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

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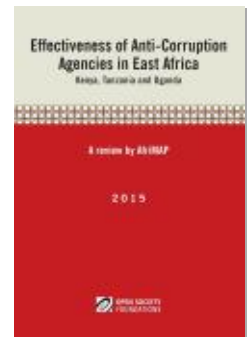
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Overview

A. Executive summary

Corruption in the three East African countries' public sector remains endemic. Whilst the media and civil society have for at least a decade freely exposed corruption scandals, the exposure has not ended corruption and its attendant impunity. The laws and institutions to combat corruption are in place and yet the situation does not seem to improve.

In all three countries, there is a clear correlation between the levels of campaign financing and the profit motive for accessing public office. A report by Cambridge University¹ found that illegal funds were used to finance the Kenya African National Union's elections in the 1990s. The funds were raised through the so-called Goldenberg affair, whereas those aimed at financing the National Rainbow Coalition's elections in December 2007 were to be raised through what became known as the Anglo Leasing scandal. A 2005 report by the National Democratic Institute (NDI) on electioneering in Tanzania noted that respondents decried the domination of wealthy individuals who seek office in order to gain access to and control over lucrative contracts, and business contributors who demand paybacks from those whom they support politically. As a result, the political establishment is often seen as a circle of wealthy individuals who make policy decisions based on private interests, rather than the common good.

Kenya, Uganda and Tanzania have all ratified the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AU Convention). In addition, all three have passed laws to domesticate these conventions to a large degree.

The three national anti-corruption agencies examined in this report are reported to

¹ See: <http://journals.cambridge.org/actiondisplayAbstract?fromPage=online&aid=1874776&fileId=S0022278X08003224>.

be ineffective against grand corruption or corruption connected to politically powerful individuals and entities. Kenya’s Ethics and Anti-Corruption Commission (EACC) has consistently been destabilised, or has been under threat of destabilisation, since its inception. It is strange that most instances of destabilisation seem to coincide with periods when progress is being made on ‘politically sensitive cases’.

The three national anti-corruption agencies independently appoint their heads through a process of open competition. They also enjoy relative autonomy under their respective laws.

The staff of these agencies are appointed through competitive, open processes and are given limited-period contracts, which are renewable. The agencies have also devolved to a limited extent beyond their respective national headquarters.

They all have clear mandates to prevent corruption and to sensitise and educate the public in the fight against corruption. Despite this, they are not well regarded by the public, most of whom claim not to report corruption to these agencies out of a belief that nothing will happen. Whilst all three agencies have had relative success in pursuing bureaucratic corruption, none has had any successful prosecutions involving grand corruption.

The agencies in Kenya and Tanzania do not have prosecutorial powers, but Uganda’s agency does. Prosecutorial power in Kenya and Tanzania is vested in the directorates of public prosecutions.

All three agencies face the challenge of inadequate resources, mainly due to government resource constraints.

The individual country reviews in this report broadly recommend that the anti-corruption agencies establish a presence in all areas of their respective countries in order to better serve the population. They further recommend that the agencies in Kenya and Tanzania be given powers to prosecute alleged perpetrators. The reports also recommend the adequate allocation of resources to the agencies.

B. State of corruption

The state of corruption in the three countries has deteriorated since the advent of Transparency International’s (TI) East African Bribery Index, as indicated in Table 1.1.

Table 1.1: Incidence of bribery in Kenya, Uganda and Tanzania, 2009 and 2014

Country	Bribery incidence (%) 2009	Bribery incidence (%) 2014
Kenya	45	41
Uganda	35	43
Tanzania	17	48

The reports attribute the high prevalence of corruption and its increasing incidence to the lack of political will to fight this scourge. This is, in turn, attributed, in part, to the capture

of the state through political processes, especially elections, by business, the ruling party and certain individuals.

C. Civil society, donors and media engagement

All three national agencies communicate with the public and have partnerships with government departments, semi-autonomous government agencies, as well as state corporations.

Kenya, Tanzania and Uganda all have well-developed and independent media that have consistently reported on corruption and advocated for accountability and transparency in the use of public resources.

The donor community has been vocal against the levels of corruption in the respective three countries since the early 1990s. The Tanzanian and Ugandan agencies have received donor funding since their inception, and continue to do so. Kenya's EACC received no donor funding in 2014, despite significant funding gaps. This is an astounding decline from USD1.26 million (15% of annual expenditure) in 2011.

The three countries all have robust civil societies that have consistently agitated for accountability and transparency. Over the last five years, however, there has been increased repression of civil-society groupings through legal measures as well as physical intimidation.

D. Commitment to international conventions on corruption

Kenya, Uganda and Tanzania have all ratified the UNCAC and the AU Convention. The respective agencies are members of the East African Association of Anti-Corruption Authorities (EAAACA).² The three countries have also passed laws to domesticate the UN and AU conventions.

E. Legal frameworks for preventing and combating corruption

Kenya, Tanzania and Uganda have extensive legal frameworks that could, if effectively implemented, significantly reduce corruption. These include laws that:

- Establish the anti-corruption agencies, their functioning, independence and oversight;
- Provide for the regulation, management, expenditure and accountability of election-campaign funds during elections;
- Enforce standards of ethics and integrity among public officers;
- Provide for the criminalisation of money laundering and the establishment of an independent institution responsible for combating money laundering;
- Provide for the protection, rights and welfare of victims of offences; and
- Provide for the right to access public information.

2 For more information about the EAAACA, go to its website at http://eaaca.org/?page_id=16.

F. Anti-corruption agencies

The three countries' anti-corruption agencies have evolved from the law-enforcement units established during colonial times. Their characteristics and status can be summarised as in Table 1.2.

Table 1.2: The status and characteristics of the Ugandan, Kenyan and Tanzanian anti-corruption agencies

Status/ characteristic	Uganda	Kenya	Tanzania
	Inspector General of Government	Ethics and Anti-Corruption Commission (EACC)	Prevention and Combating of Corruption Bureau (PCCB)
Constitutional anchoring and independence	Established by the Constitution and an Act of parliament. Reports to parliament	Established by the Constitution and an Act of parliament. Reports to parliament	Not anchored in the Constitution, but established by an Act of parliament in 2007. It also reports to the presidency, not parliament, and is therefore not perceived to be independent
Stability	Has been relatively stable	Has been disbanded, or seriously disrupted, at least nine times since its inception in 1997	Has been relatively stable
Governance	Has an oversight board consisting of the inspector general (IG) as its chairperson, two deputy IGs, the secretary, the chairperson of the Public Service Commission, the Minister of Public Service and two members appointed by the president	Has a commission that oversees the performance of the secretariat staff	Has no oversight mechanism that is independent of the executive and parliament
Capacity	Has staff in 16 parts of Uganda	Has 264 staff distributed over five regions who are competitively recruited, and trained in key functions	Has 2 086 staff distributed all over the country who are competitively recruited and trained in key functions.
Security of tenure	IG and two deputy IGs enjoy security of tenure after appointment for a four-year renewable term	Five part-time commissioners have security of tenure after appointment for a single term of five years. Staff have renewable contracts	Director general does not have specified security of tenure. Staff have renewable contracts
Ethics		Code of ethics exists for commissioners and staff and is enforced	Code of ethics exists for staff and is enforced

Status/ characteristic	Uganda	Kenya	Tanzania
	Inspector General of Government	Ethics and Anti-Corruption Commission (EACC)	Prevention and Combating of Corruption Bureau (PCCB)
Remuneration	The IG opined that their salary levels should at least be at the same levels as those of employees in the Office of the Auditor General	Generous by global standards. Ranges from USD8 500 to USD800	Generous, relative to public-service levels
Investigative and prosecutorial powers	Has investigative and prosecutorial powers	Has investigative but no prosecutorial powers	Has investigative but no prosecutorial powers. Mandate is limited to the mainland and does not extend to Zanzibar
Public-feedback mechanism	Complainants are given a code through which they can track the complaint. They also receive feedback both orally and in writing at the closing of the complaint	After submitting a report, the public can create an anonymous postbox from where to access feedback	There is no set feedback mechanism
Witness protection	None	There is a witness protection law that is yet to be operationalised.	None
Financing	IG bids, along with other independent bodies and ministries, for annual budgetary allocations awarded by parliament in the national budget. Such allocations are currently deemed inadequate	The commission bids, along with other independent bodies and ministries, for annual budgetary allocations awarded by parliament in the national budget. Such allocations are currently deemed inadequate	Submits budget to minister responsible for good governance for tabling in parliament
Performance	In 2013, the IG received 1 513 complaints, investigated 254, and instituted 83 prosecutions which led to three convictions	In 2014, the Commission received 3 355 complaints, investigated and forwarded 1 688, 32 dockets for prosecution, of which 28 were approved	In 2013, the Bureau received 5 456 complaints, investigated and forwarded 1 100, 354 dockets forwarded for prosecution, of which 343 were approved

G. Conclusion

Corruption in the three countries remains a significant challenge. While sound legal frameworks for fighting corruption exist, there seem to be deliberate efforts by the executives and parliaments in the respective countries to limit or defeat the abilities of anti-corruption agencies to do their job. This manifests itself through changes in some laws and a failure to act according to others, as well as in intimidation and the constraining of budgets.

The following country reports make far-reaching recommendations on how legal and institutional reforms can make each agency more effective.