Office of the Director of Public Prosecutions**

The Office of the Director of Public Prosecutions (ODPP) is established under Article 157 of the Constitution 2010 and operationalized by the ODPP Act of 2013. The mandate of the ODPP is to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect to any offence alleged to have been committed;

### **3.6.3. The Judiciary**

The Judiciary is one of the three State Organs established under Article 159 of the Constitution of Kenya. The Judiciary is mandated to dispense justice in line with the Constitution and other laws and is expected to resolve disputes in a just manner with a view to protecting the rights and liberties of all.

### **3.6.4. National Police Service (NPS)**

The National Police Service (NPS) is provided for and established under Article 243 of the Constitution, as one of the State organs on national security. The NPS consists of the Kenya Police Service and the Administration Police. The Constitution requires of NPS to prevent corruption and promote and practice transparency and accountability among others.

### **3.6.5. Directorate of Criminal Investigations (DCI)**

Directorate of Criminal Investigation (DCI) (formerly the Criminal Investigations Department (CID) is established under Section 28 of the National Police Service Act. The core mandate of the Directorate is to detect, prevent and investigate crimes.

### **3.6.6. Kenya Revenue Authority**

The Kenya Revenue Authority (KRA) was established by an Act of Parliament, Chapter 469 of the laws of Kenya, which became effective on 1st July 1995. The Authority is charged with the responsibility of collecting revenue on behalf of the Government of Kenya.

### **3.6.7. Asset Recovery Agency**

The Asset Recovery Agency is established under Section 54 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) 2009. The key function of the Agency is to trace, freeze and confiscate proceeds of all crime, as per the provisions of POCAMLA.

### **3.6.8. Financial Reporting Centre (FRC)**

The Financial Reporting Centre (FRC) is Kenya's Financial Intelligence Unit (FIU). The FRC is established under section 21 of POCAMLA. FRC functions include among others; receipt and analysis of reports of unusual or suspicious transactions submitted by reporting institutions, cash transaction made by reporting institutions as well as cash declaration forms received from border points.

### **3.6.9. National Intelligence Service (NIS)**

The NIS is established under Article 242 of the Constitution. The NIS is charged with the responsibility of securing national security by providing security intelligence and counter intelligence for all the government Ministries, Departments and Agencies (MDAs).

### **3.6.10. Witness Protection Agency**

The Witness Protection Agency (WPA) in accordance with the provisions of the Witness Protection Act, 2006 as amended by Witness Protection (Amendment) Act, 2010. The core mandate is the protection of threatened and intimidated witnesses to ensure successful identification, apprehension, investigation and prosecution of perpetrators of serious crime.

## **3.7. Policy Regulatory Institutions**

### **3.7.1. The Presidency**

The President of the Republic of Kenya is expected under the Constitution, and in word and deed, to play a very critical role in the fight against corruption by providing the necessary political will for fighting corruption and setting the country's agenda for good governance and anti-corruption.

### **3.7.2. Office of the Attorney General and Department of Justice**

The Office of the Attorney General and Department of Justice (OAG&DOJ), which is the Central Authority for Mutual Legal



Assistance, is one of the key actors in the fight against corruption in Kenya. The OAG&DOJ is mandated to, inter alia:

- i. promote the rule of law and public participation; support Government's investment in socio-economic development;
- ii. promote transparency, accountability, ethics and integrity;
- iii. spearhead policy, legal and institutional reforms;
- iv. promote economic governance and empowerment;
- v. promotion, fulfilment and protection of human rights;
- vi. undertake administrative management and capacity building;  
and
- vii. enhance access to justice.

### **3.7.3. The National Treasury**

The National Treasury is established under Section 11 of the Public Finance Management Act, 2012 (PFMA). The National Treasury shall, inter alia, Design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution.

## **3.8 Oversight Agencies**

### **3.8.1. Parliament**

Parliament is established under Article 93 of the Constitution. It comprises of the Senate and National Assembly. Their main mandates are enacting legislation, determination the allocation of national revenue, appropriation of funds, exercise oversight over national revenue and its expenditure and exercise oversight of state organs among others.

### **3.8.2. County Assemblies**

The County Assemblies are established under Articles 176(1) and 177 of the Constitution. The mandate of the County Assemblies is to enact laws for effective performance of the functions and exercise of the powers of the County governments. Exercise oversight over the County Executive Committee and any other County Executive Organs.

### **3.8.3. Office of the Auditor General**

The office of the Auditor General is established under Article 229 of the Constitution. The main function of the OAG is to audit and report on each financial year on the accounts of County and National Government.

### **3.8.4. Controller of Budget**

The Control of Budget is established under Article 228 of the Constitution. The main mandate is overseeing implementation of the budgets of both National and County Governments.

### **3.8.5. Independent Electoral and Boundaries Commission (IEBC)**

IEBC is established under Article 88 of the Constitution 2010. IEBC is generally responsible for conducting or supervising referendums and election to any elective body or office established under the Constitution.

### **3.8.6. Judicial Service Commission (JSC)**

The JSC is established under Article 171 of the Constitution. The core mandate of JSC is recommend to the President persons for appointment as judges, review and make recommends on the conditions of service for judges, judicial officer and staff of the Judiciary and advise the national government on improving efficiency of the administration of justice among others.

### **3.8.7. Public Service Commission**

The Public Service Commission is established under Article 233. The functions include establish and abolish offices in the Public Service, appoint persons to hold or act in those offices and confirm appointments, disciplinary control over and remove persons holding or acting in those offices and promote the values and principles in Article 10 and 232 of the Constitution among others.

### **3.8.8. Kenya National Commission on Human Rights (KNCHR)**

The Kenya National Commission on Human Rights is established under Article 59(4) of the Constitution. Its main mandate is a watchdog of the government in the area of human rights and provision of key leadership in moving the country towards a human rights state.

### **3.8.9. Public Procurement and Regulatory Authority**

The Public Procurement Regulatory Authority (PPRA) is established under Section 8 of the Public Procurement and Asset Disposal Act, 2015 (the Act). The PPRA is responsible for the regulation of public procurement in Kenya. Even though the Procuring Entities (PEs) are responsible for managing and ensuring that the procurement process is in conformity with the legal and regulatory requirements, PPRA ensures that the PEs do indeed adhere to these requirements.

### **3.8.10 Internal Audit Department (National Treasury)**

The Internal Audit is one of the four technical departments under the Directorate of Accounting Services & Quality Assurance within the Treasury. It supports Accounting Officers and AIE Holders in the Ministries and Departments in the effective discharge of their responsibilities by: measuring, evaluating and reporting on the effectiveness of the internal control systems implemented by the Accounting Officers and AIE Holders.

### **3.8.11 Efficiency Monitoring Unit (EMU)**

The Efficiency Monitoring Unit (EMU) was established in 1991 through a Presidential Executive Order to oversee prudent use and management of government resources including those of development partners. The mandate of EMU is to monitor efficiency in the implementation of government projects, programs and policies in the public service and ensure accountability and transparency in the utilization and management of public sector resources.

### **3.8.12. Responsible Commissions (under the Public Officer Ethics Act, 2003)**

Responsible commissions are those public entities charged with the task of disciplinary control over their employees. The responsible Commissions include: all Commissions established under Chapter 15 of the Constitution among others. Apart from the disciplinary control, responsible Commissions are the custodian of declaration on assets, income and liabilities of public officers.

### **3.8.13. Commission on Administrative Justice**

The Commission on Administrative Justice (CAJ) or Office of the Ombudsman is a Constitutional Commission established under Article 59(4) of the Constitution.



The Commission's mandate is to investigate any conduct in state affairs or any act or omission in public administration that may be prejudicial or may result in impropriety in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct. The Commission is the oversight agency for the right to fair administrative action and the right to access to information as provided for by Articles 47 and 35 respectively of the Constitution, the Fair Administrative Action Act, 2015 (FAA Act) and the Access to Information Act, 2016 respectively.

#### **3.8.14. Inspectorate of State Corporations**

The State Corporations Act Cap. 446 establishes the Inspectorate of State Corporations (ISC). Its mandate is to advise the Government on all matters affecting the effective running of state corporations.

#### **3.8.15. Council of Governors**

The Council of Governors is a non-partisan organization established in accordance with the provision of Section 19 of the Intergovernmental Relations Act. The mandate of the Council of Governors includes; offer a collective voice on policy issues, sharing of information on the performance of the Counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action, facilitating capacity building for governors and Receiving reports and monitoring the implementation of inter-county agreements on Inter-county projects among others.

### **3.9. Partnerships and Other Good Governance Initiatives**

#### **3.9.1. National Anti-Corruption Campaign Steering Committee**

NACCSC is administratively under the OAG & DOJ. It comprises members appointed by the President to provide the overall campaign policy and oversight and a Secretariat that interprets the policies, develops and implements campaign programmes and activities. NACCSC prepares and submits half-yearly progress reports to the President. The mandate of NACCSC is to undertake a nation-wide public education, sensitization and awareness creation campaign aimed at effecting fundamental changes in attitudes, behaviour, practices and culture of Kenyans towards corruption.

#### **3.9.2. Open Government Initiative-Office of the Deputy Presidency**

The Government of Kenya has committed itself to international norms of Open Government. The African Peer Review Mechanism (APRM) is a unique voluntary process currently involving 30 out of the 54



countries on the continent. The mechanism and its engagement at the highest level of government offer a formidable tool for inclusive governance. This National Open Government Plan therefore articulates Kenya's intention to deepen openness and thereby ensure that the democratic dividend flowing from transparency is sustained, both at national and sub-national/county levels.

### **3.9.3. Kenya Leadership and Integrity Forum (KLIF)**

KLIF draws its mandate from several legislations, conventions and frameworks. Articles 5, 12 and 13 of the United Nations Convention against Corruption (UNCAC), of which Kenya is a State Party, provides for involvement of public, private, civil society and other sectors in the fight against corruption and requires of State Parties to mainstream this through legislation or policies or through formal structured arrangements. It provides a mechanism through which stakeholders design and implement anti-corruption initiatives in their sectors; creating partnerships and networks for greater impact.

### **3.9.4. Multi-agency Team (MAT)**

MAT is an initiative that was established in November 2015. The framework brings together the following agencies: EACC, ODPP, DCI, NIS, FRC, ARA and KRA. MAT was formed to enhance coordination and collaboration among law enforcement agencies in the fight against corruption and organized crimes.

### **3.9.5. Integrated Public Complaints Referral Mechanism (IPCRM)**

IPCRM is an electronic information sharing platform. The initiative, established in 2012 brings together six agencies, namely; EACC, CAJ, KNCHR, NCIC, NACCSC and Transparency International (TI) Kenya Chapter. Through the platform, the public have access to report issues on governance through any of the partners accessible to them for referral to the relevant agency (partner) for action.

## CHAPTER FOUR: STRATEGIES FOR FIGHTING CORRUPTION

### 4.1. Prevention of Corruption

#### 4.1.1. Introduction

Corruption prevention is the process of detecting, examining and identifying corruption loopholes and opportunities and putting in place measures to minimize those opportunities and seal the loopholes. It entails nipping corruption in the bud. This involves putting in place checks and balances within public institutions to ensure that the identified corruption loopholes are sealed and opportunities eliminated. It further requires the identification of areas prone to corruption in institutions.

Chapter 3, of The UNCAC outlines preventive measures that State Parties are expected to put in place to fight corruption. These include developing and maintaining effective anti-corruption policies, establishing and promoting practices aimed at the prevention of corruption, putting in place relevant legal instruments and administrative measures to facilitate prevention of corruption and establishing mechanisms to ensure participation of all actors in the prevention of corruption. To this end, Kenya has enacted laws which include the EACC Act, 2011 and the LIA, 2012 to facilitate corruption prevention and promotion of sound ethical standards and practices in society.

In addition, the convention envisages a private sector that is ethical and that abides by fair business practices in order to foster economic growth and development. Therefore, measures are required to develop and promote standards and procedures to safeguard integrity of private sector entities. These include development of codes of conduct for the correct, honourable and proper performance of business and all relevant professions and to prevent conflict of interest; promotion of transparency among private sector entities, preventing abuse of procedures and regulations and ensuring sufficient internal controls to prevent and detect corrupt acts and to ensure that financial and auditing standards are adhered to.

#### 4.1.2. Situational analysis

The Government introduced the Public Service Integrity Programme (PSIP) in 2003 with the objective of mainstreaming and

institutionalizing prevention of corruption in all public institutions. The PSIP encompassed a framework for training all public officers on the fight against corruption and mainstreaming corruption prevention strategies including the development and implementation of corruption prevention policies and corruption prevention plans, constituting corruption prevention committees, training integrity assurance officers, conducting corruption risk assessment, creating corruption reporting boxes and taking appropriate action against reported cases of corruption within respective institutions.<sup>17</sup>

The PSIP was reinforced by the introduction of the corruption eradication indicator in the performance contracts (PC) in all public institutions. The PC framework is designed to inculcate a culture of results based performance, improve service delivery and enhance efficiency and effectiveness in the public service.

The prevention strategies have resulted in strengthened policies, systems and procedures and practices of performance in public institutions; enhanced capacity for corruption prevention in public institutions; strengthened partnerships, coalitions and networks against corruption.<sup>18</sup> However, corruption prevention has over the years been affected by inadequate capacity and lack of commitment by public institutions, the private sector and other non-state actors to mainstream corruption prevention strategies. In addition, systemic weaknesses and opportunities for corruption continue to thrive in many public institutions, including county governments. This has affected performance, quality and timeliness of service delivery, and level of integrity and ethics of public officers. This is demonstrated by the poor ranking of the public institutions on the Corruption Perception Index.

The sustained onslaught on corruption through prevention of corruption and implementation of the Bribery Act, 2016 should result in continued reduction of corruption and improved local and global ranking of corruption perception indices.

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<sup>17</sup> GoK, (May 2003). Public Service Integrity Programme: A Sourcebook for Corruption Prevention in the Public Service. Office of the President.

<sup>18</sup> See EACC, Strategic Plan (2013 – 2018) downloadable from [www.eacc.go.ke](http://www.eacc.go.ke)

#### **4.1.3. Policy objectives**

- a) To mainstream and institutionalize corruption prevention in all Ministries, Departments, Agencies and Counties (MDACs);
- b) To enhance compliance of public bodies with EACC recommendations on corruption prevention;
- c) To enhance the capacity of public bodies and private sector to prevent corruption;
- d) To simplify systems and procedures and enhance efficiency and effectiveness in service delivery; and
- e) To promote the participation of the private sector and other non-state actors in the prevention of corruption.

#### **4.1.4. Policy Issues**

The key policy issues are: -

- a) inadequate enforcement mechanisms for corruption prevention recommendations;
- b) inadequate capacity of public institutions to prevent corruption, including detecting, deterring, disrupting and punishing corrupt acts within institutions;
- c) increased complexity of the phenomenon of corruption, mainly due to developments in technology and globalization;
- d) entrenched culture of corruption and unethical practices in the society; and
- e) existence of bureaucratic systems that promote corrupt practices/make corruption attractive.

#### **4.1.5. Policy Statement and Interventions**

The Government shall mainstream corruption prevention, strategies and measures in both public and private sectors so as to eliminate systemic corruption and enhance ethical standards in service delivery and business environment. The Government shall also ensure enhanced cooperation and partnership with the Private Sector and Non-State Actors in the prevention of corruption.



Specifically, the Government shall: –

- a) review the legal framework to put in place mechanisms to enforce compliance with corruption prevention recommendations and introduce legal and administrative sanctions for Heads of Ministries, Departments, Agencies and Counties (MDACs) who fail to implement corruption prevention recommendations;
- b) develop and enhance capacity of private and public sectors to implement corruption prevention strategies;
- c) institute appropriate structures and mechanisms for corruption prevention in MDACs;
- d) institute systems and structures that promote transparency in public institutions; and
- e) mobilize the private sector and other non-state actors to adhere to standards and practices that foster and inculcate ethics, integrity and anti-corruption in the conduct of their business and interaction with the public sector.

## **4.2. Public Education, Training and Awareness Creation**

### **4.2.1. Introduction**

Education, training and awareness creation is recognized globally as a critical strategy in fighting corruption and promoting ethics and integrity in society. Article 7(1) (d) of UNCAC requires state parties to take measures to promote education and training programmes to enhance public bodies' awareness of the risks of corruption inherent in the performance of their functions and to ensure discharge of functions in the correct, honourable and proper manner. In addition, Article 13 (1) requires state parties to take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

The Government has initiated various programmes on public education, training and awareness creation with the objective of influencing behaviour and attitude change in society and to ensure

that every person plays their role in the fight against corruption. These include entrenchment of education and good governance related issues in the laws, establishment of dedicated institutions to spearhead public education, training and awareness creation against corruption and implementation of various campaign programmes and activities.<sup>19</sup>

The overall objective is to create a society that understands corruption, its manifestations and types; appreciates the effects and dangers of corruption; participates actively in fighting and preventing corruption and increasingly becomes intolerant to corruption. In addition, anti-corruption education, training and awareness creation is intended to enlist and foster public support for the fight against corruption through reporting cases of corruption, recording statements with investigating agencies, adducing evidence in courts of law and effectively monitoring corruption in the implementation of publicly funded projects and programmes.

There is need to enhance public education, training and awareness creation to ensure long term positive impact on the fight against the vice and the evolution of a society that abhors corruption and upholds integrity and the rule of law.

#### **4.2.2. Situational Analysis**

Over the years, the strategies employed in anti-corruption education, training and awareness creation programmes have focused on mainstreaming anti-corruption content in the formal education at all levels of learning through the development and application of curriculum support materials, public education and awareness creation campaigns through community outreach programmes. Additionally, media based awareness campaigns and dissemination of Information, Education and Communication (IEC) materials, partnerships with Non-State Actors on training, development of codes of conduct and public education, establishment and operationalisation of anti-corruption networks in the counties to create awareness and provide support mechanism necessary in the fight against corruption and sensitization and capacity building of the

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<sup>19</sup> See various EACC and NACCSC Reports downloadable at [www.eacc.go.ke](http://www.eacc.go.ke) and [www.naccsc.go.ke](http://www.naccsc.go.ke) respectively

public to monitor corruption in the implementation of public projects and programmes.

Implementation of the strategies has resulted in some notable outcomes including increased public awareness and discourse on corruption and the dangers it poses to the society, enhanced transparency and accountability in publicly funded projects and programmes through increased public oversight and social audits, and enhanced public participation in the fight against corruption through reporting of corruption and whistle blowing.

Despite high levels of awareness of corruption and its negative effects on society, the levels of corruption are perceived to be high. According to the EACC in a survey conducted in 2016, 79.3 percent of the respondents indicated the level of corruption as high while 63.4 percent stated that corruption is increasing in the Country while 87 percent felt that corruption is widespread in society.<sup>20</sup> Another study by EACC in 2015 had revealed the existence of a gap between the level of awareness and action against the vice as only 5.3% of those who witnessed cases of corruption actually reported to the authorities.<sup>21</sup> Therefore, there is need to widen, deepen and intensify public education, training and awareness creation to engender behaviour and attitude change and cultivate positive values in society that are intolerant to corruption.

In addition, the following issues and challenges have emerged in the course of implementing anti-corruption education, training and awareness creation programmes:

- a) multiplicity of agencies and institutions involved in the fight against corruption albeit with lack of synergy and uncoordinated efforts which lead to duplication of effort and overlap of functions and programmes;
- b) main focus on big/grand corruption to the detriment of addressing petty to medium corruption spread in all units and parts of the country but which translate into huge losses and costs to public;

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<sup>20</sup> EACC, (2013) National Survey on Corruption and Ethics 2012 report.

<sup>21</sup> EACC, (2016) National Survey on Corruption and Ethics 2015 Study Report

- c) a lot of emphasis on curative (enforcement) as opposed to preventive measures which are reliable, less expensive and sustainable over time;
- d) public education, training and awareness creation initiatives are critically under-resourced thus limiting reach, intensity and effectiveness;
- e) a deeply entrenched culture of corruption, and politicization and ethnicization of the fight against corruption and lack of prioritization of anti-corruption measures by the national and county governments ;
- f) inadequate support and participation by the public in the fight against corruption as demonstrated by the low level of citizens' willingness to police resources voted for development and service delivery in their areas, report corruption cases, record statements with investigative authorities and adduce evidence in courts of law against corruption suspects and electing individuals tainted by corruption to leadership positions;
- g) inadequate civilian oversight and social accountability mechanisms for leaders and publicly funded projects and programmes; and
- h) citizens' discontent and impatience with the progress and achievements of the fight with a perception that corruption is on the increase.

#### **4.2.3. Policy Objectives**

The objectives to be pursued are:

- a) to enhance the public's capacity and engagement in fighting and preventing corruption and unethical conduct;
- b) to promote a culture of integrity and anti-corruption in society;
- c) to mainstream anti-corruption education in the formal education system; and
- d) to ensure a comprehensive public education, sensitization, training and awareness creation framework.

#### **4.2.4. Policy Issues**

The key issues that will be addressed through this policy include:



- a) changing the entrenched culture of corruption and impunity in the society;
- b) Managing the overlapping and uncoordinated anti-corruption education, training and awareness creation efforts;
- c) enhancing participation of the public and private sectors, non-state actors and the general public in the fight against corruption;
- d) inculcating practice of national values in society;
- e) mainstreaming of ethics and integrity, anti-corruption and good governance in public institutions;
- f) promoting synergy and collaboration in education, training and awareness creation;
- g) intensifying engagement of the County Governments in the fight against corruption;
- h) enhancing reporting and feedback mechanisms on corruption cases;
- i) managing high public expectation in the fight against corruption;
- j) resourcing for effective public education, training and awareness creation as preventive measures;
- k) mainstreaming and rallying public support for public education, training and awareness creation ;
- l) building adequate public oversight mechanisms for publicly funded projects and programmes; and
- m) mainstreaming anti-corruption education at all levels of learning and enhancing support mechanisms for the public to fight and prevent corruption.

#### **4.2.5. Policy Statement and Interventions**

The Government shall enhance the capacity of anti-corruption agencies, public training institutions and all public bodies to undertake anti-corruption education, training and awareness creation. The Government shall also partner with the private sector, civil society and other non-state actors in conducting public education, training and

awareness creation on corruption, its effects and dangers and enlist public support in fighting and preventing corruption. Specifically, the Government shall:

- a) fully mainstream integrity, ethics and anti-corruption content in education at all levels of learning;
- b) collaborate with state and non-state actors in public education, training and awareness creation;
- c) strengthen mechanisms to enhance transparency and social accountability in publicly funded projects and programmes;
- d) enhance support mechanisms for the public to report corruption, obtain feedback;
- e) enhance resources and the capacity of anti-corruption agencies to undertake public education, training and awareness creation;
- f) streamline the functions of anti-corruption agencies to eliminate duplication and overlaps through legislation; and
- g) enhance civic engagement and promote participation by the public in fighting and preventing corruption.

#### **4.3. Criminalization, Law Enforcement and Jurisdiction**

##### **4.3.1. Introduction**

Criminalization of all forms of conduct which constitute corruption is an essential component in enhancing the fight against corruption and deterrence of wrongdoing. Fair and effective enforcement of anti-graft legislation is an essential part of a functioning criminal justice system and the State, through the law enforcement agencies, must competently exercise jurisdiction in respect of all recognized forms of corrupt conduct and unethical behaviour.

##### **4.3.2. Situation Analysis**

The anti-corruption legal framework in Kenya is anchored on regional and international legal instruments on corruption, such as the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). Kenya's main anticorruption statutes namely the Anti-Corruption and Economic Crime Act, 2003 (ACECA) and Public Officers

Act, 2003 (POEA) were enacted in May 2003 even before the adoption of UNCAC, which Kenya signed and ratified on 9th December, 2003. ACECA established the Kenya Anti-Corruption Commission, provides a legal framework to guide the fight against corruption and also criminalises corrupt conduct. The promulgation of the Constitution of Kenya, 2010 ushered in Chapter Six on Leadership and Integrity and the Ethics and Anti-Corruption Commission. The later is established under Article 79 of the Constitution and the EACC Act. Passage of the EACC Act did not repeal ACECA, but only repealed Part III of ACECA that established the KACC, the Advisory Board, their composition and functions.

On 23rd December 2016, the Bribery Act was enacted into law and it ropes in the private sector in the fight against corruption. It criminalizes both offering and receiving of bribes by any person including local or foreign public officials to make specific requirements for private entities to have in place procedures for prevention of bribery.

#### **4.3.3. Policy issues**

- a) the need to prioritise enforcement of anti-graft legislation by enhancing both human and financial resources;
- b) review of legal regime to address gaps in the legal framework in the enforcement of anti-corruption legislation;
- c) the need to ensure criminalisation of all recognised conduct constituting corruption and economic crime;
- d) the need to provide for legal liability in respect of natural and legal persons for corruption, economic crimes and unethical conduct;
- e) effective sanctions for corruption offences, whether penal, civil or administrative;
- f) exercise of jurisdiction by the state over all corruption and economic crimes occurring in whatever circumstances;
- g) need to enhance reporting of corruption, economic crime and related offences through various platforms;

- h) the need to strengthen capacity for international investigations, Mutual Legal Assistance and other international assistance;
- i) the need for necessary amendments in statutes to provide for specialized investigative techniques; and
- j) the need to involve the private sector in the fight against corruption.

#### **4.3.4. Policy Statements and Interventions**

The Government shall take measures for the enhancement of capacity for reporting and investigation of corruption and economic crimes that are anchored on sound legal framework to facilitate effective law enforcement on corruption, economic crimes and ethical breaches as may be appropriate. Specifically, the Government shall: -

- a) put in place measures for the criminalization of all forms of corruption, economic crimes and unethical conduct recognized under international law;
- b) put in place measures for effective and efficient enforcement of laws relating to corruption, economic crimes and unethical conduct including;
  - i. amendment of Section 25A (3) of ACECA on the conditions given to suspected persons for cessation of investigations,
  - ii. amendment of Section 62 (6) of ACECA, on suspension of persons if charged with corruption or economic crime, to lift the exemption of state and elected office holders charged with corruption and economic crime,
  - iii. amendment to Section 48 of ACECA to provide for stiffer sentences and asset forfeiture in relation to criminal proceedings.
- c) put in place effective mechanisms to enhance reporting of corruption, economic crimes and unethical conduct;
- d) ensure that all persons involved in the commission or facilitation of corruption, economic crime and unethical



conduct are held liable in law be they legal or natural persons. Such liability may be criminal, civil or administrative;

- e) ensure that offenders are ultimately held liable for their actions, regardless of the time elapsed between the commission of the offence on the one hand and investigations and prosecution on the other;
- f) facilitate changes in law to allow use of specialized investigative techniques and admissibility of such evidence;
- g) ensure that in respect of corruption, economic crime and unethical conduct, the law does not grant any immunities or privileges which would hamper effective investigation, prosecution and adjudication over such conduct;
- h) facilitate and enable freezing, seizure and confiscation of corruptly acquired assets before, during or after investigations, regardless of any jurisdiction in which the assets are located or situated;
- i) put in place measures for protection of reporting persons, witnesses, and victims, including sanctions against persons who threaten, harm or take any adverse action against reporting persons, victims and witnesses;
- j) take measures to establish jurisdiction by the state over corruption, economic crimes and unethical conduct when committed-
  - i. in Kenyan territory;
  - ii. aboard vessels or aircraft flying the Kenyan flag;
  - iii. against a Kenyan national;
  - iv. by a Kenyan national;
  - v. by a person who is not a Kenyan national but has his/her habitual residence in Kenya;
  - vi. in any jurisdiction, as a predicate offence to an offence committed in Kenyan territory; and
  - vii. by a national of another state who is present in Kenya during the commission of the offence.

## 4.4. Prosecution of Corruption and Economic Crimes

### 4.4.1. Legislative framework

Pursuant to Article 157 of the Constitution of Kenya, 2010 and the Anti-corruption and Economic Crimes Act Cap. 65 (ACECA), the Office of the Director of Public Prosecutions (ODPP) has the mandate of prosecuting all corruption and economic crime cases; giving directions to the Ethics and Anti-corruption Commission (EACC)<sup>22</sup>, the main investigative Agency for corruption and Economic crimes as well as economic crime cases received from the Criminal Investigation Department (CID).<sup>23</sup> The ODPP also executes requests for Mutual Legal Assistance (MLA) by other countries by initiating and conducting extradition proceedings.<sup>24</sup>

Section 35 of the Anti Corruption and Economic Crimes Act provides that, following an investigation the Ethics and Anti-Corruption Commission reports to the Director of Public Prosecutions on the results of the investigation. The provisions of Section 11 (d) of the EACC Act is to the effect that the EACC investigates and recommends to the Director of Public Prosecutions the prosecution of any acts of corruption or violation of codes of ethics or other matter prescribed under this Act or any other law enacted pursuant to Chapter Six of the Constitution.

On receipt of investigation reports (inquiry files), the DPP peruses and directs the EACC on the action to be taken. In the decision making, the DPP has to consider sufficiency of evidence, public interest and interest in administration of justice and prevent and avoid abuse of court process. To this effect, the DPP has formulated guidelines that give guidance in the prosecution of corruption and economic crimes cases.<sup>25</sup>

Upon perusal of inquiry file submitted by the EACC, the DPP may give either the following directions.

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<sup>22</sup>Section 35, Anti-corruption and Economic Crimes Act, Cap. 65.

<sup>23</sup> Constitution of Kenya, 2010.

<sup>24</sup> Extradition (Commonwealth Countries) Act (Cap. 77) and Extradition (Contiguous and Foreign Countries) Act (Cap. 76).

<sup>25</sup> The Prosecution Guidelines on Corruption Cases were launched, published and publicized in 2015

- a) Prosecution: This is where the evidential threshold has been met i.e. there is sufficient evidence to support the charges proposed by EACC or any other charges that may be disclosed.
- b) Further investigations: These directions are normally given where the DPP finds gaps and deficiencies in the investigations and further investigations could lead to a prosecution. Thus, the investigator is directed to conduct investigations in the given areas and resubmit the inquiry file for further directions.
- c) Administrative action: The directions are normally given where there are ethical breaches which might not amount to criminality and where correctional action is called for.
- d) Closure of the file: Directions for closure are normally given where the evidentiary threshold for prosecution has not been met and there is no likelihood that further investigation would unearth more evidence or investigation cleared the suspects.

#### **4.4.2. Concurrence Rate**

Notably, concurrence rate of EACC recommendation and DPP's directions on investigation files has been more than 90% for the periods 2012, 2013 and 2014.

#### **4.4.3. Relationship with the EACC (Investigating Agency)**

The functions of the Office of the ODPP and that of the EACC create a symbiotic relationship in the suppression and prosecution of corruption and economic crimes. The EACC undertakes the investigations upon which the DPP prosecutes corruption and economic crimes. Thus, the relationship does not end upon submission of the inquiry file.

Beyond recommendation, the EACC remains an important partner of the DPP in the prosecution of these crimes by providing and supporting the adducing of evidence in courts, or by strengthening the cases through further investigations when the DPP is of the opinion that such further investigations are required before instituting the criminal proceedings. This relationship is important as it determines to a great extent the success or the failure of a case.

#### 4.4.4. Reporting by DPP to National Assembly

Section 37 of the ACECA enjoins the DPP to prepare an annual report with respect to prosecution of corruption and economic crimes for the period commencing 1st January and ending 31st December every year which requires the following:

- a) to prepare an annual report with respect to prosecutions for corruption and Economic Crimes on all cases forwarded by EACC and action taken, and
- b) the report is laid before the National Assembly following the end of the year. Since the commencement of the ACECA 2003, eleven (11) such reports have been laid before the National Assembly.<sup>26</sup>

Reports include:

- a) a summary of the steps taken during each year, in each prosecution and the status at the end of the year of each prosecution;
- b) indication of whether a recommendation to prosecute a person for corruption or economic crime was accepted and if not the reasons for not accepting;
- c) constitutional Petitions, criminal applications and judicial review; and
- d) the state of applications which arise from prosecution of corruption and Economic Crimes.

#### 4.4.5. Appeals

Further to prosecution, the DPP represents the State in the High Court and the Court of Appeal in appeals which may arise after conviction. Section 348A of the Criminal Procedure Code<sup>27</sup> allows the DPP to lodge appeals under certain circumstances. It states,

*'Where an accused person has been acquitted on a trial held by a subordinate court or where an order refusing to admit a complaint or formal charge or an order dismissing a charge has been made by a*

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<sup>26</sup> Annual Anti-corruption reports to the National Assembly for the years 2003 to 2013.

<sup>27</sup> Cap. 75 of the Laws of Kenya.



*subordinate court the DPP may appeal to the High Court from the acquittal or order on a matter of law'.*

#### **4.4.6. Revision**

This occurs in instances where the DPP is dissatisfied with the ruling of a subordinate court, makes a request to the High Court to revise under section 362 of the Criminal Procedure Code.

#### **4.4.7. Challenges in Prosecuting Corruption and Economic Crimes Cases**

- a) Delay in conclusion of cases which is attributed to:
  - i. preliminary objections by the defence;
  - ii. judicial review and Constitutional Petitions by the defence;
  - iii. unpreparedness of the defence to proceed;
  - iv. manual recording of court proceedings
  - v. challenges in implementing day to day hearing of cases
  - vi. legal requirement for oral evidence
  - vii. reluctance, unwillingness and or unavailability of witnesses to attend court;
  - viii. shortage of special magistrates/courts;
  - ix. frequent transfers of magistrates leaving part heard cases and transfer of investigators and prosecutors
  - x. high turnover of investigators;
- b) bottlenecks in Extradition and Mutual Legal Assistance.
- c) limited capacity to prosecute complex cases;
- d) archaic and unresponsive laws;
- e) compromised/ threatened witnesses;
- f) judicial intervention through stays, conservatory orders and prohibitions;
- g) nature and complexity of corruption cases;
- h) lack of an integrated case management system; and
- i) politicization of corruption cases.

The interventions to address the challenges include:

- a) continued recruitment of more staff;
- b) capacity building; hiring and training of the prosecution counsel;
- c) decentralization of the prosecution services to the 47 counties;
- d) professionalization of the prosecution of Corruption and Economic Crime cases;
- e) enhanced Inter-Agency co-operation;
- f) enhanced stakeholder collaboration;
- g) undertaking prosecution led investigations in accordance with Section 38 of the ODPP Act;
- h) seamless case management system for investigation and prosecution of corruption and economic crime cases at EACC and ODPP;
- i) automation of processes; and
- j) plea bargain regulations.

#### **4.4.8. Policy Issues**

- a) Delay in conclusion of cases (slow judicial process), within the criminal justice system.
- b) Perception that only EACC can effectively prosecute corruption and economic crime cases.
- c) Poor inter-agency linkages.
- d) Continuous capacity building.
- e) Outdated provisions in the laws (Evidence Act, Criminal Procedure Code, Extradition (Commonwealth Countries) Act and Extradition (Contiguous and Foreign Countries) Act).

#### **4.4.9. Policy Statement and interventions**

The Government shall strengthen the Office of the Director of Public Prosecutions to enable it effectively and efficiently undertake prosecution of corruption and economic crime cases. Specifically, the Government shall: -

- a) review relevant laws;

- b) build and enhance linkages among institutions within the criminal justice agencies;
- c) build and enhance the capacity of ODPP;
- d) enhance ethics and integrity in the conduct of prosecutions; and
- e) automation/ digitization of court processes to reduce the time consumed in recording of proceedings.

#### **4.5. Asset Recovery**

##### **4.5.1. Introduction**

The main reason why people engage in corruption is to derive a personal benefit which can be through bribes, inflated costs of tenders for provision of goods and services to the Government. Asset recovery entails tracing and restitution of either the public property that was corruptly acquired or assets that were derived from corrupt conduct. Asset recovery is a useful tool in fighting corruption because when you deprive those who engage in economic crime of the assets they acquired corruptly, then corruption becomes unattractive.

Article 40(1) of the Constitution provides that every person has the right, either individually or in association with others to acquire and own property of any description and in any part of Kenya.

This article is however, subject to article 65(1) which provides that a person who is not a citizen may hold land on the basis of leasehold tenure only, and such lease, however granted, shall not exceed ninety-nine years. Article 40(6) further provides that the rights under Article 40 do not extend to any property that has been found to have been unlawfully acquired.

##### **4.5.2. Situation analysis**

The legal framework for asset recovery in Kenya can be found in: -

- a) Anti-Corruption and Economic Crimes Act;
- b) Ethics and Anti-Corruption Act;
- c) Proceeds of Crime and Money Laundering Act;
- d) International instruments such as UNCAC, and UNTOC
- e) African Union Convention on Preventing and Combating Corruption and

#### Other Related Offenses (2003)

- f) The EAC has a Protocol on preventing and combating corruption;
- g) EACC is a member of East African Association of Anti-Corruption Authorities (EAAACA); and
- h) Bilateral MLA treaties

#### 4.5.3. Policy Issues

- a) There exist gaps in terms of jurisprudence on asset recovery as a result of conflicting judicial pronouncements.
- b) Lack of an elaborate framework for ADR in asset recovery. There exists an overlap between the laws on assets recovery i.e. the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic Crimes Act and the Proceeds of Crime and Anti-Money Laundering Act.
- c) Lack of guidelines on how to utilize recovered assets delays the Asset recovery processes.
- d) Lack of a provision in law that allows for the selling of perishable or rapidly depreciating assets.
- e) There has been a challenge in the implementation of the legal regime governing asset recovery in relation to the relevant institutions and application of the law.
- f) Lack of capacity in undertaking of financial investigations.

#### 4.5.4. Policy Statements and Interventions

The Government shall strengthen the legal and institutional framework for the tracing and recovery of assets that are corruptly acquired or derived from a corrupt conduct. Specifically, the Government shall:

- a) strengthen legislation relating to tracing, freezing and seizure of assets acquired corruptly;
- b) Strengthen the system of periodic auditing of lifestyles of state and public officers;



- c) develop a clear framework for ADR in asset recovery;
- d) enhance the application of the legal framework for tracing, seizing and confiscation of assets obtained through corruption;
- e) strengthen the Multi Agency Framework to facilitate synergy in Asset recovery process by developing an institutional framework to guide coordination of the Multi Agency Team;
- f) enhance capacity of institutions dealing with asset recovery in tracing, freezing and analyzing;
- g) sensitize the public on the application of plea bargain agreements in corruption cases; and
- h) develop a national register of confiscated property.

#### **4.6. International Co-operation**

##### **4.6.1. Introduction**

International co-operation is a key plank in the fight against corruption. Kenya is a State Party to the United Nations Convention against Corruption (UNCAC)<sup>28</sup> and the African Union Convention on Preventing and Combating Corruption (AUCPCC). Both have identified international co-operation as critical to the fight against corruption the national and international levels.

International co-operation encompasses various forms of assistance that countries should render to each other in many aspects including the fight against corruption, such as; prevention, investigation, and the prosecution of offenders. In line with the principles of international co-operation, countries are required to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court to extradite offenders. Similarly, countries are also required to put in place various measures geared towards supporting the tracing, freezing, seizure and confiscation of the proceeds of corruption.

##### **4.6.2. Situation Analysis**

To facilitate international cooperation over the fight against corruption and other crimes, Kenya has put in place a number of legal

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<sup>28</sup> See: Articles 43-50 (Chapter IV) of the United Nations Convention against Corruption

instruments, such as the Extradition (Commonwealth Countries) Act, Cap. 77, the Extradition (Contiguous and Foreign Countries) Act, Cap 76, the Proceeds of Crime and Anti-Money Laundering Act, the Mutual Legal Assistance Act and the Fugitive Offenders Pursuit Act (Cap. 87).

Under the Mutual Legal Assistance Act, the Attorney General is the Central Authority for processing all requests to and from Kenya regarding mutual legal assistance. Once the AG receives such requests, he channels the requests to the relevant Competent Authorities, such as the Office of the Director of Public Prosecutions, the Ethics and Anti-Corruption Commission and the Criminal Investigations Department.

#### **4.6.3. Policy Issues**

- a) Delays in the processing of Mutual Legal Assistance requests.
- b) Need to meet the dual criminality requirement.
- c) Different legal frameworks and penalties under different jurisdictions.
- d) Length of process due to formalities, processing times, and appeals.
- e) Complex evidentiary requirements that are very difficult to meet.
- f) Differences in confiscation systems that may lead to problems in enforcement.
- g) Lack of mutual bilateral agreements with some countries to facilitate MLA/extradition processes.

#### **4.6.4. Policy Statements and Interventions**

The Government shall strengthen the legal and institutional framework for the provision of international co-operation in the fight against corruption and economic crimes. The Government shall specifically;

- a) harmonize the legal framework for mutual legal assistance and extradition with the provisions of UNCAC and AUCPCC.
- b) enhance co-operation between Kenyan law enforcement agencies and other countries.

- c) seek Technical Assistance in modern special investigative techniques.
- d) develop a legal framework for the transfer of prisoners.<sup>29</sup>
- e) encourage the use of informal assistance channels before, during, and after transmitting an MLA request.
- f) develop a legal framework for surrender of assets and witness facilitation.
- g) develop Capacity in emerging areas of Mutual Legal Assistance and Extradition.

## **4.7. Leadership and Integrity**

### **4.7.1. Introduction**

One of the notable milestones of the Constitution of Kenya, 2010 is the entrenchment of issues of ethics and integrity in the Constitution. In particular, Chapter Six of the Constitution seeks to achieve servant and transformational leadership by demanding high standards of integrity and ethical conduct for State and Public Officers. The Chapter is predicated upon the assumption that State officers carry the highest level of responsibility in the management of State affairs and, therefore, their conduct should be beyond reproach. Chapter Six provides the guiding principles for State officers and extends the same, with necessary modifications to public officers.

### **4.7.2. Situation Analysis**

The Leadership and Integrity Act, 2012 was enacted pursuant to Article 80 of the Constitution to give effect to, and establish mechanisms and procedures for effective administration and enforcement of Chapter Six of the Constitution on Leadership and Integrity. Several gaps have been identified in the Act that impede full implementation of Chapter Six. A wide gap also exists between law and the practice as required from public officers by the Leadership and Integrity Act.

### **4.7.3. Policy Issues**

The issues to be addressed include:

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<sup>29</sup> Art. 45 of UNCAC.

- a) inadequate and ineffective mechanisms for integrity vetting for persons seeking elective and appointive positions in the public service;
- b) weak mechanisms for the enforcement of the provisions of Chapter Six;
- c) lack of mechanisms for lifestyle audits;
- d) overlapping institutional framework for enforcement of provisions on declarations of income assets and liabilities by public officers;
- e) cumbersome mechanisms for access of declarations of income, assets and liabilities information and enforcement of wealth declaration provisions;
- f) public indifference to suitability of persons elected or appointed to public office;
- g) fragmented legal framework for implementing the Leadership and Integrity Codes;
- h) low threshold for enforcement of breach of ethics that impedes the enforcement of Chapter Six and the Leadership and Integrity Act/Codes;
- i) inadequate partnerships with non-state actors in the promotion of ethics and integrity; and
- j) low awareness by the public on the leadership and integrity Act/codes and on their role in the enforcement of leadership and integrity Act/codes.

#### **4.7.4. Policy Statement and Interventions**

The Government shall strengthen the mechanisms for full implementation of Chapter Six of the Constitution and the Leadership and Integrity Act. The Government shall also promote public participation in the enforcement of ethics and leadership provisions in the Constitution. Specifically, the Government shall: -

- a) provide adequate and effective mechanisms for vetting on integrity for persons seeking public office;
- b) strengthen mechanisms for the enforcement of the provisions of Chapter Six;



- c) develop a legal framework for conducting lifestyle audit;
- d) streamline institutional framework for enforcement of provisions on declarations of income assets and liabilities by public officers;
- e) simplify mechanisms for access to declarations of income, assets and liabilities information and enforcement of the provisions thereof;
- f) educate the public on their role in vetting persons seeking public office;
- g) harmonize the legal framework for implementing the Leadership and Integrity Codes;
- h) strengthen mechanisms available to determine cases of ethical breaches by State officers where applicable;
- i) strengthen partnerships with non-state actors in the promotion of ethics and integrity;
- j) establish a framework for multi-agency vetting and sharing of information on persons seeking elective and appointive public offices;
- k) strengthen mechanisms for enforcement of Codes of conduct by all public entities and reporting;
- l) raise awareness and encourage disclosure of unethical conduct; and
- m) strengthen the framework and mechanisms of public participation and for conducting civic education on leadership and integrity.

## CHAPTER FIVE: IMPLEMENTATION FRAMEWORK FOR THE POLICY

### 5.1 Implementation Arrangement

This chapter provides a framework for monitoring the implementation of this Policy. The establishment of a robust multi-stakeholder monitoring framework is critical to the successful implementation of this Policy.

#### 5.1.1 Introduction

The framework is intended to offer institutional and regulatory linkages and guide as will be crucial in successful implementation of this policy. It provides the mechanism by which anti-corruption policy will be implemented right through from planning, resourcing and monitoring of progress against set milestones and indicators. The framework thus assigns some of the core administrative functions and duties that need to be undertaken by key entities in the fight against corruption. This sharing of responsibilities is guided by institutional legal empowerment and their respective capacities in terms of facilities, skills and wider establishment, such as would be required to manage resources and to address technical issues in line with the policy priorities.

The in-depth questions that the framework here seeks to settle are thus a consideration of clarity of roles and responsibilities, such as would determine which institutions are responsible for certain inputs, activities, and monitoring dimensions of policy implementation; whether specific roles and responsibilities are clearly defined, and whether there are specific rules that govern how these roles should be performed.

In addition, the framework sets out key institutional terms of references to streamline and accordingly empower them for policy delivery. Further, the framework of itself responds to, and aspires to contribute to promotion of good governance, and in this regard, embodies transparency and accountability safeguards for implementing institutions.

Lastly, stakeholder coordination and engagement are the two other considerations within the monitoring framework, with the former emphasizing alignment and collaboration resulting in information sharing, resource sharing, and joint action. The latter then completes

the loop as the point in the framework which creates the points in the policy implementation process where engagement would be needed to improve acceptance both with the executing agencies and the wider public that is the ultimate beneficiary to this policy.

### **5.1.2 Situation Analysis**

The implementation of an effective policy framework for fighting corruption and economic crimes is premised on enactment of an effective legal framework, establishment, reform and strengthening of requisite institutions and coordination of strategies and actions geared towards implementing the policy. The OAG&DOJ is responsible for overall development and implementation of the national anti-corruption policy. The lead law enforcement agency in the fight against corruption is the EACC, which has a broad vertical and horizontal mandate to investigate, combat and prevent corruption and economic crimes. In its investigative role, the EACC effort is complemented by other agencies, including the NPS, DCI, KRA and the ARA.

The ODPP, being the primary prosecution agency, also collaborates with the foregoing upstream agencies in prosecuting investigated cases. The Judiciary adjudicates on such cases, passes judgment and any other sanctions deemed necessary (such as confiscation of assets deemed proceeds of corruption and even banishment from holding public office). A special division of the High Court (Anti-Corruption and Economic Crimes Division) has been established to expedite hearing and determination of applications and appeals on corruption and economic crimes cases. Thereafter the EACC, ODPP, DCI and ARA embark on recovery and restitution of such assets and proceeds of corruption to deserving institutions and individuals, including the Government.

In specialized financial areas, the Financial Reporting Center, the CBK and even commercial banks and other financial institutions (e.g. Capital Markets Authority, NSE etc.) are obliged to track and report any suspicious financial transactions to investigative agencies for further action. At the policy regulatory level, other institutions that complement the fight against corruption include the Presidency and the National Treasury which can trigger investigations and thence appropriate remedial action by specialized agencies. Additionally, the

implementation of the Policy framework is supported by regulatory and oversight interventions by institutions such as Parliament, County Assemblies, Office the Auditor General, Controller of the Budget, Efficiency Monitoring Unit, Inspectorate of State Corporations and the Public Procurement and Disposal Regulatory Authority.

### **5.1.3 Policy Objective**

The overarching objective for the policy under the implementation framework is to correct the disjointed past anti-corruption interventions and to enhance efficiency and effectiveness by creating better coherence and collaboration across the institutional with anti-corruption mandate. The top policy priority is therefore to create a common anti-corruption program planning and implementation platform and an institutional framework that responds adequately towards a sustainable response and proactive action against the corruption challenge in the country.

The Government has put in place structures, institutions, laws and initiatives to address the problem of corruption. These include the elaborate legislative framework and the establishment of anti-corruption agencies with mandates aimed at addressing the menace of corruption. The national government has also consistently emphasized commitment to curb corruption. Despite all these including the ratification of relevant international conventions, proper implementation remains a challenge.

### **Institutional Framework**

Coordination and collaboration with respect to anti-corruption effort remain a major challenge despite the fact that these are essential for the effective implementation of this policy and success against corruption. Co-ordination and collaboration further encourage learning and experimentation, while minimizing the risks involved with innovation. Establishing efficient mechanisms for co-ordination and collaboration will, inevitably improve sector performance on the fight against corruption. The policy therefore underscores the need for an institutional framework that upholds co-ordination and collaboration under at least five levels:

- a) at generation of sector priorities;
- b) during planning and budgeting;



- c) during implementation monitoring and evaluation to establish whether targets are being met by all actors;
- d) during reporting; and
- e) at developing internal and external accountability.

**Institutional Independence:**

The difficulty in co-ordination and collaboration in the anti-corruption initiatives is both cultural and structural. Institutions, behaviourally, tend to be inward-looking and self-centered. Often, institutions tend to work for self-preservation and due to this, they are usually reluctant to give up or lend power or support to others in the anti-corruption chain, even when it is been in the best interest of all that they do so. Structurally, constitutional offices or institutions such as the Judiciary and Parliament are for instance often too keen to guard their constitutional independence. Any initiatives that they perceive as creeping into their autonomous space, or tending to imbalance the separation of powers, however well-meaning, are rarely viewed kindly.

For these reasons, three interrelated approaches are employed in this policy to promote collaboration and coordination in the sub-sector. The first is executive direction (coordination from a point of direction by the executive arm). Specifically, the government will demand that all institutions adhere to a clearly formulated coordination strategy. The second approach is the creation of a resource-based incentive structure (coordination from a point of resources), which ensure a more even resource allocation and activity co-hosting where necessary. The third is peer-leadership in the sector that will seek institutional coordination persuasion for the common good. In this regard, this policy embodies joint planning (programming), monitoring and implementation that ensure common delivery on the anti-corruption effort.

**5.1. 4 Policy Issues**

From the foregoing analysis, the issues to be addressed include:

- a) duplication of efforts ;
- b) inefficiency in use of resources;
- c) a bureaucratic labyrinth of legal and institutional framework that is time consuming to navigate through and accords many

loopholes for culprits to escape or delay dispensation of justice and restitution to victims and institutions.

- d) pervasive public apathy against protracted efforts against the fight against corruption.
- e) cost overrun of processing cases to conclusion beyond expected net benefits; and
- f) ineffective citizen participation/engagement and non-governmental oversight mechanisms require redress. In addition, recent national corruption scandals and increased citizen mobilization demanding the Government to implement anti-corruption measures have put these issues at the forefront of the national agenda.

#### **5.1.5 Policy Statement and Interventions**

The Government shall strengthen the implementation framework for the policy. The Government shall specifically:

- a) utilize the three formal platforms for coordination to wit;
  - i) the Kenya Leadership and Integrity Forum which provides for involvement and participation of state and non-state actors in the fight against corruption,
  - ii) the Multi Agency Team which brings together all state investigative and prosecution agencies fighting corruption and organized crime, and
  - iii) the Integrated Public Complaints Referral Mechanism which is an information sharing platform for anybody including the public to report breaches of governance for referral to relevant institutions for action.
- b) mainstream anti-corruption strategy in all government processes;
- c) ensure that National and County governments continue to prioritize anti-corruption programs within their budgetary provisions; and
- d) implement anti-corruption measures through performance contracting on anti-corruption measures.

## **5.2 Resource Mobilization and Financing**

### **5.2.1 Introduction**

Policy implementation does not necessarily follow smoothly from policy adoption, and requires deliberate effort for this transition to take place. It requires the necessary mobilization and allocation of resources such as would be critically needed to put in place the fundamental instruments and framework to enforce the policy. Towards realization of this goal, Government will ensure integration of anti-corruption programs in all its budgetary decisions and policies and programs in order to engender an integrated and concerted anti-corruption effort across the public service. This also requires some mindset shift towards recognizing the net effect of anti-corruption programs in favour of resource and value conservation rather than being net consumers of resources not just on the recovery aspect but also from a preventive perspective.

### **5.2.2 Situation Analysis**

Resource inadequacy is exacerbated by inequity in the allocation of funds to sector priorities and the challenges in accessing funding even when allocated. Thus, more resources need to be generated and better mechanisms established for allocation and access. Once generated, these resources must be equitably allocated according to objectively-established priorities. It is also important to note that in some cases, the absorption capacity for some of the institutions has been low due to institutional inefficiencies, giving rise to ineffective performance or non-performance of some of the program components. Mechanisms for more stringent and objective prioritization, equitable allocation of resources and constant monitoring will be put in place to address this challenge. Besides, there is need to ensure synergies in the use of funds in a manner that avoids duplicity, lack of synchrony and therefore less than optimal resource use.

### **5.2.3 Policy Objectives**

The funding to anti-corruption institutions is to be based on the general principles of transparency, predictability and adequacy, stakeholder engagement and coordinated sub-programming. These

are not competing ethos but present mutually reinforcing fabrics of good public financial management elements

*Transparency:* In aspiring for transparency on policy implementation, it is to be noted that is that an anti-corruption policy implementation carries a moral responsibility of being the example and setting the bar for the rest of government institutions and programs. There is therefore an objective that the implementation mechanism for this policy will of necessity aspire to take good governance matters to their practical ideal level and in this case illustrate the positive value to be derived from its implementation.

*Predictability and Adequacy:* Corruption disproportionately affects the poorest in society and in so doing perpetuates poverty. It is, as such, a major contributor to funds leakages that limits access to public services for this segment of the population.

Another important consideration is that corruption is entrenched and therefore there has to be a sustained effort to defeat it. Distinct features of corruption<sup>30</sup>:

- a) Corruption occurs up-stream, at higher places, not downstream.
- b) Corruption money has wings, not wheels, meaning they are deposited abroad.
- c) Corruption leads to promotion, not prison.
- d) Corruption occurs with more than half of the population in poverty.

This brings to the fore the complexity of corruption as a third dimension that supports the need for sustained and well-funded strategy. Lastly, and given the very low base from which we are and the enormity of corruption levels in the country, anti-corruption program resourcing needs to be continually enhanced into the foreseeable future.

*Stakeholder engagement:* Fundamental to the fight against corruption is the involvement of all stakeholders. To this end there is need to create structured and regular stakeholder engagements at all levels

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<sup>30</sup> "Crisis of Governance" (Mahbub ul Haq Human Development Centre [MHDC], 1999)



including; the executive at policy level, business organizations, religious bodies, the NGO sector, development partners, the media, labour unions, academic and professional bodies and the general public. This would create a powerful platform against corruption, and from which the societal nature of corruption may be appreciated and national consensus created.

*Co-ordination:* The first lesson in the fight against corruption is that establishment of dedicated agencies has emerged as a core component in winning the war. However, while often established with great optimism, experience has further demonstrated that the effectiveness of anti-corruption agencies has varied greatly from country to country. Indeed, success of any anti-corruption strategy strongly relies on the effectiveness and cooperation of many complementary institutions such as civic education agencies, investigation agencies, prosecutor, the ombudsman, the auditor general and the courts. Yet, experience worldwide indicates that in most countries, cross-agency co-ordination remains weak or inexistent. Law enforcement agencies are often not well connected and integrated, due to their wide diversity, overlapping mandates, competing agendas, various levels of independence from political interference and a general institutional lack of clarity.

A running thread throughout the more effective anti-corruption strategies is the tendency to rely not only on resourcing but also on strong leadership with visible political commitment. Such success also relies on well-coordinated network of state and non-state actors who work together to implement anti-corruption interventions. Channels for ensuring effective inter-agency co-ordination have often involved setting up new coordinating bodies or centres. Ability for agencies to coordinate work at operational level is also critical and requires more emphasis. The use of multi-agency task teams to investigate and deal with allegations of corruption has proved to be particularly successful and should continue to be encouraged.

#### **5.2.4 Policy Statement**

There is need therefore to step up funding for specialized and independent agencies through budget allocation from Treasury. As much as additional funding will be sought through bilateral and multilateral arrangements, the Government is nonetheless to take

leadership and provide the greater proportion of required resources for the implementation of this policy. The Government will also join hands with Civil Society, the private sector and other Non-Governmental Organizations in mobilizing required resources and complimenting government efforts.

### **5.3 Communication Strategy**

Corruption is a complex phenomenon, but with unambiguous results. The communication strategy will aim at making it much simpler for all stakeholders to effectively engage and for the public to keep pace with progress and especially to positively identify with the fight against corruption. To place it in its proper perspective, it is notable that the communication strategy will of itself not be an antidote for corruption. However, when paired with other necessary initiatives such as strengthening systems, improving law enforcement and bolstering prosecution, it will play a crucial role in creating necessary conditions for corruption prevention including intensifying public participation, building public trust in institutions, and increasing access to information. Secondly, within the realm of prevention, communication tactics would be the most useful approach in shifting public attitudes away from ambivalence towards active resistance. Communication activities will thus also leverage the success of other initiatives, such as increasing the effectiveness of enforcement initiatives by increasing awareness or pressuring perpetrators by focusing on the negative personal consequences of corruption.

The first objective of the anti-corruption communication strategy is to demonstrate effects of corruption menace to every member of society. That owing to corruption, the government pays in its inability to account for resources; the economy pays in its compromised ability to spar and to attract investment internally and internationally. Citizens pay the heaviest price in lack of jobs, basic services like medication, infrastructure, security, justice, and education. They also pay in loss of confidence in the governance structures. When citizens lose faith in the systems created to support them, corruption breeds itself into a vicious cycle.

It is important to note that the envisaged communication strategy on anti-corruption, as with the core anti-corruption strategy itself, be planned, executed and reported on by all stakeholder institutions -

from government ministries , state corporations, , specialized institutions in the fight against corruption and the non-state actor institutions. The policy therefore considers that the lead coordinating entity to the fight against corruption will also be tasked with the leadership role in putting in place and managing a holistic communication strategy out of a consultative process. In the minimum, the communication strategy will target to serve two overall purposes:

1. To enhance public awareness of corruption impact while providing progress against the vice; and
2. To proactively serve to prevent corrupt practices in public and private sector bodies.

The target groups of the communication strategy will be guided by the above objectives for which different and specific communication strategies may be required. For this, the target groups are divided into two main groups according to their nature within the programme implementation. These are the internal groups consisting of people working on the implementation of the actual policy and secondly the external target groups consisting of all other stakeholders.

To determine resource needs for the communication strategy, it is important to appreciate that its implementation is to be designed as a horizontal responsibility for all programme implementation agencies. In this regard, the funding will be spread out to all implementing entities but with the lead agency responsible for its coordination in planning and implementation. Secondly, the communication strategy is to be informed by the annual cycle of anti-corruption activities which in turn also defines supportive communication activities and its resource needs. Thus, it is to be streamlined for implementation through the annual work plan drawing detailed plans on how the strategy objectives are strived for continually. Annual planning will allow for implementation of the strategy through coordinated milestones. This will give room for annual review and evaluation of the strategy for its regular adjustment and improvement where so required.

## **CHAPTER SIX: MONITORING AND EVALUATION OF POLICY IMPLEMENTATION**

### **6.1 Monitoring and Evaluation**

#### **6.1.1 Introduction**

This chapter captures the policy implementation monitoring and evaluation mechanism. It provides the vertical and horizontal logic from key outcome areas of policy priority. A robust M&E framework is intended to ensure that the programming and monitoring processes, including work plans and reports, are formulated and presented in line with the "results based approach". It also calls for using evidence-based corruption measurement tools to develop and evaluate anti-corruption strategies effectively. This is essential to avoid the anti-corruption policy and strategies remaining as mere declaration of intent.

#### **6.1.2 Situation Analysis**

A robust Monitoring and Evaluation (M&E) System is essential for efficient and effective implementation of this National Ethics and Anti-Corruption Policy. However, building and sustaining a results-based M&E system is not easy. Such an effort requires time, energy, political will, organizational commitment and resources. As with any governance function, it demands continued attention and support or it fizzles away.

Whereas there are a number of regular reports from some of the leading agencies that would serve as a starting point or some form of foundation for creating a more robust, holistic, reliable and objective M&E framework, it is also significant to note however that current M&E framework on the fight against corruption can at best be described as fragmented and lacking in objectivity while it has primarily focused on outputs while neglecting outcome indicators. This would for example explain why agency reports on corruption would generally show gains, while public surveys on the other had paint an opposing picture that at best indicates retardation.

#### **6.1.3 Policy Issues**

- A. Establish a multi-stakeholder coordination framework for ethics and anti-corruption interventions across all levels;



- B. Establish a comprehensive M&E framework cutting across sectors at national and county levels starting with the creation of a database of organizations working on:
- i. Corruption preventive measures in the Public Sector;
  - ii. Criminalization, Law Enforcement and Jurisdiction;
  - iii. Investigation of Corruption and Economic Crimes;
  - iv. Prosecution of Corruption and Economic Crimes;
  - v. International Co-operation;
  - vi. Asset Recovery;
  - vii. Technical assistance, and,
  - viii. Non-State Actors (such as the private sector, civil society, religious organizations, among others) involved in the campaign against corruption.

#### **6.1.5 Policy Statements and Interventions**

The Government shall strengthen the mechanism for monitoring and evaluation of the policy. Specifically the Government shall;

1. continuously undertake research, collect and analyse information to monitor and document best practices and trends in the fight against corruption.<sup>31</sup>
2. implement the National Anti-Corruption Policy through a five-year strategic plans that should be aligned with MTP timetable and further broken down into annual budgets and forward plans under the MTEF framework.<sup>32</sup>
3. establish a multi-stakeholder coordination framework for ethics and anti-corruption interventions across all levels; and

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<sup>31</sup> Evaluation of the policy interventions will be undertaken to assess the impact and shortcomings of the fight against corruption. These findings will inform the review and related policy cycle improvement(s) in respect to the content and context of anti-corruption strategies

<sup>32</sup> It will therefore involve annual work planning that will direct the priorities in every year. The annual (operational) work plan will of itself be a compendium of thematic work-plans for the year. These documents will be at the focal point of program implementation monitoring by articulating projects, activities, and periodic targets to be monitored and reported upon.

4. establish a comprehensive M&E framework cutting across sectors at national and county levels starting with the creation of a database of organizations working on  
Create a database of organizations working on:
  - i. corruption preventive measures in the Public Sector;
  - ii. criminalization, law enforcement and jurisdiction;
  - iii. investigation of corruption and economic crimes;
  - iv. prosecution of corruption and economic crimes;
  - v. international co-operation;
  - vi. asset recovery;
  - vii. technical assistance, and,
  - viii. non-state actors (such as the private sector, civil society, religious organizations, among others) involved in the campaign against corruption.

## **6.2 Policy Monitoring**

Although it is important to collect detailed information on the broad policy and/or specific policy instruments, the nature and level of detail of information to be reported, and the frequency of reporting, will be tailored to the relevant audience. Thus, there will be need for higher frequency and for detailed reporting for operational purposes, whereas reports to the Executive and Parliament will be at most bi-annual and to contain major milestones.

## **6.3 Review**

Policy implementation reviews are of necessity at various levels, National, County and institutional. These will focus on results achieved against the efforts and resources employed as well as the plan of action. In this regard, the review is to follow a well-structured approach that is articulated through agreed terms of reference with a view to maximizing stakeholders' value.

Two complementary aspects or processes for monitoring policy implementation shall be employed. First, there will be a regular review to take place every two to three (2-3) years so as to take account of the changing social, legal, economic, political and global dynamics in the ethics and anti-corruption arena in the country. This will serve the

purpose of providing policy implementation process with a self-assessment mechanism that illustrates progress made and the challenges and opportunities arising. Ad hoc reviews may nonetheless be undertaken from time to time when there is fundamental change in circumstances in the legal, policy and institutional framework for fighting corruption and economic crime.

The second instrument is evaluation. This is an objective assessment instrument that will determine the effects of policy implementation in terms of results by assessing outcomes and whether policy objectives are progressively being realized. The objective for evaluation being outcome oriented will be undertaken at the minimum of 5-year intervals by independent external evaluators. The timing for such evaluation may be synchronized so that its findings and recommendations would feed into the Vision 2030 implementation framework under the Medium Term Plans.

#### **6.4 Logical Matrix**

This policy document is condensed and simplified through a Logical framework. Appendix-1.

This becomes a key instrument for monitoring, reporting and evaluation of implementation. The purpose of the matrix is to outline the various key program interventions in an iterative manner that enhances clarity through a matrix format. This format allows for the policy components wherever they abide in the sector to be presented in their completeness and in a clear, sequential and related manner. It is intended to present the substance of an intervention in a comprehensive form, presenting the intervention logic or the rationale captured by objectives/purpose/results on the one hand against indicator/verifications/assumptions on the other. It also captures the budgetary aspect of activities and funding. This logic is illustrated in the simplified diagram hereunder.

POLICY LOGICAL FRAMEWORK			
Intervention Logic	Indicators	Means of verification	Assumptions
Objectives			
Purpose			
Results			
<b>Activities</b>	<b>Means</b>	<b>Costs</b>	<b>Pre-conditions</b>

The vertical logic (or intervention logic) identifies what the project intends to do. It clarifies the causal relationships and specifies the important assumptions and risks. The horizontal logic relates to the measurement of the effects of, and resources consumed in policy implementation through the specification of key indicators, and the means of verification.



Policy Area/ Strategy	Objective (s)	Intervention(s)	Desired/Target Output	Output Indicator	Responsible Institution(s)	Implementation timeframe		Resource Requirements (KSh. Million)	Key Assumptions
						Start date	End date		
<b>1. Institutional Framework For Fighting Corruption</b>									
1.1 Institutional measures	To provide a mechanism for the co-ordination of anti-corruption programmes in government agencies, private sector and within non-governmental organizations.	The Government will develop and implement a framework for the coordination of corruption prevention programmes in government agencies, private sector and within non-governmental organisations	Framework for the Ethics and Anti-Corruption Commission (EACC) to facilitate inter-agency co-ordination of corruption prevention programmes, developed and implemented.	Framework in place					
	To enhance transparency and accountability in the exercise of public authority.	Develop and implement mechanisms for enhancing transparency and accountability in the exercise of public authority.	Increased public administration's accountability through; public auditing and promotion of access to information.	No. of audits done Access to information laws					
	To streamline cumbersome bureaucratic and complex procedures in public service delivery.	Develop and implement mechanisms for streamlining cumbersome bureaucratic and complex procedures in public service delivery	Procedures to reduce cumbersome bureaucracy and complexity in public service reviewed Operational manuals defining procedures for						













		private sector and other non-state actors in the prevention of corruption.	to adopt standards and practices that foster and inculcate ethics, integrity and anti-corruption in the conduct of their business and interaction with the public sector.							
2.2 Education, Training and Public Awareness		To enhance public engagement in the fight against corruption	Strengthen mechanisms to enhance social accountability of publicly funded projects/programmes; Enhance mechanisms for public reporting on corruption and feedback;							
		To promote a culture of integrity in society	Enhance civic engagement and public participation in the fight against corruption. Promote prevention as one of the key strategies in the fight against corruption;							
		To mainstream anti-corruption education in the formal education system	Fully mainstream anti-corruption content in education at all levels of learning;							
		To ensure a comprehensive public education, sensitization, training and awareness creation framework.	Enhance the capacity of anti-corruption agencies to undertake public education, training and awareness creation; and Collaborate with non-state actors and media in public educations and awareness; Establish a National Anti-Corruption Academy;							

<p>2.3 Criminalization , Law Enforcement and Jurisdiction</p>	<p>Strengthening of the legal framework on corruption and economic crime, and unethical conduct</p>	<p>Put in place measures for the criminalization of all forms of corruption, economic crimes and unethical conduct recognized under international law</p> <p>Put in place measures for effective and efficient enforcement of laws relating to corruption, economic crimes and unethical conduct</p>	<p>Amendment of Section 25A (3) of ACECA on conditions given to suspects persons for cessation of investigations;</p> <p>Amendment of Section 39 of ACECA on bribery involving agents to expand the scope beyond agents;</p> <p>Amendment of Section 62 (6) of ACECA on suspension if charged with corruption or economic crime to lift the exemption of state and elected office holders charged with corruption and economic crime and</p> <p>Amendment to Section 48 of ACECA to provide for stiffer sentences</p>				
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<p>vs. Stanley Mombo Amuti.</p> <p>Draft policy setting out the circumstances under which negotiations may be commenced and who may initiate.</p>									
<p>Need for policy/legal framework for tracing, seizing and confiscation of assets obtained through corruption.</p>									
<p>Need for cooperation with the EACC and duty not to disclose to suspect that they are being investigated. Need to protect property being investigated</p>									
<p>Consolidation of the laws on anti-corruption.</p>									
<p>Co-ordination of the asset recovery initiatives.</p>									
<p>Multi-pronged approach – investigate with a view to charging the suspects in court while the recovery proceedings for proceeds of anti-corruption are running concurrently.</p>									
<p>Article 31 of the Constitution protects property and the person from search</p>									
<p>Where companies cannot be traced for service yet they are registered as the proprietors of public land/assets, the law should</p>									







