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## Effectiveness of Anti-Corruption Agencies in East Africa: Kenya, Tanzania and Uganda

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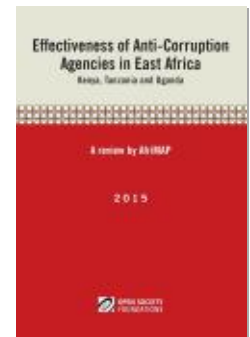
Published by African Books Collective

AfriMAP, AfriMAP.

Effectiveness of Anti-Corruption Agencies in East Africa: Kenya, Tanzania and Uganda.

African Books Collective, 2016.

Project MUSE.[muse.jhu.edu/book/45597](https://muse.jhu.edu/book/45597).



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# Preface

Corruption has a detrimental impact on the development of any country, for it affects the effective provision of public services, particularly services to the most vulnerable groups in society. Despite the plethora of efforts deployed to combat corruption, it remains an endemic problem in most countries of sub-Saharan Africa. East Africa is no exception. According to Transparency International's Corruption Perception Index for the year 2014, out of the 175 countries and territories studied, rankings for Tanzania (119th), Kenya (145th), and Uganda (142nd) remained low. Needless to say, high-profile corruption cases have come to light in all countries under study. Some have been channelled through the proper authorities, and outcomes and findings have been made public. But most are still pending, have simply been smothered by executive orders, or have become entangled in convoluted political processes that seem never-ending. However, efforts have been made at the national, regional, continental and international levels to establish institutions to combat corruption, and anti-corruption laws have been passed. The African Union Convention on Preventing and Combating Corruption defines a series of corruption-linked offences in article 4, and article 5 on 'the legislative and other measures' requires member states to 'establish, maintain and strengthen independent national anti-corruption authorities or agencies'. Other measures include the strengthening of internal accounting and auditing systems, in particular in the public sector, the protection of witnesses and informers in corruption cases, denouncing corruption-promoting systems, and educating the populations on corruption. In another provision, the AU Convention sets out that 'the national Authorities or Agencies' responsible for combating corruption related offences 'enjoy the necessary independence and autonomy enabling them to carry out their duties effectively' (article 20(4)). The current East African Community (EAC) Protocol on Preventing and Combating Corruption is only in draft form. But its current draft does not mention anti-corruption commissions specifically in the text. However, article 6 (b) does compel the partner states to adopt measures and strategies to strengthen institutions responsible for enforcing mechanisms for preventing and detecting, as well as watchdog and good-governance institutions. It further states that 'the competent authorities shall be vested with prosecutorial powers for the purposes of implementing this protocol'. The scope of the instrument covers the following:

- Preventive measures;
- Enforcement;
- Asset recovery and forfeiture;
- Regional cooperation; and
- Technical assistance

A large number of East African countries had enacted anti-corruption laws and had established agencies devoted to helping control corruption even before the adoption of the AU Convention.

Nonetheless, there is still strong scepticism within the East Africa region regarding the effectiveness of these institutions, which are vigorously criticised in view of the disparity that exists between the governments' anti-corruption rhetoric and the impunity enjoyed by public servants. One can hardly state with certainty that the emergence of these agencies will give rise to a genuine decline in corruption. At times, one is inclined to suspect that these agencies do not enjoy sufficient independence to enable them to fulfil their mandate effectively. The real autonomy of these agencies vis-à-vis the executive should be examined, and, likewise, their broad mandate, which affords them powers to institute legal proceedings, as well as the need to provide them with sufficient resources to deal with the magnitude and significance of systemic corruption. One is therefore left wondering whether the numerous anti-corruption agencies have only been put in place to appease international donors and whether their actual objective is to find durable solutions to the corruption problem – or are they simply a façade of an institution that is undermined and is ill-equipped to address grand corruption. This analysis is justified, in that several countries which are highly dependent on aid and which are bound by the anti-corruption requirements often included in the key conditions attached to this aid may have been tempted to take this easy way out. Studies carried out with regard to anti-corruption agencies around the world have established reasons to justify the failings of some of them. Among these are: lack of political will; absence of a national global strategy; inadequate legal frameworks and insufficient or inappropriate resources; limited autonomy and low public confidence; the lack of an enabling climate and the necessary know-how; the isolation of some agencies; and the lack of integrity. Efforts were made to verify these conclusions in relation to the agencies under consideration in the present study. In the final analysis, continuing efforts are needed to reach a collective agreement as to whether, in fact, anti-corruption agencies in Africa, and particularly the EAC, constitute effective tools for combating corruption, or whether greater efforts and investments are needed to enhance the criminal justice system, accounting and banking standards, or other measures, beyond just political will and effective leadership.

**Ozias Tungwarara**

*Research Manager*

*Africa Regional Office*

## Methodology

As far back as 2011, discussions were ongoing within AfriMAP and among its partners and within the Open Society Foundations in Africa as regards the viability of conducting a study on the effectiveness of anti-corruption commissions in Africa. The idea was to undertake a comparative study which would examine the rationale underlying the successes and failures of agencies or mechanisms devoted to the prevention and combating of corruption in East African countries, with the aim ultimately being to establish ways and means of strengthening anti-corruption efforts on the African continent.

Accordingly, in the present study, and in the context of the general, legal anti-corruption framework in each of the countries under discussion, the various agencies' responsibilities are assessed together with their status and that of its members. Forming part of such assessment are these agencies relations with the general public and other stakeholders, as well as their overall performance and impact. Such assessment has culminated in a set of recommendations identified in the present study, as well as in solutions to issues such as the relevance of the anti-corruption institutions and the necessary roles, measures and conditions required for their effective operationalisation.

In the final analysis, the researchers examined whether in fact the agencies constitute effective tools for combating corruption, or whether greater effort and investment are called for in order to enhance the criminal justice system, accounting and banking standards, or other measures. The study was complemented by a series of desk reviews, by focused group discussions, and by interviews with critical stakeholders, policymakers, CSOs, and lawmakers at the national level. All the country reports were subjected to rigorous in-country validations, where senior staff members of the respective anti-corruption commissions were represented so as to ensure that the information and data presented in the draft reports were accurate. The reports were also subjected to peer reviews.

## About the contributors

*Kenya:* Job Ogonda is a development executive with over 18 years' experience in leading national and regional institutions and programmes. He has over 16 years' leadership experience, providing institutional, knowledge and project leadership at Transparency International, the United Nations, the International Centre for Development, and HelpAge International. He is currently an extractives sector advisor to the Ministry of Mining (Kenya Government), advisor to the government of South Africa on accountability in the public service, governance consultant to the East African Community, accountability advisor to Adam Smith International, and governance advisor to the Institute for Human Rights and Business. He was previously an Africa regional advisor on public administration and anti-corruption with the UNDP-Africa Regional Office in Addis Ababa. He sits on the boards of the National Democratic institute (NDI) and the Institute of Ethics-East Africa, and previously sat on the board of the Institute of Directors (IoD).

His areas of specialisation include governance (with emphasis on accountability,

economic governance, and public administration and performance), social development, and economic development. Job Ogonda holds a master's degree in development and a bachelor's degree in economics.

The first drafts of the Kenya chapter were authored by Mwalimu Mati, who is the co-founder of an internet web portal dedicated to exposing, documenting and indexing information on corruption in Kenya.

*Tanzania:* Moses Kulaba is currently the founding executive director of the Governance and Economic Policy Centre (GEPC), a not-for-profit organisation based in Dar es Salaam, Tanzania. Previously, he was executive director of Agenda Participation 2000 (AP2000) and was responsible for establishing the Tanzania Corruption Tracker System, an online portal for documenting corruption cases in Tanzania. He has an extensive training background in political science, development management and law, and has over 13 years' experience in governance, democratisation, and public-policy analysis. He has conducted and participated in various studies and projects for leading agencies like Policy Forum, the UNDP, the EU, the DFID, Concern, OSIEA and the International Budget Project (IBP) and has written extensively in the areas of corruption, illicit capital flight, and development. His current interests are natural-resources governance, petroleum policy and resources management, and taxation.

*Uganda:* Dan Ngabirano is an assistant lecturer in the School of Law, Makerere University, in Kampala, Uganda. He is also a consulting partner at Development Law Associates (DLA), a legal consultancy firm with a keen interest in law and development across the African continent. Over the years, Dan's work has focused on: anti-corruption law and practice; the right to information; transparency and accountability; and natural-resources governance. He previously worked and consulted for a number of organisations including: the Open Society Initiative for East Africa (OSIEA), Open Society Foundations, Carter Centre, Global Integrity, World Resources Institute (WRI), Article 19, Advocates Coalition on Development and Environment (ACODE), Avocats Sans Frontières, Human Rights Network Uganda (HURINET-U), Kitua Cha Katiba (KCK), Greenwatch Uganda, Africa Freedom of Information Centre (AFIC), and the International Law Institute (ILI), among others.

Dan holds a master of laws (LLM) degree from Harvard University in the United States of America, Bachelor of Laws degree (LLB) from Makerere University, and a Postgraduate Diploma in Legal Practice from the Law Development Centre (DLA). He has been admitted to practise law in Uganda and is an active member of the Uganda Law Society and the East African Law Society. He is also a member of several groups that promote transparency and accountability. Some of these include the Access Initiative (TAI) and the Access to Information Committee of the African Network of Constitutional Lawyers (ANCL).

## Acknowledgements

This first volume on assessing the effectiveness of anti-corruption agencies, which covers Kenya, Tanzania and Uganda, was made possible by contributions and the participation of the following persons, for which they are sincerely thanked: Agnes Hanti, Programme Officer, Open Society Initiative for Eastern Africa (OSIEA) Tanzania Programme; Adam Anthony, Programme Assistant, OSIEA Tanzania Programme; Magdalene Kioko, Programme Manager, OSIEA Kenya Programme; Mary W Gathegu, Programme Assistant OSIEA Kenya Programme; Richard Mugisha, Programme Officer, OSIEA Uganda Programme; Rita Nalumansi, Programme Assistant OSIEA Uganda Programme; Josephine Ihuthia, Programme Assistant, OSF's Africa Regional Office (AFRO); Maureen Kimatu, Executive Assistant, OSIEA Director's Office; and Chris Abuor, Intern OSIEA Kenya Programme.

Appreciation is expressed to the Africa Foundation's Regional Office's (AfRO) Anti-Corruption Cluster members: Pascal Kambale, Ibrahima Kane, Yaye Helene Ndiaye, Thandi Mosala and Sarah Pray for the strategic support they contributed to the project. Jeggan Grey-Johnson, Programme Officer, AFRO, led the work of the cluster, edited all the chapters, and facilitated the country validation meetings.

The regional editor, Job Ogonda, showed total dedication in his role, thereby adding much value to the final publication.

