



NEW ANTI-CORRUPTION GOVERNMENTS: THE CHALLENGE OF DELIVERY

KENYA

A CASE STUDY

Karuti Kanyinga

Paper commissioned for the Kenya Meeting on New Governments, co-organised by the government of Kenya, TI-Kenya and Transparency International, held in Nairobi, Kenya, in October 2004.

Kenya

1. Executive summary

Kenya held its third set of multiparty presidential, parliamentary and civic elections on 27 December 2002. A coalition of opposition political parties, the National Rainbow Coalition (NARC), campaigned on an anti-corruption reform agenda and won the election. Upon assuming office, the new government developed a comprehensive policy framework - the Economic Recovery Strategy for Wealth and Employment Creation - and implemented legislative and institutional reforms to enhance accountability, reduce the scope for corruption and deal with the legacy of the previous regime. The government formed several task forces to deal with past abuses. Corrupt judges, magistrates and procurement officers were removed from office.

The government received overwhelming and widespread support. The public supported these initiatives because they read in them a fundamental shift from the corrupt practices of the past. Within 12 months, however, popular support for the reforms began to wane simultaneously with the re-emergence of grand corruption and increased ethnicisation in transition politics. Suspicion and mistrust among the governing elite spilled over into the broader political arena and led to the emergence of two main factions in the coalition, each led by a cabal of ethnic elites. Public vigilance disintegrated as the government found it difficult to deal both with political conflict and corruption within its own ranks. Anti-reform networks reorganised and infiltrated the reformists, using the cracks in the coalition; they formed 'alliances' and began to undermine the reform agenda by deflecting national attention away from the reform process and towards the battle for distribution of political power and attendant conflicts within the soap opera of ethnic politics in Kenya.

An important lesson drawn from this case study is that reforms require co-ordination and harmonisation. Anti-corruption reforms and associated legislation proliferated in every sector and in every government ministry without a coherent mechanism for co-ordination. Related to this, and because the corrupt are well networked throughout public institutions, reforms needed to be implemented in all institutions simultaneously. Purging the judiciary without reforming the bureaucracy creates opportunities for the corrupt to re-invent themselves and to lodge themselves afresh in the new system.

A further lesson is that politics in Kenya are driven by ethnic patronage, such that the expectations of ethnic constituencies fuel the demand for corruption. Corruption provides the resources to satisfy the appetites created by patronage politics. It provides the mechanism to appease both individuals and the communities they represent. The failure to move beyond ethnic politics and realise the 'Rainbow Nation dream', which was a brief post-election reality, therefore perpetuates the very foundation of corruption in Kenya.

A third lesson is that fighting corruption requires a combination of prevention, detection, apprehension and conviction mechanisms. These all require public trust and vigilance to function optimally. Public vigilance, at an all-time peak after the election, dissipated shortly thereafter. Maintaining public trust requires an effective communications strategy, so that public expectations are well managed and achievements well communicated to the public. Despite its achievements, the government lost the window of opportunity in which public trust could have been consolidated and harnessed through an effective public communication strategy. As a result, public confidence, a critical component in the war on corruption, has been lost.

Despite the fact that the government has introduced many reforms, it is seen to be failing and has lost public support. The reasons for this contradiction include the failure of the government to manage political expectations and to communicate effectively. At the same time, the reforms were introduced

in a highly politicised context. Consequently, the government chose to consolidate political powers through ethnic alliances rather than through the fight against corruption because it could not realise quick gains from anti-corruption efforts. Anti-corruption networks reorganised and infiltrated the new government through these divisions. The question now is whether the government will have sufficient time in office to see through its reform agenda, record significant gains in the war against corruption and recapture public confidence.

2. Conditions for transition

2.a. Country overview

Population and economy

Kenya has a population of about 31 million people and a population growth rate of less than 2.5 per cent per annum. More than 80 per cent of the population depends on agriculture and related activities. Less than 17 per cent of Kenya's landmass of about 570,000 square kilometres is arable land. The rest of the land is arid or semi-arid land used essentially by pastoral communities.

Economic growth rates fell continuously throughout the 1990s. From about 2 per cent in the early 1990s, growth declined to 1.4 per cent in 1999 and slid to a negative -0.3 per cent in 2000. There was a slight improvement to 1.2 per cent in 2001. Incomes per capita fell by 0.8 per cent per year between 1992 and 2001. The decline in growth also affected public investment, which continued to decline during the period (*Economic Survey*, various issues).

Income disparities continued to widen. In 1994, the poorest 20 per cent of the rural population received only 3.5 per cent of rural income, while in the urban areas the poorest 20 per cent received 5.4 per cent of total income. The richest 20 per cent of the population controlled 61 per cent of rural and 51 per cent of urban income. In 2001, the bottom 20 per cent of the population had a share of 2.5 per cent of the total national income while the top 20 per cent received more than 50 per cent (Economic Intelligence Unit, 2002). Poverty deepened over the period. In 1997, the overall incidence of absolute poverty was estimated at 52 per cent and grew to 56 per cent in 2000. Three-quarters of the poor live in rural areas (*Kenya Human Development Report*, 2003).

A point to note is that Kenya had one of the most stable and impressive economic growth rates in Sub-Saharan Africa in the 1960s and 70s. The economy grew at about 5 per cent per annum on average. This boosted the state's capacity to provide basic services and develop infrastructure. Kenyans had a better standard of living than that of the newly industrialised countries of Southeast Asia. Factors such as corruption, mismanagement of the economy and bad governance in general gradually arrested economic growth.

Administration

Administratively, the country is divided into eight provinces. These are: Nairobi, Coast, North Eastern, Eastern, Central, Rift Valley, Nyanza and Rift Valley. Each province is further divided from the top into administrative districts, divisions, locations and sub-locations. The sub-location is the smallest administrative unit. A provincial commissioner (PC) is the head of a province while a district commissioner (DC) heads a district and a district officer heads a division (DO). Chiefs and sub-chiefs head locations and sub-locations respectively. The Provincial Administration has its origins in the colonial era and has enormous powers. It was through this structure that the colonial state power was entrenched in Kenyan society. The post-colonial governments of both presidents Kenyatta and Moi effected little change in its powers. They continued to use the structure to consolidate political power and to insulate themselves against political opposition. Similarly, the NARC government has not effected any significant reforms in the Provincial Administration. It has remained intact except for sporadic transfers of officials from one administrative unit to another.

Ethnicity and politics

Kenya is a multi-ethnic society: there are about 40 ethnic groups. The largest groups in terms of percentage share of the population (using the 1989 population census) are the Kikuyu (21 per cent); Luhya (14 per cent); Luo (12 per cent); Kamba (11 per cent); and Kalenjin (12 per cent). These groups

make up about 70 per cent of the population. Other significant groups are the Kisii (6 per cent), Meru (5 per cent) and Mijikenda (5 per cent). Together, the eight numerically largest groups therefore constitute about 86 per cent of the population. The remaining 32 groups are numerically insignificant: many are less than 1 per cent of the population.

Among all the 40 or so groups, none is numerically large enough to dominate the others. This structure of ethnicity has several consequences for governance and politics in Kenya. It is the structure around which politics is organised particularly because of the need to build ethnic alliances for the purposes of political competition. This has meant de-institutionalisation of political parties, which depend far more on ethnic mobilisation than on the articulation of interests and policies. Politicians have thus effectively utilised this structure of ethnicity to build political constituencies, including constituencies to undermine reforms that threaten their political and therefore economic positions. Moi sharpened this structure by playing off one ethnic group and its ethnic elite against another.

At independence in 1963, there were several political parties, the main ones being the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). In 1964, KADU and several smaller parties joined KANU 'to enhance national unity' (Gertzel, 1968; Ghai and McAuslan, 1970). In 1966, the then-vice president, Oginga Odinga, formed the Kenya People's Union (KPU) after disagreements over post-colonial development policies with the first president, Jomo Kenyatta. In 1969, the government banned KPU following violent confrontations and a standoff between Oginga Odinga and the president. Kenya remained a de facto one-party state until 1982 when the government amended the constitution to introduce a de jure one-party state. In November 1991, following domestic and international pressure, the government re-introduced multiparty democracy.

Consolidation of the one-party state prior to multiparty politics necessitated the conflation of public and private political spheres. The line between the government and the party became blurred, as did the division between public and private resources and the interests of the party and senior government officials. The lack of distinction between private and public resources laid the foundation for the flagrant abuse of public office by senior politicians and bureaucrats. The party and the Provincial Administration became the tools for this abuse.

At the time of elections in 2002, there were about 55 registered political parties; their numbers had grown sharply from about 10 in 1992 and about 20 in 1997. The main political parties in 2002 were the Kenya African National Union (KANU), Kenya's ruling party since independence in 1963; the Democratic Party of Kenya (DP); Ford-Kenya; the National Development Party (NDP); and the National Party of Kenya (NPK). All the parties have significant ethnic constituencies. DP's membership comes from the Kikuyu and Meru groups; Ford-Kenya, Luhya; and NDP, Luo. KANU enjoys support among the Kalenjin and other numerically small groups. This was the situation until the opposition parties formed NARC. (For details on the ethno-regional character of the political parties, see Cowen and Kanyinga, 2002.)

The first set of multiparty presidential, parliamentary and local government elections was held in December 1992. A second general election followed in 1997. In both elections, the main opposition political parties mobilised around ethnicity and, ironically, fragmented along ethnic lines. KANU won both elections but failed to make any changes in governance. Under pressure from civil society and ethnic constituencies, the main opposition political parties finally formed the National Rainbow Coalition, and agreed to a single presidential candidate for the December 2002 general election. They also agreed to nominate single parliamentary and civic candidates. NARC won the election with a margin of over 60 per cent.

Kenya has a unicameral legislature with 210 elected members and another 12 nominated members. Parliamentary parties nominate the 12 members and the number of seats to each party is allocated on the basis of the party's numerical strength in parliament. The judiciary is headed by a chief justice and comprises the high court and court of appeal, the magistrates' courts, and the Kadhi courts. The court of appeal is the highest court. Judges of the high court and the court of appeal are presidential

appointees; the president appoints them on the basis of recommendations by the Judicial Service Commission.

Civil society and the media

Civil society in Kenya is fairly well organised. With about 3,000 registered non-governmental organisations, about 300 human rights groups and over 250,000 self-help groups and community-based organisations (CBOs), the country has a relatively large number of CSOs compared with other countries in the region (Kanyinga et al, 2003). The numbers and activities of human rights groups increased in tandem with the demands for the reintroduction of multiparty politics in the early 1990s. Civil society continued to apply pressure for comprehensive reforms, resulting in the establishment of the Constitution of Kenya Review Commission and initiation of the actual process of reviewing the constitution in 2000.

The new government included individuals from civil society and initiated reforms in human rights and governance. Civil society became less critical of the government as many organisations adopted a 'wait and see' attitude. Conflicts that characterised state and civil society relations generally disappeared and civil society is today relatively less vigilant vis à vis the government.

The country has a relatively free media compared with the early 1990s. State television and radio and a couple of independent newspapers dominated the media arena from independence until early 1991. With the reintroduction of multiparty democracy in 1991, the government liberalised the media on a piecemeal basis. Liberalisation intensified after the 1997 election as KANU and several opposition political parties under the Inter-Parties Parliamentary Group (IPPG) agreed to minimum reforms before the election. This notwithstanding, the readership of the independent media is still limited to the main urban centres, and the government-controlled radio and television are still the only media with truly national coverage. Furthermore, the government remains hostile to media vigilance. The government and senior politicians have on several occasions activated laws on defamation to silence media houses. Intimidation of the alternative press appears to be on the increase, given the continued harassment of journalists working in the sector.

2.b. Transition conditions

On 27 December 2002, Kenyans went to the polls to elect a new president, members of parliament and civic leaders. The poll was significant because it marked the end of the constitutional term of President Moi, during whose reign corruption became institutionalised and service delivery ground to a halt. This section describes the socio-political and economic conditions before the December 2002 general election.

Parliament

Over time, the Kenyan parliament has witnessed significant changes. Before reintroduction of multiparty democracy, parliament functioned as a rubber stamp for the executive, the president in particular. With the reintroduction of multiparty democracy, parliament grew increasingly independent and less and less amenable to executive control. MPs began to reassert the authority of the parliament through parliamentary committee systems. Parliamentary watchdog institutions such as the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) became more effective tools for checking on the executive. The PAC investigated corrupt practices in government ministries and parastatals with relatively more zeal than in the past. The government and KANU had to evolve several strategies to undermine its effectiveness.

The judiciary

The KANU government routinely circumvented the procedures of appointing judges and magistrates. The party preferred appointment of individuals who were loyal to the party and senior politicians in the government, thus ensuring that the judiciary served the interests of the government and punished its critics. Judicial positions became a patronage resource for rewarding loyal constituencies while the judiciary as a whole became a tool for silencing government critics and promoting government and party interests.

With the reintroduction of multiparty democracy, KANU further politicised the judiciary. The government appointed judges from among lawyers who were sympathetic to KANU, including lawyers who had stood for but failed to win parliamentary seats in the 1992 election on a KANU platform and those who provided legal services to KANU parliamentary candidates. Public confidence in the impartiality and credibility of the judiciary virtually collapsed. Indeed, the credibility of the judiciary sank so low that it became the most criticised institution in Kenyan society (Constitution Review Commission of Kenya (CKRC), 2002). Complaints of 'justice being sold' could be heard everywhere. Nothing illustrated this slump in confidence more than the sarcastic civil society slogan, 'Why hire a lawyer when you can buy the judge?'

Ethnicity, party politics and corruption

As already mentioned, the structure of ethnicity and particularly the fact that no group is numerically large enough to dominate others has resulted in ethnicity becoming an important feature of Kenya's political life. In both the 1992 and the 1997 elections, the government secured KANU victory by encouraging ethnic divisions among the opposition through financial and political inducements. Political elites in KANU also fuelled ethnic violence, which they used as a tool to counter the struggle for multiparty democracy (Grignor, 2001; Klopp, 2003). State-run media tipped the balance in favour of KANU through biased reporting. Little positive reporting was done on the opposition political parties.

Overall, KANU did not win the 1992 and the 1997 general elections on promises of comprehensive political and economic reforms. The party instead capitalised on ethnic divisions and a fragmented opposition to win the election. It used public resources and the Provincial Administration to mobilise support and shut out opposition political parties from campaigning in areas it considered strategic. Furthermore, the party mobilised around people's fear of an 'untried' opposition. Because of this, KANU did not effect any significant changes after winning the elections. The context of governance remained unchanged, while the political space remained highly ethnicised and therefore politically fragile. Ethnic animosity, suspicion and mistrust increased in tandem with growing opposition to KANU and the government. The form of governance that evolved from multiparty democracy and continued domination of KANU proved a fertile breeding ground for both petty and grand corruption in all spheres of life. Although petty corruption involves exchanges of small sums of money to obtain services or to avoid harassment by the authorities, it prepares the conditions for grand corruption. The latter involves systematic abuse of public institutions, often leading to a huge loss of public resources through overpricing of contracts, payment for non-rendered services and undervaluation of assets (Chweya, 2004). The nature, magnitude and general causes of corruption in this respect are discussed below.

At the time of the December 2002 general election, corruption was pervasive and widely spread in the public sector. In one of the pioneering studies on nature of corruption in Kenya, Kibwana et al (1996) underlined that corruption had become so systemic that in most public institutions, the rules and norms of behaviour had been adapted to a corrupt *modus operandi* in which bureaucrats and other public servants often followed the example of, or took instructions from, their principals in the political arena. Later in 2000, a parliamentary Anti-Corruption Select Committee found out that corruption was so extensive that almost 56 per cent of tax revenue was being misappropriated through corruption (Republic of Kenya, Parliamentary Anti-Corruption Select Committee, 2000). In yet another study, the Centre for Governance and Development (CGD) carried out an analysis of the controller and auditor general's reports for the period 1990-91 to 1996-97. The analysis revealed that the government had lost a total of Ksh 475 billion (about US \$6 billion) through corruption during the period. This was equivalent to Ksh 68 billion (US \$870 million) per annum (Centre for Governance and Development, 1998).

This discussion suggests then that the root causes of corruption in Kenya vary considerably and fall within at least three broad categories: socio-political, economic and legislative.

Socio-political roots of corruption

Political patronage: Corruption finances politics and elections; it is interwoven with politics at both the local and national level. This means corruption facilitates the carving out of political constituencies as well as the retention of their loyalty. Indeed, in Kenya, major corruption scams invariably take place around election time or when the opposition is potentially threatening to remove the governing elite from office. For instance, the infamous financial scam in which Kenya lost Ksh 68 billion (US \$800 million, equivalent of 10 per cent of the country's GDP) through payments to Goldenberg International for exports of non-existent gold and diamonds took place in the early 1990s at the time of the reintroduction of multiparty democracy. The company used a portion of the funds it ripped off to finance KANU campaigns and drum up support for a weak government. In the period preceding the 1997 election, the locus of corruption migrated from procurement to public land. Consequently, the government excised close to 10 per cent of the country's forest land for distribution to loyal elites and ethnic constituencies. For the purpose of the 2002 election, corruption networks raided public coffers through pending bills in the Ministry of Public Works; through over-invoicing, the government was required to pay contractors in the ministry about Ksh 13 billion (US \$1.7 million). Again, after the transition in 2002, grand corruption re-emerged in the procurement of security services through the mysterious Anglo-Leasing and Finance Company. This emerged against a background of politically threatening disagreements within NARC over the sharing of political power and the constitutional reform process.

The thin line between the public and private interests of public officials: Use of public resources for private interests has been the framework responsible for petty and grand corruption. Corruption has thrived because there exists only a thin line between the public and the personal interests of public officials and politicians in government.

The new political elite's need for resources to build a political base: The experience in Kenya shows that new elites often seek new sources of wealth. Corruption becomes the source of the wealth needed to build a strong economic and political base for power. Corruption rapidly bridges the gap between those with political power but lacking the wealth to be effective in the political system, and those with wealth who require political protection because of the manner in which they earned their wealth. The emergence of new political elites and the need for such an elite to have a stable economic base to make an impact on the political system has facilitated the spread of corruption. President Moi's first years in office witnessed a clear linkage between the creation of new elites and corruption, using procurement of goods and services for state institutions to allow these elites to enrich themselves. Similarly, some of the major financial allegations attending to the consolidation of power by the new elites in NARC appear to be rooted in this framework.

A culture of tolerance of corruption: As already noted, corruption was institutionalised in all spheres and all sectors of the economy. Corruption entrenched perverted values and a culture that both accepted and respected corruption as well as those who had grown wealthy from its proceeds. On the whole, communities approved grand corruption if the individuals involved in it carried on activities that were seen as beneficial to their community. Corrupt individuals entrenched themselves in local communities using *Harambee* fundraisings to promote local development. Indeed, corruption in the past was not cast as a harmful activity; it was instead imbued with impunity. Those charged with corruption-related offences would walk around in public places as if they had never been involved in a crime. They mixed freely with a tolerant public and the expectant group of those who benefited from them.

Economic roots

Lack of perfect competition: Lack of perfect competition in the supply of public goods and services has been responsible for the pervasive nature of corruption in the public sector. The absence of competitive pressures on a corrupt public sector resulted in a small group of politically influential individuals establishing networks to control the procurement system. Continued domination of the procurement system by the old networks in the bureaucracy has generally meant the continuation of corrupt practices in spite of a new government. Absence of perfect competition in procurement of security services thus resulted in the old networks reasserting themselves through single-sourcing of

security services and equipment on the argument that open tendering of such services would jeopardise national security.

Inefficient supply of services: Inefficient or dysfunctional institutions and the inadequate supply of services have also promoted corrupt behaviour. Where the demand for public goods and services outstrips supply, 'queue jumpers' emerge, ready to pay for services. Those providing such services often capitalise on poor services to either introduce their own private fees or put up mechanisms of providing such services adjacent to what they are paid to provide. The findings of the Transparency International-Kenya Bribery Index (2004) show that those state companies that ranked high in terms of prevalence, frequency and severity of corruption tended to be renowned for inefficiency in supply of services to the public.

Poor wages: The low wages paid in the public sector and especially to public officials who have the discretion to engage in corrupt activities breed further corruption as public servants begin to look for additional sources of income.

Absence of policy reviews: The economic causes of corruption in the public sector are rooted in the Ndegwa Commission of 1972, which recommended that civil servants be allowed to engage in private business while still in office. Although the recommendations of the working party were aimed at addressing concerns about low wages in the civil service, they nevertheless created opportunities for bureaucrats to form networks with political elites to supply goods and services. This policy has remained unchanged despite its impact on corruption.

The legal framework

Lack of co-ordination in mechanisms for detection, apprehension and conviction: There has not been adequate co-ordination between mechanisms for preventing corruption and those that would facilitate detection, apprehension and prosecution/conviction. Furthermore, there has been a tendency to overemphasise the formulation of legal policies without a similar emphasis on mechanisms for enforcement. Each mechanism operates in isolation from the other. Moreover, a comprehensive civic education and public awareness campaign against corruption has yet to be launched.

Absence of strong enforcement and oversight mechanisms: Corruption detection is advanced through a governance system that oversees how public resources are used. This has to be combined with policing and prosecutorial services. Further prevention of corruption is enhanced through functioning checks and balances, supported by transparency. On the whole, anti-corruption enforcement is the responsibility of a responsive justice system (Kpundeh, 2003). In Kenya, however, the judiciary and the police top the list of the most corrupt institutions even though they have a key responsibility to fight corruption.

Corruption has also thrived because of poor oversight and enforcement mechanisms. The controller and auditor general, together with the Parliamentary Accounts Committee and Parliamentary Investments Committee, have been the main institutions responsible for tracking accountability in use of government resources. However, the previous administration systematically failed to enforce their recommendations. In other instances, the administration starved them of the resources required to be effective in their oversight roles.

Inadequate laws: There are no laws to protect whistleblowers and promote access to information. Because corruption is highly institutionalised, there is a fear of harassment and general victimisation among potential whistleblowers. Kenya is yet to pass a law to promote freedom of access to information. Without this law, accomplices who have lost out on deals or private individuals who overcome the fear of retribution remain a sporadic, often unreliable source of information on corruption.

Procurement rules: Rules and procedures on procurement of government services also tend to have gaps that facilitate corruption. Notably, rules and procedures are scattered in multiple documents and

procurement systems vary from one level of government to another. There are no clear checks and balances in the entirety of the procurement process (Ikiara, 2001).

This discussion shows that corruption is not the result of weak institutions; neither is it the result of poor legislation. The roots of corruption are numerous and, similarly, their impact is widespread. For instance, corruption has discouraged investment and slowed growth. Foreign investment has been on the decline in recent years owing to the rising cost of doing business in Kenya, which is partly attributable to corruption. Secondly, the quality of public services has been declining; moreover, in some cases, these services are available exclusively to those with the ability to pay bribes. Those who provide services have also tended to provide inferior services and low quality goods to compensate for losses incurred through bribe payments to win their contracts. These are the issues around which NARC mobilised political support to win the 2002 elections. The section that follows examines these issues in detail.

2.c. Preparations for transition

Immediately after the 1997 general election, the politics of the Moi succession process began to shape the main political events in Kenya because President Moi was serving his last constitutional term of office. For its part, KANU forged an alliance with NDP and the government appointed some of the party's leaders to the cabinet. The parties merged in March 2002 to form New KANU. This caused fear and panic among the main opposition parties. Under pressure from their constituencies and civil society, leaders of DP, Ford Kenya and National Party of Kenya also formed an alliance to counter New KANU. Later, together with several smaller parties and pressure groups, they formed the National Alliance Party of Kenya (NAK) and identified DP chairman, Mwai Kibaki, as their single presidential candidate (for details see articles in Wanyande et al, 2004).

KANU's merger with NDP did not last long. President Moi 'anointed' Uhuru Kenyatta, a Kikuyu and son of the first president, Jomo Kenyatta, as the party's presidential candidate for the 2002 elections. Other leaders in KANU who had ambitions to succeed Moi protested against the choice of Uhuru Kenyatta and threatened not to support him. They then formed the 'Rainbow Alliance' to articulate their grievances within the party, but Moi stood his ground. The Rainbow Alliance moved out of KANU in protest. They took over a little known party, the Liberal Democratic Party (LDP), and 'renovated' it for the purposes of the December election.

On 14 October 2002, NAK and the KANU breakaway Rainbow Alliance, or LDP, merged to form NARC. NARC agreed to field a single presidential candidate and common parliamentary and civic candidates. They agreed on Mwai Kibaki as their presidential candidate.

NARC campaigned on an anti-corruption and comprehensive reform platform. The party identified the prevalence of corruption, poor governance and repression by the state through the Provincial Administration, economic decline, deteriorating security, increasing unemployment, and empowerment of women as issues the NARC government would address once in power (NARC Manifesto, 2002). NARC won the election.

In line with its electoral promises, the new government pledged to root out corruption from public life and to ensure that every individual and every ethnic community was treated equally so as to create a corruption-free 'Rainbow Nation'. On 30 December and in line with this quest, the new president, Mwai Kibaki, stated in his inauguration speech, 'Corruption will now cease to be a way of life in Kenya; I call upon those members of my government and public officers accustomed to corrupt practices to know and clearly understand that there will be no sacred cows under my government'. The president added, '*... we will have no sympathy for anyone who tries to loot public property*' (Daily Nation, 31 December 2002).

This statement laid the foundation for the fight against corruption. From the judiciary to other departments, the new government is exerting itself to bring about change. It has identified several pillars on which the campaign against corruption is to be anchored. These include: political

commitment and leadership; addressing past abuses; promoting institutional and legislative reforms; building coalitions with civil society and the public sector; and engaging donors in a positive manner. Towards this end, the government has established a Ministry of Justice and Constitutional Affairs (MoJC) and a new Department of Governance and Ethics in the Office of the President to co-ordinate anti-corruption activities and provide advice.

The government has formulated a broad policy framework and enacted several new laws to facilitate governance reforms. The policy framework, the Economic Recovery Strategy for Wealth and Employment Creation (ERS), evolved as a major policy for building partnerships between the government, the private sector and civil society. With inputs from all the sectors, the government developed a plan on how to address fundamental electoral promises such as anti-corruption reforms. The government also introduced several pieces of legislation to protect and promote these reforms.

The start-up phase of these reforms experienced important political difficulties. One of these was political factionalism within the ruling coalition. How political power was shared among coalition partners, especially in the distribution of cabinet and other senior positions in the government, caused divisions between the two main parties that constitute NARC. The LDP faction protested that the NAK faction had reneged on a memorandum of understanding (MoU) that both parties had signed before the elections and that the president's ethnic group, the Kikuyu, and others living adjacent to the Kikuyu in the Mount Kenya region, had apportioned themselves powerful senior positions in the government. The inability of the government to resolve the conflicts among the ruling elites led to the conflict spreading to the constitution making process, in which the two factions identified themselves with different and opposed positions on all issues concerning distribution of political power. Related to this was the challenge of ethnicisation of politics and the reform process itself. Ethnic elites who stood to suffer from the consequences of these reforms mobilised ethnic constituencies using the argument that the new government was out to take revenge against the groups that supported KANU.

3. Initiatives taken by the government

3.a. Designing a realistic plan of action

Quick win approaches and sequencing

In January 2003, President Mwai Kibaki constituted a new government. The president established two important institutions for dealing with corruption and governance in general, the Ministry of Justice and Constitutional Affairs and the Department of Governance and Ethics in the Office of the President. The president also appointed the then-executive director of Transparency International-Kenya to the position of permanent secretary in charge of this new department and answerable directly to the president.

These efforts produced quick results. The public read in them the government's commitment to arrest corruption and promote accountability. Taking their cue from such statements, ordinary citizens took the initiative to fight against corruption. In some instances, citizens were arresting traffic police officers found demanding or collecting bribes. They would march them to police stations expecting that the police would take action on them. In general, efforts by the government to start the reform process sparked a popular demand for reforms in all sectors and institutions. The government established a Public Complaints Office (along the lines of an ombudsman office) to receive and analyse complaints on corruption and past abuses.

The government established several committees to deal with these past abuses. A Task Force on Truth, Justice and Reconciliation was established to collect views from the public on the relevance of establishing a Truth, Justice and Reconciliation Commission. The government constituted the Goldenberg Commission of Inquiry to investigate the payments made to Goldenberg International for fictitious exports of gold and diamonds in the early 1990s. A task force to inquire into illegal and irregular allocation of land was established. The chief justice appointed a probe team to inquire into corruption in the judiciary while the Ministry of Roads and Public Works constituted a task force to study the pending bills that politically influential contractors had submitted for payment before the December 2002 election. There was a task force to study abuse of the *Harambee* (fundraising) system

by politicians in KANU and the government through the Provincial Administration. In general, there was a proliferation of reform committees in virtually all sectors and in all government ministries.

Broader policy framework

The Economic Recovery Strategy (ERS) for Wealth and Employment Creation was the first comprehensive policy plan that the government developed immediately after taking office. Produced around June 2003, this framework encapsulated the government's vision on economic recovery and promotion of good governance. This vision - and the framework itself - were rooted in NARC's manifesto and electoral promises.

The ERS framework hoped to 'recover the lost ground by undertaking radical reforms that would drive the economic recovery process' (Republic of Kenya, 2003). The framework included approaches to governance (justice and institutional reforms), security and law, public sector reforms, infrastructure development, and issues around equity. In this framework, the government proposed to form a National Economic and Social Council (NESC) to provide the space for partnership with non-state actors (NSAs) in making and implementing government policies. The government also proposed to enact and implement several laws to promote oversight and accountability of public resources and integrity in procurement of public goods and services. At the same time, in June 2003, the government signed the African Union Convention on Prevention and Combating Corruption. This is yet to be ratified, however.

Within the ERS framework, the government initiated a Sector-Wide Approach (SWAP) to the Governance, Justice, Law and Order Sector (GJLOS). This approach provides a coherent and prioritised focus to problems around human rights, governance and administration of justice, and law and order. It prioritises leadership and direction of the reforms by the government and partnership between the government, the private sector and civil society. Participants are drawn from civil society, faith-based organisations and the private sector. Over 15 donors are supporting the programme through a basket funding mechanism.

Once in place, the programme will offer mechanisms to co-ordinate activities in the governance sector. Activities under this programme will address shortcomings in oversight institutions and enforcement mechanisms. They will touch on virtually all governance institutions. On account of this, GJLOS has the potential to provide coherence in governance reforms. A major shortcoming, however, is that the reform programme is being implemented by a bureaucracy that is yet to appreciate the need for governance reforms. The programme seeks to reform governance institutions and, at the same time, involve them in implementing a wide range of reforms within a limited period of time.

Legislative approaches

The new government introduced several pieces of anti-corruption legislation. In April 2003, the government introduced the Public Officer Ethics Act to ensure that corrupt public officers face the consequences of their actions. The Act seeks to promote ethics and accountability among public officers and introduces a code of conduct for public servants. The Act also requires public officers to exercise professionalism and pursue high standards in the exercise of their roles. It requires public officers to respect the rule of law and to avoid enrichment through irregular use of public office. This Act, however, does not provide freedom of access to information on wealth. The public service wealth declaration forms are not open to public scrutiny. The implication of this is that the public will not be able to track 'irregularities' in accumulation of wealth by public officials. Furthermore, the focus of the Act is limited to public servants. The private sector, through which most public servants conduct illicit business, is not reflected on in any significant way in the Act.

In the same period, the government introduced the Anti-Corruption and Economic Crimes Act. The Act establishes the Kenya Anti-Corruption Commission (KACC) and gives the commission broad powers to conduct civic education on preventive services, check on practices and procedures in public institutions that encourage corruption, and investigate cases of corruption. The Act also defines corruption broadly to include abuse of office, breach of trust, dishonesty regarding taxes and elections to public office.

The legislation does not give KACC adequate prosecutorial powers. Such powers remain with the attorney general's office (see Republic of Kenya, Anti-Corruption and Economic Crimes Act of 2003; Tuta, 2004; Chweya, 2004). This implies that prosecution of corruption cases will depend on the goodwill of the government, and that the AG and government bureaucracy will determine the pace at which KACC will move.

In July 2003, President Kibaki launched an Anti-Corruption Campaign Steering Committee to carry out public awareness activities to change attitudes towards corruption. Members were drawn from civil society, religious organisations, the public sector and the private sector. In May 2004, the committee was legalised following the announcement of its mandate and membership. It is possible that the campaign will be carried out in a manner similar to the public education campaign by KACC. Mechanisms for collaboration and co-ordination between the two have not yet been clarified.

These initiatives lack an elaborate co-ordination framework. There is no coherent mechanism of co-ordinating the various initiatives. It is also not clear what the main priorities are, whether institutional reforms or legislation. There are thus several overlapping priorities but little sequencing of efforts. The reforms were also introduced without reforming the institutional context on which they were anchored. The bureaucracy was expected to implement the reforms when, ironically, it was itself the target for change. The failure to synchronise institutional and legislative reforms resulted in delays and loss of impact. For instance, the timetable for enacting the necessary legislations was held hostage by the parliamentary calendar. Throughout the 2003 period, when it was critical to have the bills passed, parliament successfully debated only two anti-corruption bills. Debate on the Anti-Corruption and Economic Crimes Bill was also delayed when MPs wanted to debate the entire bill rather than the bill that sought to introduce KACC.

It is important also to note that the reforms were introduced within a context marked by growing political tensions in the ruling coalition. The battles over sharing of political power spilled into parliament and affected the debate on the reforms. This had the effect of delaying debate on the composition of the KACC, which parliament was meant to discuss, approve or reject. In August 2004, the government gained enough parliamentary support to introduce the names of the KACC membership for debate, which parliament then approved. The government recruited some ethnic elites from the opposition into the cabinet to constitute a 'government of national unity' so as to provide the government with the numerical strength to prevail against opposing factions. Some of the new members served in the cabinet of the previous administration and had a record of corruption. Their presence in the government was generally interpreted to represent waning political commitment to reform.

In the meantime, anti-reform networks made attempts to derail the reform programme. They infiltrated the various factions in NARC to politicise the reform agenda. Some of them continue to drum up ethnic support against the reforms on the argument that the government is undermining the political interests of their ethnic groups. Moreover, the government has within its ranks individuals carried over from the previous administration whose priority is certainly not to see through anti-corruption reforms, as these would adversely affect their political careers. This has created a severe constraint on the reform process.

3.b. Keeping up the momentum of reforms

At the outset, the political leadership was supportive of the key institutional and legislative reforms. The president in particular continued to reiterate the commitment of the government to arresting corruption. In June 2003, for instance, he noted that '...greed and corruption are not the ingredients of a prosperous new nation... it is my intention to fight corruption in a systematic and thorough manner... I call upon Kenyans to join me in the fight' (*Daily Nation*, 2 June 2003). This assurance echoed a similar one made at the time of his inauguration.

Within the government there are also certain individuals who came from the reform movement within civil society. They have been critical in providing leadership and keeping up the momentum for reforms within the government. They have been identifying areas of need and formulating strategies to deal with various aspects of corruption. The various institutional and legislative reforms identified above are the result of their efforts. The reformers in government are nonetheless in a minority. They face the challenge of fighting resistance from among their own colleagues in government.

The above notwithstanding, Kenya's political leadership has had difficulties in addressing growing signs of corruption within its ranks. The popular demand that the government probe and punish senior officials involved in the irregular procurement of services from Anglo-Leasing and Finance Company has yet to be fulfilled. Signs of grand corruption in the new administration thus remain a challenge for the government, anti-corruption groups in civil society and the private sector.

The momentum for reforms was sustained by growing interest of civil society and the private sector. The government endeared itself to civil society by speaking the language of rights and by recruiting individuals from civil society. This served to erode the suspicion and mistrust that characterised relations between the state and civil society under the previous regime. The relations between the government and civil society therefore began on a warm note. For the first time, civil society and the government began to work in partnership to promote reforms. There are CSOs working with the government in GJLOS, the anti-corruption campaign, and on legal sector reforms. For civil society, maintaining a balance between working with government and maintaining autonomy has been a difficult aspect of this partnership. Civil society also seems to lack strategies to engage the government in the context of the new dispensation. Knowledge-led strategies and development of research-based approaches, though critical for positive engagement, are poorly developed within the sector.

The government's approach to ERS invited participation from the private sector. The private sector constituted sectoral working groups to consult with the government on various reforms and in particular reforms in the development of infrastructure and investment incentives. The private sector began to demand reforms in the area of procurement of public goods and services and public financial management. On the whole, this new partnership energised and sustained the reform agenda in the initial stages.

Donors have been critical in sustaining the tempo for reforms in two important ways. They provide resources and technical assistance for implementation of many of initiatives within and outside GJLOS. Secondly, they have continued to link further assistance to a deepening of the reforms in all sectors. Donor criticisms of the government's failure to deepen anti-corruption activities and the inability of the government to effectively deal with signs of grand corruption have generally kept up the momentum of reforms.

There have been several challenges in keeping up this momentum, though. This includes the decline in public vigilance despite emerging signs of grand corruption among loyal elites and little or no action against the politicians implicated in some of the financial scams. The public is becoming increasingly disillusioned with the outcome of these reforms.

Secondly, there is increased politicisation of the reform initiatives by networks from the previous administration. Some of these networks have developed ethnic-based counter-reform drives. They tend to portray the reforms as attempts by the government to punish certain ethnic communities. This has had the effect of deflecting public attention from reforms towards political factionalism. These challenges also need to be seen as contributing to the momentum for reform. Criticism of the reforms has helped to keep alive the reform discourse in public places. The media has been helpful in this regard.

3.c. Reforming dysfunctional institutions

The government identified institutional and legislative reforms as among the pillars of the government's anti-corruption campaign efforts. Important in this regard was also the drive by civil

society and the private sector to support anti-corruption initiatives. A tripartite front of the government, civil society and the private sector produced some of the most impressive anti-corruption initiatives ever witnessed in countries undergoing transition.

The judiciary

Beginning as early as January 2003, civil society groups demanded reforms in the judiciary. Newly elected members of parliament also made similar demands. The most radical voices from civil society demanded the resignation of the chief justice on account of his role in facilitating the government's violation of human rights and the unfair trials of advocates for change in the 1980s. They believed the chief justice was not morally and ethically suited for this position in a new democracy. Additionally, they observed that the chief justice was openly opposed to judicial reforms even after internal reports clearly indicted judicial officials in cases of corruption (see Report of the Committee on the Administration of Justice, 1998). In February, the government constituted a probe team to investigate the chief justice but the latter opted to resign instead of enduring the investigation. The government then appointed a new chief justice.

In March 2003, the new chief justice appointed an Integrity and Anti-Corruption Committee to investigate corruption in the judiciary. The committee collected views from the public and judicial officials from many parts of the country. It concluded that corruption and miscarriages of justice were common and widespread in the judiciary. The analysis provided details of how judges and magistrates, among others, collected or induced bribes in order to give favourable judgments. In total, 23 judges, 82 magistrates and 43 paralegal workers were implicated; some were involved in corrupt practices while others were found to be generally incompetent.

Civil society, the general public and individuals reacted to these findings by demanding the sacking of the judges found to be corrupt. The Law Society of Kenya (LSK), for instance, demanded a radical reform of the judiciary. The clean-up began with the establishment of two tribunals to investigate the allegations made against the judges, while the magistrates were suspended. Some judges opted to resign rather than face the tribunal. Magistrates were replaced with new employees. The government also recruited new acting judges to fill the positions of those who retired and those who agreed to be investigated.

Police reforms

Reforms in the police force began with the appointment of a new commissioner of police. No significant institutional reforms were introduced in the force, however. The rate of crime continued to increase in rural and urban areas. Political factionalism in the ruling coalition became a testing ground for the impartiality of the police. Both factions would convene meetings and expect the police to provide security or protect them from supporters of the opposing faction.

In the continued ethnicisation of the relations between the two factions, the leadership of the police force became increasingly identified with the LDP faction. The police commissioner was eventually removed and replaced with an officer from the armed forces. The new police commissioner carried out significant institutional reforms, beginning with an increase in salaries. Over 50 senior police officers were sacked, retired or redeployed. The commissioner also introduced a public relations orientation course for police stations with a view to repairing the dented image of the force. The government also procured new vehicles for police officers to increase the mobility of the force.

In spite of these reforms, the police force remains focused on reducing the crime rate in urban areas and has yet to evolve a strategy for dealing with corruption within the force, undermining political patronage and increasing professionalism.

The government re-launched the Public Sector Integrity Programme (PSIP), a programme with origins in the previous administration. The re-launch saw many public sector institutions forming Corruption Prevention Committees (CPC) and training Integrity Assurance Officers (IAO). The main shortcoming in

this drive is that the chief executives of public sector institutions are the chairpersons of the CPC, thereby making it difficult for IAOs to investigate or monitor high-level corruption in their institutions.

An important challenge in reforming dysfunctional institutions is the continued domination of old structures and the culture of corruption in many of these institutions. For instance, in spite of the increase in their salaries, most police officers continue to engage in and promote petty corruption. A campaign to build awareness of the effects of corruption on the force and the general perception of the force with regard to corruption is yet to begin. Similarly, no measures were taken against the lawyers with whom the corrupt judges and magistrates did business. There is a risk therefore of the re-emergence of corrupt judicial networks as long as the lawyers who formed the core of these networks in the judiciary remain active in the sector. Significantly, the purge of the judiciary did not affect decisions that the corrupt officers had made, even though many people and institutions had suffered the consequences of 'justice for sale'. Furthermore, powerful politicians were increasingly influencing the appointment of new judges, thereby laying a foundation for further politicisation of the judiciary. Political patronage may thus evolve as another major problem for the judiciary. The exercise concentrated on recruitment of personnel rather than on structural and institutional re-configuration. Infusing the judiciary with a new vision and creating the conditions for a culture of 'justice without pay' was not attended to in these reforms.

The most important opponents of these reforms have been elements from the previous administration and in particular those around whom the corrupt networks revolved. Opposition to reforms in the judiciary came from KANU leaders and individual lawyers, some of whom acted for KANU leaders in corrupt financial transactions. Ethnic elites from the opposition and some factions within the coalition have been mobilising political constituencies to oppose these changes based on the argument that they are aimed at members of their ethnic communities.

3.d. Financing reforms

The government began by targeting the area of procurement of goods and services because procurement had become the most significant avenue of loss of public funds. Given that the government is the largest procurer of goods and services, with procurements taking about 20 per cent of GDP, procurement had become an important nexus of interaction between corrupt bureaucrats, senior politicians and agents of corruption in the private sector. Below is a review of the main initiatives taken to erode the basis of corruption in the procurement system.

Suspension of procurement officers

As a short-term measure to address the problem of fraudulent procurements, the Ministry of Finance in mid-2003 suspended all middle and senior level procurement officers in the public service. This measure provided the new administration with opportunities to enhance the integrity and transparency of the procurement process. Vacancies were advertised and the suspended officers applied for positions alongside new candidates. Some were eventually sacked, retired or redeployed to other positions while others were recruited alongside the successful applicants.

2003 Public Procurement and Disposal of Assets Bill

The government introduced the 2003 Public Procurement and Disposal of Assets Bill following the suspension of the procurement officers. The bill addressed shortcomings in the procurement and tendering processes in a bid to maximise value for money in procurements. In this regard, the bill sought to develop a system of checks and balances in the procurement and tendering processes. Emphasis was placed on addressing conflicts of interest, preventing the provision of 'advantageous' information to select bidders, promoting professionalism in the tendering process and promoting strict adherence to rules and procedures. Overall, the bill sought to infuse efficiency, promote competition in procurement of public goods and services, and create conditions for transparency in public procurements. The bill was therefore an appropriate response to the public interest in ensuring that procedures are replaced by 'legislation in an improved form as part of the initiatives to reduce the extent of corrupt practices in the public sector' (IEA, 2004).

The Public Procurement and Disposal of Assets Bill lapsed in December 2003 at the end of the parliamentary session. The parliament did not initiate debate on the bill owing to pressure from civil society organisations to have certain amendments incorporated before debate. Among other things, for instance, the Centre for Governance and Development (CGD) observed that the bill gave multinational corporations a leverage that was not healthy for the cause of anti-corruption reforms. The bill was subsequently shelved (CGD, 2004). Furthermore, the bill failed to include 'rules to ensure adequate policing by the public; it failed to provide incentives and protection of whistleblowers so as to confidently alert the public or the authorities whenever individual officers detect practices that contravene the law' (IEA, 2004).

Public Audit Act

The government introduced the 2003 Public Audit Bill, which parliament then discussed and enacted into law. The Act establishes 'accounting' safeguards for government finances through tightening of internal audit procedures. It also promotes effective audit functions in order to ensure there is accountability in revenue collection and in expenditure of public funds. This was the only 'financial reform' law passed by parliament in 2003.

2004 Government Financial Management Bill

The 2004 Government Financial Management Bill seeks to provide for efficiency, transparency and accountability in the management of government finances. The bill also seeks to ensure sound management of government revenue, expenditure, and assets. It seeks to promote sound financial principles and efficient use of government resources. It focuses on financial administrative reforms and management of Exchequer Accounts. It provides for preparation of budget performance reports and presentation of these reports to the parliament. The bill establishes key financial management institutions and identifies clear roles and responsibilities for various institutions and actors.

The bill does not make adequate room for provision of information on financial management to the public. It also fails to create enough room for coalitions in the private and civil sector to scrutinise budget preparatory and performance processes. It does not address the perennial problems of public debts and of striking a balance between recurrent and development expenditure, which remains the most important cause of supplementary budgets. The bill does not demand that the government produce performance reports at specific times for debate by parliament. Further, the bill does not provide for punishment of government ministries where there are cost overruns and absence of financial probity.

2004 Privatisation Bill

This bill has been introduced in response to public demands for accountability and transparency in the divestiture or privatisation of public sector institutions. The previous government carried out divestiture reforms in an opaque manner, which in turn resulted in the reform losing focus and moving away from the basic objectives of privatisation. The public also grew cynical and disillusioned with the exercise, especially after noting cases of senior government officials and politicians privatising enterprises at figures far below what the market could offer (IEA, 2004).

The Privatisation Bill attempts to promote openness in privatisation reform efforts. However, it is not explicit on how the public and the parliament will play their oversight role. The bill creates a Privatisation Commission in which it vests powers to promote disclosure and openness. But the commission is also given additional powers to decide what information to provide to the public. This has the effect of undermining whistleblowing and indeed promoting further opacity in the privatisation process (IEA, 2004). Nonetheless, the bill is commendable for providing the minister with powers to bar certain people from participating in privatisation. Assuming that this provision is not abused, the bill creates a good mechanism for punishing the corrupt and preventing them from laundering their wealth through the privatisation programme.

Asset tracing and recovery; mutual legal assistance

An important feature in the fight against corruption is the government's efforts to trace stolen funds stashed in foreign banks and illicit assets held outside the country. Such assets were bought with public funds stolen and siphoned out of the country through corrupt networks in the old regime. By December 2003, through asset recovery efforts, the government had identified about US \$1 billion in foreign accounts. In May 2004, through the help of a UK firm, Kroll Associates, the government traced another US \$3 billion in foreign accounts. The government planned to carry out more investigations to trace the funds and assets and requested the relevant foreign governments to provide legal assistance to freeze these assets and finally recover them. In June 2004, the government enlisted mutual legal assistance from the UK and Switzerland in tracing financial transactions between the Anglo-Leasing and Finance Company and the Treasury after allegations of irregular allocation of contracts to the company. Following these allegations, some of the money already paid to Anglo-Leasing and Finance Company was mysteriously refunded, but the ownership of the company as well as the public officers responsible for any irregularities were not identified.

3.e. Dealing with the past

Immediately after ascending to power, the government constituted several taskforces to deal with the past. These were a Task Force on Truth, Reconciliation and Justice and a Task Force to Inquire into Illegal and Irregular Allocation of Land. Others were the Government Properties Investigations Committee, the Probe Committee on Validation of Pending Construction Bills, and the establishment of the Public Complaints Unit. There were other ad hoc measures taken by individual ministries, all aimed at dealing with past abuse of office.

The government appointed the Task Force on Truth, Reconciliation and Justice in March 2003 to enquire into the possibility of establishing a commission to deal with past abuses, as has happened in several countries undergoing transition from authoritarianism to democracy. The Task Force collected views in many parts of the country and examined popular perceptions of past abuses of human rights and injustices committed against various individuals and communities. Borrowing extensively from the South African model of the Truth and Reconciliation Commission, the Task Force concluded that there was a need to establish a commission in order to effectively address the past and heal the wounds left by the injustices committed by the government and its agents. The Task Force also recommended that such a commission address not only human rights abuses but economic crimes as well. The government has not established a commission and it is doubtful whether it will do so, particularly now that it has set up a 'government of national unity' that includes senior politicians from the previous administration, some of whom would have been the subject of inquiry by such a commission.

The government formed a Task Force on Illegal and Irregular Allocation of Land to identify public land that individuals in the previous administration had irregularly privatised. Allocations of public land were routinely done on the basis of political patronage and therefore most transactions involved politically prominent individuals. Bureaucrats were involved too; they acted as entry points through which senior politicians identified land for irregular allocation and subsequent sale to various government institutions.

There were other inter-ministerial ad hoc approaches to issues of the past. These include the efforts by the Ministry of Lands and Housing and the Ministry of Roads and Public Works to identify structures constructed on areas designated for public roads (road reserves), but which economically and politically powerful individuals had appropriated and privatised. An elaborate strategy to demolish all the structures built on areas designed for public roads followed. The demolitions affected both economically and politically powerful individuals as well as the ordinary people who owned privatised land meant for public roads.

The results were quickly evident: there was mass support for the government's initiative. It also caused fear and panic among individuals who had privatised public resources. They organised themselves to resist and began to use the courts to stall the process. The government halted the process midstream as it sought land to resettle the poor who had settled on public land.

There are several observations regarding ‘dealing with the past’ that need to be made at this stage. Firstly, reforms aimed at dealing with the past were not co-ordinated and therefore some of the approaches appeared eclectic. There was no centre to co-ordinate initiatives between the different ministries. Secondly, in spite of the fact that corruption had been prevalent in all ministries and sectors, only a few ministries appeared to have designed strategies to deal with past abuses. This also tells another significant story: within the government there are individuals keen to pursue reforms and others who prefer the status quo. To the latter may be added a group of individuals from the previous administration. Finally, there is a need to understand that the old networks are well established and resourceful. They have the potential to wage a vengeful campaign using loopholes in the eclectic approach to these reforms.

4. Summary

4.a. Overall outcomes and current status

These reforms have had several results. Firstly, they elicited huge public support for the government. This support rose in tandem with rising public expectations. Whether the reforms focused on institutions or changes of personnel, the public grew increasingly optimistic about the government’s commitment to change. Opinion polls conducted early in 2003 revealed an expectant and optimistic nation (Gallup Survey, 2003; TI-Kenya, 2003; TI-Kenya 2004; Afro Barometer, 2003). In September 2003 (or nine months after the inauguration of the NARC government), when TI-Kenya collected data for the Kenya Bribery Index, a significant number of respondents said that there had been an improvement (in terms of corruption) in many organisations they dealt with compared with 2002. These perceptions are captured in Table 1 below, drawn from TI-Kenya’s Kenya Bribery Index.

Perception	National		Urban		Rural	
	2003	2002	2003	2002	2003	2002
Much improved	13.9	5.1	15.2	5.2	12.6	5.0
A little better	18.2	8.8	19.4	8.0	17.0	9.3
Much worse	8.5	23.4	7.7	21.9	9.2	24.2
A little worse	4.4	10.8	4.1	10.2	4.7	11.1
No change	55.1	52.0	53.7	54.7	56.5	50.4
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source: TI-Kenya, 2004: Kenya Bribery Index

Secondly, the reforms impacted on popular perceptions of the government’s role in the fight against corruption. TI-Kenya’s Integrity Check, conducted in September 2003, showed that about half of the population had confidence in the various reforms and institutions established to fight corruption. Over 80 per cent believed that the government was committed to fighting corruption. Over 60 per cent were of the opinion that corruption had declined during the period that NARC was in power (TI-Kenya, 2003). Thirdly, the reforms had an impact on corruption itself. Again, TI-Kenya’s 2004 Bribery Index showed a significant decrease in cases of bribery compared with 2002. The findings showed that the percentage of encounters in which bribes were demanded or offered declined from 65 per cent in 2002 to 40 per cent in 2003. Table 2 below captures these perceptions more clearly.

	National		Urban		Rural	
	2003	2002	2003	2002	2003	2002
Index (average)	18.2	25.6	19.1	21.4	15.8	24.5

Highest ranked institution	57.3	69.4	57.6	69.7	55.9	68.2
Lowest ranked institution	2.4	3.2	2.6	0.2	0.0	5.1
Number of bribes per person per year	9.4	28.8	9.8	25.4	7.7	35.7
Expenditure on bribery, Ksh per person per month	1,261	3,905	1,958	4,898	612	3,254
Average size of bribe, Ksh	3,958	2,318	4,480	3,154	4,926	3,159

Source: TI-Kenya, KBI 2004

The TI-Kenya study also indicates a very significant reduction in the number of bribes per person per annum, but an increase in the size of bribes. This suggests that the increased likelihood of detection and apprehension as a result of these reforms naturally led those seeking bribes to increase the size of bribe by the value of the risk of being caught and punished. In other words, public officers now required bigger inducements to take risks.

The reforms have also encountered several obstacles. These include:

An unreformed bureaucracy

The old networks are deeply entrenched in the public sector and especially in the procurement system. The government did not purge the public sector in any significant way, however, even though the civil service and the parastatals had become the main locus of corruption networks.

Limited budgetary support

The bureaucracy does not prioritise funding of anti-corruption initiatives. As a result, the anti-corruption reform has to compete for funds with other government programmes despite the fact that corruption is responsible for poor outputs in these other programmes.

Old networks reasserting themselves

The old networks have reasserted themselves in the public sector using resources accumulated in past years. Using their relatively superior knowledge of how the government works, individuals in these networks subverted efforts at undermining corruption by assisting in diverting attention from corruption to issues such as ethnicity, political factionalism and constitutional review process.

New elites, new corruption

The new elites in NARC had little understanding of how the government or bureaucracy works. The old networks capitalised on this knowledge gap to introduce the new elites to the procurement avenues. Inventions such as single-sourcing for security purposes created the necessary bridge between the new politically powerful but 'economically challenged' elites and the wealthy elites who were seeking immediate political protection. Table 3 below shows some of the cases of irregularities detected within the first 18 months of NARC administration.

Procurement

- Office of the President: Anglo-Leasing and Finance Company tender for forensic laboratories and procurement of passports security system
- Ministry of Roads and Public Works: attempt to divert EU funds to a personal account
- Ministry of Local Government: irregular procurement of insurance services
- Kenya Pipeline Company: unauthorised debt refinancing and procurement of fibre optics
- Kenya Power and Lighting: conflict of interest in, and irregular procurement of, electricity polls and cables

Influencing

- Kenya Ports Authority: ministers' interference in the tendering process for procurement of cranes and tugboats
- Goldenberg Commission of Inquiry: an assisting council influences appointment of a relative to run Grand Regency Hotel despite the fact that the hotel is a subject of the inquiry
- Coffee Board of Kenya: attempts to create a monopoly of sales of Kenya Coffee by a private company without any track record
- Ministry of Health: Conflict of interest in procurement of services to host women's AIDS

Politics and ethnicity

Political factionalism and ethnic politics within the ruling coalition have prevented proper consolidation of these reforms. Conflicts between the two factions have been diverting the attention of the public from the reforms. Moreover, the old networks have been feeding into this factionalism in order to draw attention away from reforms.

Organised beneficiaries

There have been many beneficiaries of corruption; they range from individual bureaucrats to senior politicians and their constituencies - communities or business groups. The pain of losing the benefits of participation in a corrupt framework is much more visible than the incentives to support anti-corruption efforts, benefits of which can only be collectively reaped after a period of time. Popular support has thus dissipated owing to the absence of immediate gains

Notwithstanding these obstacles, several factors combined have contributed to the success of some of the reforms. These factors include a general commitment to reforms by certain individuals in the government. Secondly, there has been a huge demand for reforms from an expectant public. Thirdly, donors have been keeping up the pressure for reforms on all fronts. Fourthly, the media remains watchful and keen on monitoring the government.

4.b. Current challenges

There are several challenges facing the anti-corruption reform programme in Kenya today. These may be grouped into three general categories: design, socio-political context of the reform, and institutional issues

Challenges arising from the design of the reform programme

Un-coordinated efforts: The past 18 months have witnessed a proliferation of anti-corruption initiatives and institutions. Some have been ad hoc while others resulted from efforts by individuals rather than institutions. Some are well planned, others are eclectic. Furthermore, while some ministries formulated strategies to deal with the past, others did not do so, even though a coherent and consistent approach is mandatory for the success of the reforms.

Limited public education activities: There have been limited public education activities. Civic education on corruption is yet to start. Schools and religious institutions have not been involved in any significant way even though they are important agents of socialisation.

Increased attention to detection and apprehension: Legislation introduced so far tends to focus on policies for detection and apprehension rather than on preventive services and strengthening enforcements.

Causes of corruption in various sectors not clearly understood even by the government: The approach to the reforms shows that the causes of corruption are not fully understood by even the reformers themselves. Thus there have been only limited attempts to improve on service delivery in key public institutions. Quality control and efficiency performance indicators are yet to be built into the design of the reforms.

Institutional context

Lack of reforms in the bureaucracy: The eclectic approaches used to address corruption have left the bureaucracy intact; the bureaucracy remains unreformed while old networks are well lodged in the civil service and the public sector in general. The bureaucracy is accustomed to doing things in the old way; the attitude of 'wait and see' is an obstacle to the reforms.

Few people in the government are committed to reforms: Reformers within the government are evidently in a minority. They have a challenge of working with non-reformers from the old regime who are now well entrenched in the government.

Reformers have little knowledge of government procedures: Only a handful of reformers have a complete knowledge of how the bureaucracy operates. The old networks have utilised this shortcoming to fight back and entrench themselves in the new system.

Anti-reform lobby groups are deeply entrenched in government and well resourced: The anti-reform groups have not been dismantled. They have regrouped to fight back in several ways. They are united by the fear of losing the benefits they have been deriving from corruption.

Socio-political context

New corrupt elite and emergence of sacred cows: Some 'loyal' individuals in the new government are seen as condoning corruption. They are seen as having linked up with the old networks to create wealth to use in influencing the political system. They have become 'sacred cows'. Observers say this has led to selective action on corruption, especially given that the judiciary was the only institution effectively purged.

Politicisation and ethnicisation of the reforms: Political conflicts and ethnic divisions within the ruling coalition have arrested the pace of reforms in some areas. Both factors have also undermined popular support for these reforms.

Political patronage is not addressed: Corruption is continuing to pay for politics. Senior politicians are still influencing appointments in key positions in the public sector including in the judiciary and civil service.

4.c. Evaluations and lessons learnt

There are several lessons to be learnt with regard to how to design reforms under transition conditions and how to exploit the window of opportunity before it shuts. These lessons are enumerated below.

Political commitment diminishes quickly

Political will and commitment to fight corruption are not sustainable by themselves. The energy and will to do so dissipates as the realities of the burdens of office and vested ethno-political interests

come to bear on the governing elite. The window of opportunity thus does not stay open for long. Adequate preparation by 'waiting political parties' - in terms of developing a comprehensive reform package - is critical. In the Kenyan experience, the coalition comprising parties implicated in corruption alongside those fighting corruption has made it difficult for the government to successfully tackle corruption.

A comprehensive and consistent approach is important for the success of reforms

For the reforms to yield results, they must be comprehensive and actions must be consistent. Public institutions are intricately interconnected through corrupt networks and therefore 'radical surgery' should not be restricted to one institution. In Kenya, purging the judiciary without cleaning up the bureaucracy provided time for the bureaucracy to formulate anti-reform strategies. It has been very difficult to deal with corruption since then.

Anti-corruption reforms are political

Corruption underwrites the practice of politics and therefore dismantling its foundations is a politically risky venture. Reforms are contradictory in outcome if not completed early. Incomplete reforms can be a problem for the reformers themselves. Anti-reformers lose relatively more when the reforms are pursued with consistent force and to the end.

Stop-go-stop approach creates opportunities for anti-reformers to regroup

The pace of reforms needs to accelerate in order to tire out and frighten anti-reformers. Planning and implementation need to be seen as taking place simultaneously.

Struggle against corruption needs to be seen in relation to the struggle for democracy

Anti-corruption reforms are sustained if seen as a part of (and not in isolation from) the struggle for democracy. This enables political elites to move away from corruption to popular support as a source of political legitimacy.

Reforms must focus on changing habits and minds

Corruption yields huge pay-offs for individuals and communities. These pay-offs create a culture that is tolerant to corruption. Broader reforms are required to change such entrenched habits.

4.d. Recommendations

The window of opportunity

The window of opportunity to inflict pain on the corrupt and to reform dysfunctional institutions does not stay open very long. Political factionalism and conflicts among the political elites usually sap the energy needed for reforms after a short while. Reopening the window of opportunity amid waning public support requires addressing the causes of popular apathy. The government has to dispense with the 'sacred cows' lodged in the bureaucracy and in the political system in order to resuscitate public support for anti-corruption activities.

Need for a co-ordinated approach

Anti-corruption reforms need to be co-ordinated in order to produce systematic and planned results. Reforms that are not co-ordinated are poorly sequenced and unfold with several unintended consequences. The results are difficult to plan for and it is not easy to determine which factors are responsible for what result.

Reforming the bureaucracy, the police and other enforcement institutions

Anti-corruption reforms should be carried out simultaneously within all strategic institutions. If reforms are not done at the same time, then anti-reform groups will utilise the short time available to identify strategies to defeat the reforms.

Identifying reformers and anti-reformers

There is a great need to identify or 'map' the reformers and non-reformers before the reforms are implemented. Strategies to buy in the support of senior bureaucrats and defeat the anti-reformers can be easily executed if this mapping is well done.

Anti-corruption reforms and the broader struggle for democracy

Anti-corruption reforms must be introduced in tandem with broader democratic initiatives including promotion of fundamental freedoms, tolerance, protection of human rights, promotion of principles of equality and social justice, and enhanced space for citizens' participation in public affairs. Accommodation of and respect for dissenting views enhances openness and creates the conditions for the success of the reforms.