



NEW ANTI-CORRUPTION GOVERNMENTS: THE CHALLENGE OF DELIVERY

KENYA

A CASE STUDY

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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. Summary

2.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.

2.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.

2.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.

2.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.