

LEARNING JOURNEY ON ANTI-CORRUPTION INSTITUTIONAL REFORMS

KENYA

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Transparency, Integrity, Accountability Programme (TIP) in South Africa

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On behalf of the

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Background

This learning journey was undertaken to understand Kenya and Uganda's complex political and legal challenges in executing anti-corruption institutional reforms, and the practical solutions that were deployed to bring about these reforms. It was also an opportunity to establish trustful and mutually supportive relationships between the participating state and non-state institutions. The learning journey for partners from government, civil society and anti-corruption advisory bodies was organised by the Transparency, Integrity and Accountability Programme (TIP) in South Africa, in collaboration with GIZ programmes in Kenya and Uganda.

TIP supports state and non-state actors to collaborate on implementing the National Anti-corruption Strategy (NACS), with a whole-of-government and societal approach. The TIP is co-financed by the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Swiss State Secretariat for Economic Affairs (SECO) and is implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in partnership with the Department of Planning, Monitoring and Evaluation (DPME).

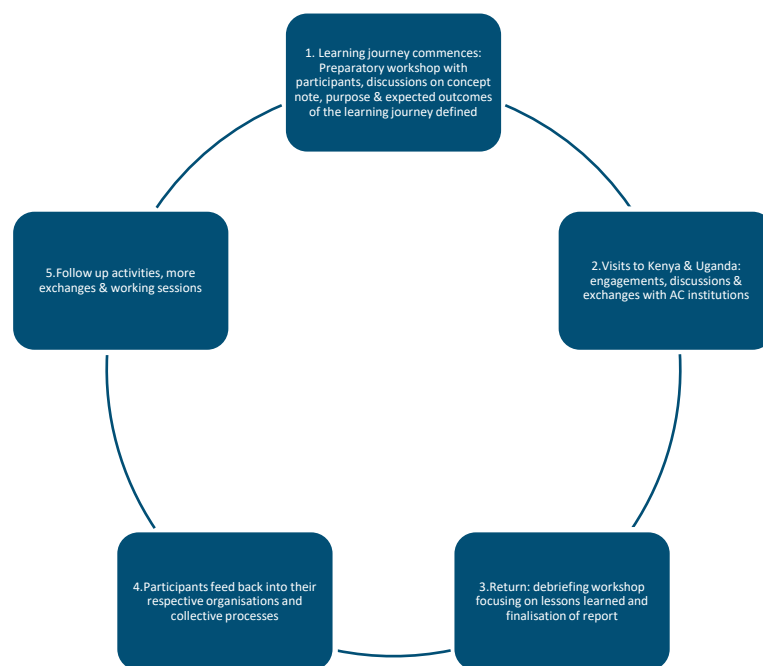
Context

As a direct consequence of the adoption of the National Anti-corruption Strategy (NACS)¹ and the recommendations of the Commission of Inquiry into Allegations of State Capture (Zondo Report), organs of state, civil society organisations, academia and the National Anti-corruption Advisory Council (NACAC) are considering policy reforms and the institutional arrangements for fighting corruption. This process is underpinned by research, analysis, consultation and benchmarking.

The NACS proposes the establishment of a National Anti-corruption Agency and the Zondo Report recommends specific institutional arrangements for the protection of whistleblowers and public procurement to fight corruption. There are also existing organs of state whose mandates and functions relate to fighting corruption and Constitutional Court judgements on the matter. Reforming the anti-corruption institutional architecture is thus fraught with political and policy challenges and implementation of policy choices on architecture will be complex.

Flowing from the ratification of the United Nations Convention against Corruption, international guidance and benchmarks for the establishment of anti-corruption agencies have been developed in the form of the Jakarta Statement and subsequent Colombo Commentary on principles for anti-corruption agencies. The guidance and benchmarks cover aspects of institutionalization, leadership, human and financial resources and oversight and accountability.

Rather than being a once-off event, peer learning is a process designed to create space and opportunities for anti-corruption policymakers, anti-corruption practitioners and relevant stakeholders to participate in learning and meaningful on-going discussion around sustainable measures to fight corruption in SA. The learning journey was constructed based on the needs and research questions of participating organisations (which was determined through individual consultations and a joint workshop) and offered a platform for ongoing reflection and cooperation beyond the actual exchanges with or visits to another country. By its very nature, peer learning involves the exchange of learning and so Kenyan and Ugandan parties engaged were also interested in South African developments.



Flow diagram of the learning journey

High-level programme for Kenya and Uganda

Both Kenya and Uganda have successfully undergone reforms to their anti-corruption architecture and both countries are continuing with implementation. This learning journey will provide direct exchanges with state and non-state actors in these two countries. Areas explored for learning included the following.

¹ [National Anti-Corruption Strategy 2020-2030](#)

- Institutional and governance arrangements: Mandate, leadership, human and financial resources and oversight and accountability. Key aspects: inter-agency collaboration/ independence/ inter-dependence, leadership appointments, protection from political environment, responsibility for whistleblower protection and ensuring transparent and accountable procurement.
- Approach to executing mandate: Concentration on removing/prosecuting corrupt individuals/structural changes, centralisation of authority, grand/petty (front line) corruption.
- Societal mobilisation: Communication, education, awareness raising and relationship between state and non-state actors.
- Impact: Monitoring, evaluation and reporting, including social accountability and data management.

The following institutions were identified with the support of the GIZ offices in Kenya and Uganda as engagement partners during the learning journey.

In Kenya:

- The Ethics and Anti-corruption Agency, which has the mandate of combating and preventing corruption in Kenya
- Commission of Administrative Justice
- The Auditor-General
- The Public Procurement Reform Authority
- Civil society bodies, including the Transparency International chapter.

Discussion on Uganda (in Kenya):

- Inspectorate of Government (an Ombudsman and key anti-corruption agency with powers to investigate, arrest and prosecute anti-corruption cases).
- Ministry of Justice and Constitutional Affairs

Composition of the delegation

The delegation be made up of persons drawn from the following institutions:

- Government: Department of Planning, Monitoring and Evaluation (DPME), Department of Public Service and Administration (DPSA), National Prosecuting Authority (NPA), Special Investigating Unit (SIU), National Treasury: Office of the Chief Procurement Officer (OCPO), Office of the Premier: Gauteng and the Department of Justice and Constitutional Development (DoJ & CD)
- Civil society/academia: Corruption Watch (Transparency International chapter), Public Procurement Reform Working Group/Public Affairs Research Institute and The Whistleblower House
- Anti-corruption advisory bodies: The National Anti-Corruption Advisory Council (NACAC) and the Gauteng Ethics Advisory Council (GEAC)
- GIZ-TIP



ITINERARY

Time	Activity/Host/Venue	Topics/Tasks/Deliverables	Responsibility
Day Zero: Sunday 9.07.2023			
16:00	Arrival of the delegation in Nairobi, Check-in; GemSuites Riverside Apartments and Hotel Off Riverside Lane Nairobi.	Briefing on the study visit programme	GIZ Kenya/SA Shuttle Services, Kenneth Matiba Maleka Mokgapi
Day One: Monday 10.07.2023			
09:30 – 10:30	Visit to the South Africa High Commission in Nairobi Roshanmaer Place 3rd Floor Lenana Road Nairobi.	Courtesy Call/Exchange	GIZ South Africa/ Delegation HE MJ Mahlangu Prof Firoz Cachalia
11:30 – 13:00	GIZ Kenya, Good Governance Programme 4 th Floor Segen Plaza	Understanding GIZ Governance Cluster in Kenya: Objectives, Structure and Focus areas, Partners, Successes, Challenges and Opportunities.	GIZ Kenya, Good Governance Cluster, Thomas Ansorg

Time	Activity/Host/Venue	Topics/Tasks/Deliverables	Responsibility
	96 Riverside Drive Nairobi.		SA Counterpart : Valeska Onken TIP Programme Manager
14:30 – 16:30	Commission of Administrative Justice (CAJ) (<i>Ombudsman</i>) 2 nd Floor, West End Towers Opposite Aga Khan High School, Off Waiyaki Way Westlands, Nairobi.	Centrality of Access to information and complaints management: Mandate of CAJ, Experiences, Challenges and Opportunities.	GIZ Kenya, Titus Ogalo SA Counterparts: Selby Makgotho Nicki Van't Riet
Day Two: Tuesday 11.07.2023 - Study Visit Exchanges			
09:30 – 12:30	Africa Anti-Corruption Day University of Nairobi (Chandaria Hall, Main Campus and Ufungamano House)	Concurrent sessions: 1 The People's Anti-corruption Summit 2023 2 Africa Day Commemoration: Public lecture	GIZ Kenya, Elijah Ambasa and Titus Gitonga SA Counterpart: All
15:30 – 16:30	Visit to the National Archives/Uhuru Gardens/Museum	Learning about Kenya	GIZ Kenya, Joan Kadamu

Day Three: Wednesday 12.07.2023 - Study Visit Exchanges			
09:30 – 12:05	Office of the Auditor-General (OAG) 3 rd Floor, Anniversary Towers, University Way, Nairobi.	Relevance of fiscal oversight and accountability: Mandate, Experiences, Challenges and Opportunities.	GIZ Kenya, Kenneth Matiba SA Counterpart: Terence Nombembe
14:30 – 16:30	Public Procurement Regulatory Authority (PPRA) 6 th Floor KISM Towers, Ngong Road Nairobi.	Open and accountable public procurement system in promotion of transparency and integrity: Mandate of PPRA, Experiences, Challenges and Opportunities.	GIZ Kenya, Kenneth Matiba SA Counterparts: Mpho Nxumalo & Devi Pillay
Day Four: Thursday 13.07.2023 - Study Visit Exchanges			
09:30 – 12:30	Ethics and Anti-Corruption Commission (EACC) Integrity Centre, Jakaya Kikwete/Valley Road Junction, Nairobi.	Exchange on the Ethics and Anti-Corruption Landscape in Kenya: Legal Policy and Institutional Framework, Experiences, Challenges and Opportunities.	GIZ Kenya, Elijah Ambasa SA Counterparts: Firoz Cachalia
14:30 – 16:30	Transparency International (TI), Kenya 4 th Floor	Role of the Civil Societies in the promotion of transparency, integrity and social accountability in Kenya: Experiences, Challenges and Opportunities.	GIZ Kenya, Silas Kamanza

	Segen Plaza 96 Riverside Drive Nairobi.		SA Counterpart: Andy Mothibi & Ben Theron
17:00 – 18:30	GIZ Kenya, Good Governance Programme 4 th Floor Segen Plaza 96 Riverside Drive Nairobi.	Discussion: Uganda	Musa Modoi, Enyuk Charles
Day Five: Friday 14.07.2023 - Study Visit Exchanges			
08:30 – 09:30	GIZ Uganda	Exchange: Experiences, Challenges and Opportunities. Debriefing.	GIZ Uganda/South Africa Enyuk Charles & Musa Modoi
End/Departure			

The Learning Journey

DAY 1



Visit to the South Africa High Commission in Nairobi

The visit to the South African High Commissioner to Kenya, His Excellency, MJ Mahlangu was primarily a courtesy visit but was useful in receiving a country briefing and a status report from the ambassador. He provided an overview of the Kenyan situation and commented on the excellent cordial relationship between South Africa and Kenya.

Points covered include:

- In 2021, a memorandum of understanding was signed cementing cooperation.
- In 2023, a mid-term review was undertaken between the two countries. Kenya has a constitution that is similar to South Africa.

Kenya Overview

A new government was elected in August 2022 with a peaceful transition; however, the opposition Jubilee party opposition leader Raila Odinga had arranged a demonstration against the high cost of living. The ruling party had reached out to the opposition for reconciliation and nation building; however, this was not successful as there are deep-seated divisions between the current and previous presidents. This is partially due to the ex-president supporting the opposition causing tensions. Corruption in Kenya is rife and can be regarded as a pandemic with especially the prominent individuals being mentioned frequently in the press. The fight continues and will be intensified. It is an accepted fact that whistleblowers need to be protected and taken care of. Kenya should have a rallying cry that includes: “we have a clean government!” and “we need to fight corruption!” The high debt to the IMF has necessitated a higher tax rate which led to demonstrations on 7 July 2023. This resulted in injuries and a few fatalities. There is another demonstration planned for 12 July 2023.

Highlights and learning points from input

It is clear that the South African delegation is diverse and inclusive as it includes Government officials and civil society. This allows for divergent views and inputs enriching the end product. It also creates the space for individuals to provide honest and open opinions.

South African inputs

The detailed response by the President on the Zondo Commission findings, as Head of the Executive, has been submitted to Parliament of South Africa during October 2022. One of the recommendations contained in the Zondo Commission is the establishment of a single and permanent Anti-State Capture and Corruption Commission. This learning journey seeks to study the responses from other jurisdictions in the fight against corruption in the public and private sectors. South Africa follows a multi-agency law enforcement approach. The government recently completed the review of the law enforcement agencies as it prepares to finalize a model for an Anti-State Capture and Corruption Commission.

The NACAC, established in August 2022, is consulting widely to ensure maximum inputs and diverse views. Transparency, integrity and accountability are critical features. South Africa recognizes that corruption is found at all levels and should be addressed accordingly. Gauteng Province has established an Ethics Unit to address the provincial issues.

Questions raised:

- How do Kenyan politicians position themselves to the liberation movement?
- Are there structures similar to the Ethics Unit in other provinces? If so, what is their status?
- How does one get the executive to take responsibility for public assets?
- How do we ensure transparency and meaningful consultations to maximize inputs? The previous Gauteng Premier involved civil society to ensure a complete picture and maximum inputs.

GIZ Kenya: Governance Cluster, in particular, Regional Programme on Illicit Financial Flows and the Good Governance Programme

The GIZ has been working in Kenya since 1975. The priority areas for the German – Kenyan development cooperations are:

- Sustainable economic development and employment promotion
- Agriculture and food security
- Renewable energy and climate change
- Governance and Democracy
- Migration and Displacement

The Governance and Democracy Cluster comprises the projects Good Governance, Civil Peace Service, Illicit Financial Flows and Police Programme working with a wide variety of state and non-state partners in Kenya.

Understanding the GIZ Governance Cluster in Kenya: Objectives, Structure and Focus areas, Partners, Successes, Challenges and Opportunities.

Valeska Onken, programme manager of the TIP in South Africa deliberated on the purpose of the learning journey in the framework of the TIP, emphasizing the importance of peer learning in an honest and trustful exchange invoking Chatham House rules for the discussion and recording of what was being said.

The first input presentation by GIZ colleagues from Kenya summarized the work of the global development cooperation programme “Combating Illicit Financial Flows” (GP IFF) that supports the Kenyan and regional partners in their compliance with relevant international standards (e.g., of FATF, UNCAC, UNTOC). The main points of discussion included the following.

- Despite the fact that Kenya has excellent legal frameworks, it struggles with the enforcement and implementation of these. Especially in the space of prevention, achievements are hard to capture.
- The Beneficial Ownership Register is of great interest to South Africa. While the existence of the register in Kenya has transformed criminal investigation in the space of IFF at the moment, it is only accessible for law enforcement entities.
- The Ethics and Anti-Corruption Act allows the Commission to investigate unexplainable assets.
- Work with the central bank (incl. with MPESA) was of interest. The programme has supported the capacity development of money laundering reporting officers as well as the reporting centre. This was within the context of hefty fines imposed in banks in terms of non-compliance with reporting of IFF.

The second input was from the Good Governance Programme Kenya, which works across the entire anti-corruption chain of prevention, investigation, prosecution, adjudication and asset recovery as well as at national and sub-national government (county) level. Digitalization is the major focus of this phase of project implementation. Please refer to the comprehensive presentation.

Highlights and learning points from inputs

- In terms of achievements of the GP IFF, the presenter highlighted the beneficial ownership register that was developed with the assistance of the programme. It was also highlighted that beneficial ownership disclosures are obligatory under Kenyan law in the public tendering process. In addition, the development of effective capacity building tools and assistance to law enforcement agencies for financial investigation, cross-border-investigations and inter-agency cooperation (also see factsheet in the annex) was mentioned.

- The Good Governance Programme works with a multi-stakeholder approach with a strong emphasis on civic engagement and inter-agency collaboration. In 2021, the programme supported the Office of the Auditor General to conduct the first ever Citizen Accountability Audit.
- The programme has supported the establishment of the Integrated Financial Management System and has already seen improvements in performance in supported counties.

Ideas that SA should consider for adaptation and application

- The presentation was received with great interest in light of the recent grey-listing of South Africa by the FATF, and the delegation voiced the wish to continue the discussion, learning more about specific developed methodologies and seeking further advice in the upcoming reporting, in particular with regards to experiences with mutual legal assistance, money laundering and asset recovery of the GP IFF.

Website/additional information links: <https://www.giz.de/en/worldwide/101392.html> Kenya - giz.de ; Strengthening Good Governance in Kenya - giz.de ; Combating Illicit Financial Flows - giz.de [Combating Illicit Financial Flows - giz.de](#)

Commission of Administrative Justice (Ombudsman)

Commonly known as (Office of the Ombudsman), is a constitutional commission established under Article 59(4) of the Constitution, and the Commission on Administrative Justice Act, 2011. The mandate of Office of the Ombudsman is two-fold and extends to both national and county governments, thus - tackling maladministration (improper administration) in the public sector and overseeing and enforcing the implementation of the Access to Information Act, 2016. It is also referred to as the "Watchman of Kenya".

Centrality of Access to information and complaints management: Mandate of CAJ, Experiences, Challenges and Opportunities

The key functions of the Commission are:

- a) Quasi-judicial mandate to deal with maladministration
- b) Ensuring compliance with leadership, integrity and these requirements
- c) Litigation and quasi-judicial functions
- d) Reporting obligations
- e) Training of government Ministers, Departments and Agencies
- f) Provision of advisory opinions and recommendations
- g) Promotion on Constitutionalism and Human Rights Advocacy
- h) Enforcement

Mandate covers entities and certain private bodies. Action upon receipt of a complaint of motion (Suu motu). Appeal - 21 days - same effect as the order of the High Court. Non-compliance is disclosed to Parliament and also disclosed in the annual statements. Legislative oversight – Parliamentary Committee on Justice and Legal Affairs.

Professor Firoz Cachalia led the introduction of members. He encouraged all to learn with enthusiasm as South Africa needs to put in an Anti-Corruption Agency which will put the centrality of information as key to recover whatever is wrongfully taken from the taxpayers of South Africa. Professor Cachalia thanked the hosts for opening their doors to South Africa and availing their executives to the meeting.

The Commission on Administrative Justice is a constitutional body founded on the provisions of Article 59 (4) of the Constitution of the republic of Kenya. The Commission is a constitutional body, which is fully accountable to Parliament. Parliament fully supports the work of the Commission. The Commission tables annual reports to the Parliament (which plays an oversight role). Public and private entities are encouraged to co-operate with the Commission and if they act to the contrary, the names of the non-cooperative entities are referred to Parliament for action.

Highlights and learning points from input

South Africa's access to information is governed by the Constitution (Section 32). The enabling legislation is the Promotion of Access to Information. The key learning point is the alignment of the enforcement of administrative justice provisions and the right to access information.

Ideas that SA should consider for adaptation and application

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- Enforcement of the Commission recommendations. The Commission does not have adequate legal mechanisms in place to prosecute or take any stringent measures for the defaulters. It can only rely on the Parliament to take tougher actions. It would be prudent to create a legal system to enforce the rules and regulations of the Commission for it to be more effective. In its current structure, the Commission is a necessary vehicle serving as a deterrent.
- Budget and Human Resources – The Commission is concerned that there is inadequate budget for human resources.
- Political Will – The political climate of the country is quite critical to the functioning of the Commission as well as the work of the other law enforcement agencies.

Refer: <https://www.ombudsman.go.ke/>

Day 2



The People's Anti-Corruption Summit 2023 hosted by Transparency International Kenya at Ufungamano House, Nairobi

This was a civil society event hosted to commemorate African Anti-Corruption Day. The theme is AUCPCC, 20 years after: Achievements and Prospects. The event was hosted by Transparency International (TI), Kenya. In attendance included:

- TI-Kenya
- GIZ multidisciplinary delegation
- Ambassador of Finland to Kenya – donor to TI
- Delegation of the European Union (EU) to Kenya
- Kenyan Human Rights Commission
- Mzalendo Trust – promoting open, inclusive, and accountable Parliaments across Kenya and Africa
- The institute for social accountability
- HE Henriette Geiger – EU Ambassador to Kenya
- Inter-Religious Council of Kenya (IRC-K)
- Hon. Bernard Kibor - MP Nandi Hills Constituency and Secretary, African Parliamentarians Network Against Corruption (APNAC) Kenya
- Hon. Shimbwa, Omar Mwinyi – MP Changamwe Constituency, Member of APNAC

Introduction by TI – Kenya Programme Coordinator, Titus Gitonga

- Public participation (PP) and civic engagement (CE) became a key factor across the running of the entire Constitution. In the previous regime, there was a lack of CE. Prior to this, it was about a centralized government. The focus on PP and CE is in the running of government and public finance management. With this comes the mandate of how citizens should be included in governance matters. In some activities we support several CS and private sector partners to promote and advance civic engagement and public participation. TI, National Taxpayers association; National Anti-Corruption Steering Committee – government institution within AG. Civic engagement and anticorruption measures.
- Things done by TI Kenya: Support to do social audits – provide power to the people to push for accountability. With this we have supported the National Taxpayers Association and support for Citizen Audit processes with office of the AG.
- TI Kenya has presence in most of Kenya. It engages citizens in governance process: public participation is mandatory in budget making process. Leadership / politicians must engage people in counties and nationally in budgeting. TI has engaged people on the ground for this and brought them in one room to discuss budget at ward level. TI has leveraged technology to enhance citizen participation – takes in complaints relating to governance issues. TI can collect complaints and engage citizen and give feedback on different processes. Enhancing of system by having an SMS model which will enable to citizens without smart phones to engage. We also work with Kenya Manufacturers Association – challenges in terms of procedure on how to handle corruption issues, develop a judicial guidebook to highlight jurisprudence that needs to be addressed in the sector. The National AC Steering committee (NACSC) has CACCOCS – civilian anti-corruption oversight committees. Supported to establish these where there are nominations done; received citizens which would take place in these conversations. Social audits – civilian oversight tool to give citizens the ability to contribute to push for accountability of government projects. We can choose a sector (e.g., education TVET school – what has been allocated, what has been achieved – this is all citizen led).
- The laws are there for PP, but the challenge comes to the quality of the PP and the access to information. The meaningfulness of the PP is questionable – e.g., bills timelines are not enough – PP have formed a lot of J/P where judges have pronounced – they are still working on the PP guidelines. Conducting radio shows on AC; developing material – manual for training for CACCOCS.
- Ambassador to Kenya from Finland – what was behind improvement of corruption; moral tendencies; geography and national identity; having a potential enemy next to you – treason to take from the state (Russians next to them). Independence had costs so much; selling out on the state was something dangerous. There was difficult moment in the 50s and 70s where there were corruption problems relating to trade deals with USSR.

Sheila Masinde – Executive Director of TI Kenya

- Proposed amendments which address offences relating to non-compliance procurement guidelines – what they seek to do is de-criminalize procurement offences. 95% of cases are procurement related. Attempts to decriminalize procurement corruption will strike a raw deal for Kenya.
Attempts two weeks ago to delete 64 of Act disqualification of acts being elected as public officers. Offends national values of good principle. Chapter 6 on good leadership. Soldiers in Parliament to fight two sections. Get them to back down from efforts to amend the ASECA model. Counting on Parliament and partners to help with attempts to weaken anti corruption laws.
- Court rules in favor to stop implementation of finance act – as civil society working presented proposal re how the government shifts overtaking citizens and businesses and to shield people from the high cost of living. What is the plan to strengthen fight against corruption and asset recovery. A lot of public resources have been siphoned and taken to havens. What are the plans to bring back resources that were meant for Kenyans. 30% of national budget is lost to corruption and abuse. What would happen if we sealed those loopholes. Could we put this back into pockets needs to focus on fighting strengthening recovery, fighting IFFs before. We hope the court will stand in the public interest and put in place measures to address economic situation. Another concern – Kenyan's exercised right to assembly and expression – witnessed alarming incidences. Unnecessary force.
- If corruption carries on, we can forget about our future, conventions, and SD goals. What is my personal contribution in the fight against corruption? Ultimately you today are a civilian – what happens when you become a public servant tomorrow? Will you uphold the value we speak of today? #kenyaagainstcorruption #africaagainstcorruption

Hon Bernard Kibor - MP Nandi Hills Constituency and Secretary, African Parliamentarians Network Against Corruption (APNAC) Kenya

- Brief about who APNAC is and what do they play; support can be offered so that you know you have friends. Reference was made to the Whistleblowers Bill, the Protected disclosures bill and the Lifestyle audit bill. Bills are not easy; they require several actors – the bills inhibit prohibits corrupt practices – there is a law that will catch up with me. We need a ringfencing of laws or acts to continue protecting the public resources. Anti-corruption bills – you have friends in Parliament who are always ready to walk with fighting corruption.
- APNAC continues to leverage off peer learning – APNAC chapters to benchmark on strides made. There are exchanges and shares on peer review with China. Appreciate TI support which supports Parliamentarians. Speak out; we will be listening.

Mr. James Muraguri CEO the Institute of Public Finance – Kenya – Founder and CEO, Institute of Private Finance open public finance

- Cost of living in Kenya; cost of food protection. Look at government document some 1000 people were supposed to benefit but didn't. This increases inequalities. Corruption has contributed to socio-economic inequality. Action is commendable but more needs to be done in criminal proceedings, strengthening oversight institutions. Call includes strengthening institutions; Parliament needs strengthening. Parliament is our weakest link – empirical evidence. County government needs to publish documents to provide platforms to engage. What comes to reports implementation there is a big gap.
- In a life survey done on how many people had engaged in corrupt activity in the room, over 50% said yes.
- How is the corruption affecting your life and livelihood?
 - Cost of living weakens the economy
 - High cost of living
 - Not able to get jobs or received services unless you know someone or have something to offer
 - Commodities are becoming expensive
 - The cost of living has become unbearable
- “It is not just taking a shilling, a thousand, a million, it is destroying a whole system that maintains humanity.” MC

Silas Kamanza, GIZ Kenya

- Convention was a turning point to unite to dismantle – significant milestone and unwavering commitment. Served as a powerful instrument in twenty years there have been notable strides however, we must acknowledge that the work is not complete. Challenges remain and new forms of corruption emerge.

Nicki van 't Riet Corruption Watch South Africa

Presentation made by Nicki van 't Riet from Corruption Watch. The address focused centered around learning from the past to profit by the present and from the present to live better in the future. It reflected on 20-year journey of the AU Anti-Corruption Convention, which anniversary provides an opportunity to reflect on progress made so we can determine what needs to be done to have a future free from corruption. It examined certain successes' following the implementation of the convention, one being regional cooperation and a second being the development of legislative reform and enhancing capacity to address corruption effectively. We still have a way to go in achieving our goal. Two focus areas would be the development of whistleblower protection in legal frameworks and pulling together as civil society and supporting our human rights defenders and investigative journalists.

Pirkka Tapiola – Ambassador Embassy of Finland

- Are we celebrating, commemorating, or marking? For celebration we have ways to go. For commemoration we are not eulogizing past, so we are marking it. It holds great significance as we note the importance on the convention. Corruption has become something akin to treason. If you want to work with your neighbors and build security and break the glass ceiling from a middle income to a high-income anti-corruption needs to be at the heart of efforts.
- Kenya's low scores are improving – the commitment is there, and it needs to be followed through. Kenya has robust laws and policies however implementation of the frameworks needs to be operationalized. Finland works on corruption around the world – women's democratic participation, GBV, technical and vocational opportunities, peace and security for women and youth. Corruption can disproportionality affect women.
- External and internal threats – poverty is a result of corruption as in unemployment. Where are the origins of people feeling desperate. Peace – if society does not work it becomes volatile. Fight against corruption – need frameworks, institutional capacity and protect whistleblowers. These are heroes not villains. Even in settings of government. Citizen participation and CSO engagement is NB. Kenya has done a lot since its 2020 constitution. Governance systems which recognize the rights. Implementation is still not quite there. There is a way to go.
- "The least corrupt country becomes one of the wealthiest countries in the world."
MC

Henriette Geiger –EU Ambassador to Kenya

- We need to assess where we have stand. It is endemic around the world; it robs Kenya and all countries of important benefits. It forces people to engage to survive. The statistics are survival. We are forced to engage in things we are not wanting to engage in because systems are set up on a way, we cannot avoid it. It is not only a bribe but can also be a threat – there it becomes dangerous and life challenge. If we slay the corruption dragon, every country would be able to provide for its citizens. This is what we must keep in mind when looking at the fight – this is the big prize hanging there. This is what we are aspiring to do. Covid 19 has exacerbated corruption – big sums were dispersed quickly, medical supplies, a lot has happened that was not accounted for globally. The EU and its institutions have recently adopted on 4 May 2023 new conclusions reconfirming commitment to incorporate strong anti-corruption efforts in all programs it is doing worldwide. The key to the global approach is our human rights and democracy action plan. C cannot be seen outside HR. Two examples – strengthening accountability networks amongst civil society – empower civil society across boundaries. Empowers civil society in 26 countries including Kenya.

We must make sure we use and leverage power by naming and shaming across border. OGP implementing action plans in pilot countries of which Kenya is one. 34 of the delegations have anti-corruption activities prioritized. This includes support to democracy rule of law and public financial management. C is one of the costliest barriers to global trade. We need to join forces and all be aware of the issues. The government made NB commitments, but we all know in a society where corruption affects all level action must be taken at all levels. If the leaders are engaging in it, everyone else thinks it is ok. Old habits must die hard for new habits to be born. Laws are there but serve nothing if they are not properly implemented. We need parliament enforcement, but we need implementation throughout society. Strengthening good governance framework in Kenya. Access to justice without having to bribe is a major achievement.

- “If we tackle corruption, Kenya will skyrocket” MC.

Inter-religious Council of Kenya (IRC-K)

- There is hope. Hope is preached – practice the tenants of our religion. No religion teaches you to be corrupt. Practice the tenants of our religion. Persuade them to be the agents of positive change. We must practice it from within. We must. Be contented – Kenyans who stand and say we want to be patriotic and be counted as someone who stood for our country. And as a result, things are changing.

Imam

- We should fear God and corruption should come to an end. Appreciated that for the religious formations, religious organisations were available and organized.

Dr David Malombe – Executive Director of Kenya Human Rights Commission

- He spoke about political accountability, safeguarding and enforcing Chapter Six of the Kenyan Constitution. Public participation is a fundamental. The right to self-determination means people have the power to control unfettered power –this is about the right to public participation. Political problems making corruption so hard to fight. Deep seated culture of shameless leaders not accountable to people. Money is lost. Political DNA – Kenya was established as a corporate entity – British East Africa. System was to advance interests. From the beginning the structure as not made for the people. Rights have never been protected. The role of elections – what does elections do? Delivers criminals unaccountable; people who have spent money to get their way into public office. You land up with people who are not loyal to the people. You cannot entrust your resources to criminals. People do not understand the link between corruption and money.

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- The main point was the issue of public accountability, especially the youth. The youth must not only be used for elections; the politicians they vote for must be held to account by them for the delivery of basic goods and services.

Quote:

- You have got to live your life as though there is a camera on you. Catherine Kasavukli – what do you feed yourself, what do you allow yourself to watch, these things determine what you will be tomorrow. What you ingest is what comes out tomorrow. Whatever we do today will reflect tomorrow. – Catherine Kasavukli

TI Kenya's awards

- Living up to the standards of integrity – set for action. Categories of the awards are:
 - Patriotism to ordinary citizens
 - Whistleblowers integrate award to those who play a certain role in exposing corruption
 - Leadership integrity award
 - TI award to those who promote integrity within society and create a good climate for governance within society.
 - Judiciary integrity award.

Hon Okiya Omtatah – MP & Senator for Busia County

- He gave context that Kenya's history was shaped by faith. He linked faith to the rule of law. Hence, they need to ensure that they obey the rule of laws. If they obey faith and the rule of law; they will know when to say no. Characterizing corrupt individuals as attractive – we must be brave. If you look at our communities, they are highly religious, but we are selective on when we practice our beliefs. Do not consume beyond your means. Vacate the office for those who can govern. Let us stand up for Kenya. IMF Bill is neocolonialism. \$2.4 billion is the public debt. It keeps going up and they say they are not borrowing. Where is the money going? The debt – 70% of the current budget is to pay debt. It is a state of war that requires going to war. What did the money do? Get a register of the loans and how it was used. The real debt is half what treasury has published. Who authorized the debt? It was not authorized by Parliament. The debt is violating the law and if we don't tackle the debt, it is going to kill the country. Only pay the debt that benefitted us. That which did not benefit us must be paid for by those who utilized it for personal gain. Audit the loan accounts – the records will show no money was owed to the Chinese. People need to come and account. If the law is supreme, we will be able to develop the country.

Highlights and learning points from input

- TI has engaged people on the ground for this and brought them in one room to discuss budget at ward level. TI has leveraged technology to enhance citizen participation – takes in complaints relating to governance issues. TI can collect complaints and engage citizen and give feedback on different processes. Enhancing of system by having an SMS model which will enable to citizens without smart phones to engage.
- Public participation cannot just exist on paper – it has to be meaningful.
- It was a learning point that over 50% of people in the room admitted via survey to having engaged in corrupt activity – whilst the statistic was high, it is likely that this is out of necessity.
- Ambassador – if you have funds that are redirected to corrupt activity, then you are redirecting them from what they were intended for (such as fighting GBV). This becomes an internal threat.
- Ambassador from Finland extended a willingness to work with the region in their fight against corruption.
- Ambassador from EU used the example of corrupt activity in EU around covid-19 and PPE. It was interesting to hear that the EU faced those same challenges as South Africa in this regard. They have therefore incorporated anti-corruption programs in all their developmental programs.
- The engagement was structure well – use of local languages (connecting with the audience). They also made it accessible with sign language.
- Leveraging of technology to encourage public participation.
- The quality of public participation is critical – people need to be informed about the topic so that they can ask the right questions.
- The set up was done well – use of AV, the MC was engaging and experienced, and the use of Menti.com allowed for crowd participation.
- The background music in between speakers kept people alert and engaged.
- The creation of a platform for civil society – high profile people mixed with people on the ground to voice their issues. It is important to create sessions for civil society so everyone, as opposed to just the dignitaries, have a chance to speak. This will allow us to access the real issues facing our grassroots communities.
- They queried the capacity of the current Parliament to represent them in the fight against corruption.
- Admire the realism that corruption is still a real challenge and that there is a big fight ahead of them. You must know what you must deal with so that you can deal with. Be alert for corruption as this process unfolds and make sure that the counties are capacitated to handle corruption.
- Corruption makes life very difficult from a socio-economic perspective for people. This was demonstrated through the menti.com surveys.
- As counties go through devolution process of decentralizing power from national to county – must make sure that there are enough resources.
- Religious organisations have a huge role to play because the religious organisations are being utilized to launder money.
- If they can withdraw an award if you are, in future, found to have committed corrupt activities.

- The fight against corruption requires people to be informed – they must know the law and they must know how to apply it. The advantage of the facility – he is well informed of the issues; speaks from an informed position.
- The three approaches by religious leaders that were being approached in assisting in the fight against corruption:
 - The use of social media
 - Forming partnerships with various sectors of society
 - Scripture material they develop from different faiths

Ideas that SA should consider for adaptation and application

- What does meaningful public participation look like – we need practical minimum norms and standards to see PP taken from the law books and properly manifested in practice.
- It would be ideal to be able to study Finland and other Scandinavian countries (but particularly Finland which went from a country with corruption to the least corrupt country in the world). To study how this transition happened.
- Creation of CACCOCs and conducting of social audits.
- Examine the public debt of South Africa – request a schedule of what the loans were taken for and how they were spent.
- Ambassador from Finland extended a willingness to assist – to work with the region in their fight against corruption.
- Ambassador from EU used the example of corrupt activity in EU around covid-19 and PPE. It was interesting to hear that the EU faced those same challenges as South Africa in this regard. They have therefore incorporated anti-corruption programs in all their developmental programs.
- Make sure that provinces and municipalities are capacitated and equipped to deal with corruption.
- They included religious organisations – RSA should consider including communities, cultural and religious organisations in the fight against corruption.
- To consider implementation of Integrity Awards.

<https://www.facebook.com/TransparencyKenya/>

Africa International Day Commemoration, University of Nairobi

Public Lecture, attended by a broad range of stakeholders and partners working in the Kenyan Anti-Corruption space, in commemoration of the 7th African Anti-corruption Day.

Theme: African Union Convention on Preventing and Combatting Corruption at 20: Achievements and Prospects

The lecture was attended by all relevant Anti-Corruption stakeholders and reminded of the old Anti-Corruption Forum SA had. It is clearly an initiative banking on the support of the Kenyan citizens.

A variety of speakers from key stakeholder groupings, including a brief panel discussion formed part of the session, notably the Transparency International, UNODC, and University of Nairobi. Given the fact that the majority of the audience were students and the fact that the youth constitute the majority of the Kenyan population, all speakers focused their inputs on the role of youth in fighting corruption. Even the questions from the youth were provocative, asking the panellists for instance to be clear and decisive about what constitutes acts of corruption and what it should be called. Most importantly the question of sextortion was also raised especially in the university sector and action was demanded from policy makers.

Mr Twalib Mbarak, the CEO of Ethics and Anti-Corruption Commission the co-convenors of the event with the University of Nairobi and the Kenya Leadership Integrity Forum (KLIF), highlighted the following in his input.

- By means of using the Corruption Triangle Strategy, he analysed the enablers of corruption. The Corruption Triangle Strategy has three components:
 1. Public/Society
 2. Political culture/Politics
 3. Enforcement
- These three elements are interlinked: Crooks are being voted into power and then set the tone at the top (usually lacking ethics), taxi drivers experience no consequences for their bad road use, but when they are for example employed in Doha, they tread carefully as they know they will be deported. This lack of consequences breeds a society that is not pushing against corruption, but actually supports it. His message was that we should respect laws and follow them, as it strengthens the culture of enforcement.

The keynote address by Justice Aaron Ringera, was titled, “The Quest for an Ethical Kenya: Essentials and Prospects”.

- He outlined what ethics is, and presented an analysis explaining the failure of Kenyans in addressing ethical lapses: moral degeneration, institutionalisation of bad ethics, failure of governance. He furthermore outlined the improvement in the ethics situation, by adopting appropriate legislation to address gaps. One success he highlighted , was a “peoples driven Constitution”, that provides for a section (Section 6) to bolster ethics.
- His address provided a reflection on what happened, as well as ideas to improve going forward. His address identified all the aspects covered in South Africa's National Anti-Corruption Strategy (NACS). His advice was for Kenya to always reflect on where they are in terms of the fight against corruption. The fight against corruption is according to him in the hands of the people and as such it must be their project, and not that of political parties. It must be used to strengthen democracy.

Buzzwords: whole of society approach; citizen participation; constant reassessing of situation; independent Anti-Corruption agencies.

Highlights and learning points from input

- The use of the outcomes of a study by a Master's student's dissertation on lifestyle audits to inform policy which was later adopted and approved by Parliament for implementation. An example of evidence-based policy making.
- Mr Mbarak reiterated that all stakeholders must take hands to fight corruption and that there must be a central message. This was very clear from the presentations and the communication behind the Lecture.
- Justice Ringera identified the following essential building blocks for an ethical society:
 - Adherence to the rule of law. Do not allow courts to water down legislation.
 - Leadership must have integrity with a commitment to good governance.
 - There must be collective action against corruption.
 - Independent law enforcement agencies.
 - Civic responsibilities.
 - Proactive public participation in Government processes.
 - Proper secured whistle-blowing legislation/systems.
 - A vibrant civil society.
 - Accountability.
- The Justice deemed it pertinent for all systems and processes to insulate the public trust from abuse. As such, public servants and public officials must meet ethics and moral requirements for being able to carry on with their work. If not, they must be removed, as per Chapter 6 of the Kenyan Constitution. In this, civil society must play a leading role to protect the Constitution. He found that they were vigorous in pushing for the adoption of the new Kenyan Constitution, but he does not see the same vigour to demand implementation of the Constitution.
- Justice Ringera made a strong argument that professionalization must not be confused for ethical employees. The main corruption cases in Kenya involves professionals like accountants, doctors, lawyers, engineers.
- The Justice identified the following as the missing links in creating an ethical society:
 - A concerted effort by all to walk the talk and not to only talk the walk.
 - An ethical commitment starting from the individual, the family, and society – “Monkey see, monkey do”.
 - To influence of appointing unethical leaders permeates the culture of business, of society and the public service. If the political leader is corrupt, his or her officials is corrupt, and it spreads to the lowest level.

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- He identified the following challenges and opportunities for Kenya:
 - The necessary frameworks are in place to address ethics.
 - The education sector failed society. It must concentrate on instilling values and ethics in the youth and students.
 - There is a glorification of unethical conduct, where criminals are praised as heroes.
 - That corruption has become internalised.
 - To rectify this, the Justice suggested:
 - Compulsory ethical training via the education system, with courses that addresses values and ethics.
 - Wealth declaration by all Public Servants and improvement of Conflict of Interest via the proposed Bill.
 - A strengthening of ethical standards for ethical leadership so that leaders will lead by example.
 - To follow chapter 6 in the Kenyan Constitution, which lays the foundation for ethical conduct for acceptable, trustworthy and ethical leadership.
 - Periodic integrity testing for Public Servants and a total ban on business to be performed with the State.
 - To hold the corrupt accountable.
 - To focus on procurement as 80% of serious corruption stems from this.
 - Improve laws to strengthen the fight against corruption, and not water it down.
 - To build capacity in key agencies to fight corruption.
 - To recover assets stolen from the public and to retain a portion to fight corruption.
 - To create strong messages that corruption is under siege and stigmatise it. This needs to involve the naming and shaming of culprits.
 - Rewards must be provided to Anti-Corruption champions. This will create a culture of good ethics.

Ideas that SA should consider for adaptation and application

- There must be a general vision around where SA is going with fighting corruption, with better cooperation between all role-players. This would entail the popularisation of the NACS to create a sense of ownership amongst the public.
- South Africa must therefore have a national campaign against corruption, including the youth, students, public servants and citizens.
- Proper monitoring of the implementation of the NACS's Implementation Plan with regular sessions to gauge implementation progress. The feedback must be shared with the public. Justice Ringera made the remark that all stakeholders in the ethics space must be prepared to do an objective evaluation of the ethics space and must reflect regularly on implementation progress.
- The Professionalisation drive of the SA public administration must not be seen as an attempt to address ethics. This is merely one part of the problem that must be addressed.
- Adoption of an Ethics Strategy for society (including education on ethics from school level to university).

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- South Africa should have regular ethics and integrity testing and remove those Public Administration employees who do not meet the requirement of Section 195 in the SA Constitution. This may be in the form of declaring them delinquents, resulting in the being placed on a register.
 - Improvement of lifestyle audits on implementation level, with consequences to those who ignore it. Resources to TAU to provide technical assistance in this regard. Also support to TAU to continue monitoring of employees conducting business with the State. To reassess the current placement of this unit as an important role player to address ethics and corruption by means of prevention, detection and resolution.
 - Improved recruitment of Public Administration officials, who must be measured against ethical standards as contained in section 195 of the Constitution. Continuation of ethics training for these officials, but also for Public Office bearers.
 - Focus on vulnerable sectors, health and procurement, to address all procurement corruption.
 - To build capacity in key agencies to fight corruption.
 - To overhaul the CARA funding model to make more money available for preventing corruption and not only fighting corruption.
 - To openly reward Anti-Corruption champions.

Day 3



The Office of the Auditor-General (virtual meeting)

Much like the South African Auditor General, our Kenyan counterpart is an independent, constitutional body responsible for auditing and reporting on the use and management of public resources by public entities. They work to ensure that public money is spent accountably, effectively, and efficiently for the public benefit, and promote principles of sound financial management. The Office of the Auditor General (OAG) reports to Parliament and subnational assemblies.

Relevance of fiscal oversight and accountability: Mandate, Experiences, Challenges and Opportunities

- Terence Nombembe represented the delegation and chaired the engagement. He introduced the members of the delegation and provided a brief overview of the issues we are interested in – i.e., corruption, fraud and maladministration.
- The OAG made five presentations. First, they gave an overview of the organization and its mandate. Second, a presentation was made on the institutional and legal framework governing the OAG. Third, a presentation was made on the OAG ethics and integrity committee. Fourth, a presentation was made on fiscal oversight. Fifth, a presentation was made on the OAG's reporting to and support of Parliament and subnational assemblies.

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- The OAG gave a detailed overview of its structure, institutional framework, legal powers, and constitutional mandate. The Attorney General is appointed by the President on the recommendation of Parliament. A special recruitment committee is convened and makes recommendation to President, after a competitive process. Once the President selects the preferred candidate, Parliament then vets the choice before the appointment is made. The OAG is funded by the budget appropriations committee in Parliament.
 - The OAG explained the different activities they conduct. Their work primarily concerns financial, compliance and performance audits, as well as audits concerning procurement and public debt. In addition, the OAG can conduct special audits requested by Parliament or subnational assemblies. They can provide services for supranational bodies like CODESA. The OAG charges fees for auditing public corporations but not agencies, government departments etc., which supplements their revenue and cash flow.
 - The OAG has a special relationship with the EACC, particularly with regards to sharing information. It also collaborates with various national, subnational and supranational entities. Where the OAG detects corruption, it reports this to the policy Directorate of Criminal Investigation (which often relies on AG reports for prosecution), the EACC, and the public procurement oversight authority. The procurement authority has relied on AG reports to disbar persons and companies from participation in procurement processes.
 - The OAG has an ethics and integrity committee which is responsible for setting ethics policies, oversight, managing complaints, developing ethics training, monitoring and evaluating corruption prevention activities etc. They have developed corruption reporting mechanisms such as an automated platform and whistleblowing hotline. The OAG also has a unit responsible for managing inputs to Parliament, representing the OAG in oversight committees etc.
 - It was a lively and involved discussion. The SA delegation engaged on issues including whistleblower protection, public participation, enforcement of recommendations, collaboration with law enforcement entities, and post-audit support. We also discussed technical issues including risk profiling, integrity testing, and methodologies for evaluating value for money.

Highlights and learning points from input

- Explored mechanisms of public participation and citizen accountability. The OAG received complaints from citizens concerning the implementation of policies and projects etc. These complaints can be earmarked for the next audit process/report on the entity concerned, or in cases concerning corruption are referred either to the police (Directorate for Criminal Investigations) or to the EACC.

- The OAG also engages in public participation through stakeholder engagements such as public forums, as well as through partnerships with civil society organisations, professional bodies, and community-based organisations.
- The OAG shared the challenges they face in conducting their duties. In particular, the expansion of the audit universe and increase in the number of clients poses a challenge as resources are strained and timelines for audits are insufficient. (This is important considering calls in South Africa for the AG to audit more, or even all, public entities).
- Discussed issues of enforcement and post-audit support. The OAG's recommendations are not always implemented, which is a recurring challenge. They are working on developing a framework for tracking, recording and reporting back to Parliament/county assemblies on implementation issues. They are also working to capacitate oversight committees in the legislatures, so that those committees can be able to make actionable recommendations. They are also capacity building within the OAG so that they are able to support implementation, working with the entities post-audit.
- Discussed witness protection and whistleblower support. There is a new whistleblower protection bill currently being debated in Kenya. The OAG itself does receive anonymous or protected disclosures and protects the identities of anonymous complaints unless required otherwise by law.
- Observed that we face many of the same challenges in South Africa, particular the high burden placed on constitutional oversight institutions when state entities are weak and poorly capacitated.

Ideas that SA should consider for adaptation and application

Members of the delegation were keen to learn from the OAG in several areas. Specific requests were made for the OAG to share its methodologies for evaluating value for money, its terms of reference for the ethics and integrity committee, its plans for integrity testing, and its MOUs with CSOs, so that we can learn from these mechanisms. South Africa does not have a methodology for testing value for money and could learn from the Kenyan mechanism.

Website/additional information links: <https://www.oagkenya.go.ke/>

Visit to the Public Procurement Regulatory Authority (PPRA)

Open and accountable public procurement system in promotion of transparency and integrity: Mandate of PPRA, Experiences, Challenges and Opportunities

The facilitator of the session, Devi Pillay introduced the SA delegation and made reference to the Public Procurement Bill, the Commission of Enquiry recommendations, and the National Treasury's role in coordinating the procurement policy, norms & standards.

There is no independent regulatory authority in SA, hence the expectation of the delegation to learn from the journey of Kenya in this regard. The PPRA presented on the mandate, legal framework and institutional structure of the authority. They gave an overview of the legislation and regulatory environment. They discussed professionalization, digitalization, open contracting, beneficial ownership transparency, and the challenges faced by the institution.

Highlights and learning points from input

- The PPRA was established by an act of Parliament.
- Its primary purpose is to address issues of corruption over and above standard guiding principles of transparency, fairness etc.
- The greatest challenge is corruption.
- Overall focus on MOU with Anti-corruption Commission, MOU with competition commission, Code of Ethics.
- Slide presentation on: the legal framework that is informed by the constitutional order and supported by constitutional enabling provision, the appeal mechanism, segregation of key responsibilities, professionalization of procurement function, digitization of the procurement function, transparency & open contracting, controlled disposal to state employees (with limited exceptions), and enforceable sanctions. The presentation discussed the procurement cycle in detail. Challenges have been identified and being acted upon with the support of GIZ.
- The PPRA works in conjunction with professional bodies which are responsible for codes of conduct, ethical responsibilities, licensing etc.
- Discussed procurement plans and how procurement links to the objectives of the state entity, as well as open access to these plans.
- Discussed the appeals structure and regulatory framework – the appeals mechanism makes the process transparent and expedient, and allows for automatic judicial review within 14 days of judgement of the appeal board.
- Discussed public participation and stakeholder engagement in the procurement cycle, including the lodging of complaints from the public at any point in the cycle.
- Discussed the role of professional bodies and licensing of procurement officials.
- Collaboration with law enforcement agencies, especially the EACC. 90% of EACC cases involve procurement corruption. There is an MOU in place governing this relationship.
- The PPRA does conduct investigations and refers corruption cases to the DCI and EACC.
- Transparency and open contracting as well as digitalization.
- The role of procurement agents as licensed and registered professionals.
- Flexible/strategic procurement for complex infrastructure etc.
- Debarment mechanisms and publication of debarred suppliers.

Ideas that SA should consider for adaptation and application

- Constitutional/legal framework for the establishment of the independent regulatory authority.
- Gauteng Provincial Treasury to specifically benchmark the Open Tender System with PPRA Kenya and act on the required enhancements/alignment in collaboration with National Treasury.

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- Ringfence and prioritize the Professionalization Framework of Procurement Function.
 - Look closely at the Kenyan process of debarment and appeals mechanism, especially the judicial review process. This will require legislative reform.
 - Focus must shift from reactive, law enforcement centric approach to a preventative, systems-building approach.
 - Great deal of interest in the PPRA given the recommendations of the Zondo Commission.
 - Innovative and creative response by Kenya to the Procurement Fraud/Corruption and challenges.
 - Lessons to be taken back and utilized to improve the situation in SA.

Website/additional information links: <https://ppra.go.ke/>

Day 4



Visit to the Ethics and Anti-Corruption Commission (EACC)

The Ethics and Anti-Corruption Commission (EACC) is a public body established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011. The Commission consists of a Chairperson and four other members appointed according to the provisions of the Constitution and Section 4 of the EACC Act. The Commission has a Secretariat, headed by the Secretary/Chief Executive Officer (CEO) to the Commission. The EACC gathers information on corruption occurring in Government and the Public sector from a variety of sources. These sources include members of the public, heads of government departments and agencies, and officials working in both the public and private sectors and the media.

Mandate: To combat and prevent corruption, economic crime and unethical conduct in Kenya through law enforcement, prevention, public education, promotion of standards and practices of integrity, ethics and anti-corruption.

Vision: An integrity driven Kenyan society

Core Values: Integrity, Professionalism, Fidelity to the Law, Courage, Teamwork and Innovation

Exchange on the Ethics and Anti-Corruption Landscape in Kenya: Legal Policy and Institutional Framework, Experiences, Challenges and Opportunities

- The current CEO/Secretary was appointed by Parliament on a 6-year single term.
- The institution started in 1999 as Kenya Anti-Corruption Committee but declared unconstitutional until 2003 when Kenya signed and ratified the UN Convention against Corruption.
 - Established a specialized agency to prevent and combat corruption.
 - Strengthen the legal framework.
- Accountability and Good Governance.
- 2010 Promulgation of Constitution of Kenya.
- Headquarter in Nairobi, with 11 regional offices across the Country.
- Proposed organizational structure with 1,508 head count, with currently 767 posts filled.
- The total budget allocated of R461 million (Kshs. 3.4 billion) within donor support received occasionally.
- The commission report to Parliament through tabling of annual, quarterly and ad-hoc reports.
- Established partnership with other agencies to streamline the justice system and enhance effectiveness.
- Kenya leadership integrity forum which includes both public and private entities.
- Member of the Law Society of Kenya and other international Authorities.
- Signatory UN on Anti-Corruption.
- Four Strategies:
 1. High impact investigations – high value cases, individual involved and the public interest on a particular case aimed at causing maximum deterrence.
 2. Asset tracking and recovery – targeting both unexplained wealth and corruptly acquired assets.
 3. Prevention – Promotion of institutional and personal integrity (Risk Assessment).
 4. Partnership Approach – enlist and maintain strategic linkages in the fight against corruption (LEA and GIZ).
- For Legal Framework and Common Corruption offences, refer to detailed presentation.
- Achievements in the past 4 years that have been recorded:
 - Assets of R3.1 billion (Kshs. 23.74 billion) has been recovered.
 - Forfeiture of corruptly acquired assets worth of R5.38 billion (Kshs.40.78 billion) in various courts across Kenya.
 - Averted a loss of R4.8 billion (Kshs. 36.5 billion) through proactive investigation and disruption of corruption networks.
 - 655 cases concluded, of which 251 cases were finalized in court or through dispute resolution.
 - Corruption Prevention –
 1. Continuous system reviews which target Ministers, Departments and Agencies and County Governments (26 National Government, 27 counties reviewed).
 2. Leadership and Integrity Codes for 136 public entities with state officers.
 3. Continuous Training under the National Integrity Academy.
 4. Vetting for 48,383 candidates for public appointments.
 5. Application approved for 1,342 public officers who opened bank accounts outside Kenya.

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- Partnerships –
 1. Member of regional and international associations.
 2. MOUs signed with peer agencies and strategic partners.
 3. Working closely with various development partners.
 4. National networks for effective administration of justice.
 - Current Challenges:
 - Budgetary constraints remain a challenge.
 - Politicization of fight against corruption and unethical conduct.
 - Slow judicial processes.
 - Weak legal framework to implement Chapter 6 of the Constitution.
 - Delays in processing of MLA (Mutual Legal Agreements).

Key discussion points

- To what extent does the entity incorporate law enforcement agencies?
- Ethics mandate: system reviews.
- How independent is the EACC from politics or influence of politicians or those in power?
- The success shouldn't just be picked from Europe, when we have Africa to benchmark against and learn from their best practices.
- Corruption is chronic – we need enforcement. Winning the war against corruption can only be achieved when all pillars are effective, ineffectiveness of one pillar affects the outcome towards winning the fight against corruption.
- Political culture of the country is also crucial, the type of people or individuals the public elect into power is critical.
- Grant corruption – done in boardroom, at highest level. The independency of LEA and the political leadership is key.
- Fight against corruption requires balance between enforcement and prevention.
- Public sees them as doing work when they prosecute than when focus is on the prevention part which doesn't influence public confidence. Reference was made to Japan which currently has 1000 to 1500 investigators. Hong-Kong due to its infrastructure projects in the pipeline see them using the investigation over prevention as disruption for possible corruption hence the massive number.
- Context is key and not all countries are the same in making that determination, choose a mechanism that works and contributes positively to the desired goal.
- In sub-Saharan countries or instances where corruption is high enforcement is crucial and where corruption is low prevention takes precedence. (Adam Greyer)
- Constitutional: what works for you.
- Independent doesn't mean disconnection from government.
- Ethics/Criminal corruption – Ethics Mandate - Derived from chapter 6 – 2010, conduct of all public and state officers. State officers are Senior and have more responsibility compared to public officers (Leadership and Integrity).
- Suitability Vetting: Weaknesses are there, recommendation is given but the parliament still processes the appointment.

- Ethics enforcement: ethical bridges: investigate and make recommendation.
- Moral vs Legal aspect.
- Single vs multi agency models.
- Kenya has a Single agency model – effective deterrence model. Depends on the context of a country. Investigation is with prevention; Parliament has a way of controlling conduct of business. Balance between enforcement and prevention, improve accountability, bring together civil society.
- Relationship with Police and Prosecution. The EACC doesn't prosecute but finalizes the investigation and submits it for the National Director of Public Prosecution – element of independence.
- Extradition of people involved in corrupt activities depends on government relations.
- Alternative Dispute Resolution mechanism is a constitutional requirement.
- Effective complaint handling procedures are necessary as they inform the protection of whistleblowers.
- Whistleblower protector bill hasn't yet been passed – being going on for 9 years and is yet to be passed by parliament.
- Main source of complaints - major corruption: through referrals; anonymous complaints
- Turnaround:
 - Allocation committee review progress from time to time.
 - Complaint vs whistleblowing: Decide to remain anonymous and are whistleblower. Agree or decide to be a complainant and be a witness in the case.
 - Protection of the sources is key; intelligence officers don't go to court.
 - Anonymous reporters or complainant as opposed to Whistleblowers (CEO believes that is the NGO concept, "tomato sauce vs ketchup").

Best Practices/takeaways to use in South Africa

- Ethics in schools at both primary and high school, by having clubs in the schooling environment. Infusion of compulsory ethical training in the education system.
- Declaration of interest by all public official across all levels within government institutions.
- Citizens play a critical role in vetting those who want to ascend to the political office.
- Capacity building.
- Annual Publication of a list of shame, the publication will effectively stigmatize corruption and contribute to much needed cultural re-engineering.
- Consider rewarding anti-Corruption champions, by proactively identifying, recognizing and rewarding those who have blown the whistle on corruption.
- Partnerships.

Visit to Transparency International – Kenya chapter

Transparency International – Kenya (TI-K) has embarked on a six-year journey towards its vision of a corruption-free society. TI is part of the Civil Society Movement and focusses amongst others on the following:

1. Citizen demand and oversight,
2. Beneficial ownership transparency,
3. How to involve citizens in the public budgeting process and monitoring thereof,
4. Planning, monitoring and evaluation

TI has adopted a new strategic plan, outlining the following intervention areas:

1. Citizens demand and oversight,
2. Natural Resource and Climate Governance,
3. Public financial management, and
4. Institutional Development.

TI experience includes the following:

1. Red card campaign during the elections,
2. Social vetting of candidates,
3. Campaign Financing and monitoring using Campaign Watch monitoring,
4. Use of media and investigative journalists,
5. Coalition Building,
6. Public expenditure tracking
7. Public interest Litigation
8. Health and education
9. Enforcement of suitable and transparent public resource management systems,
10. Transparency and accountability in the management of public debt Citizen Manifesto
11. Study on Tax Incentives and economic inequality.

Under the Policy and Institutional Frameworks, TI focuses on the following initiatives:

1. Beneficial Ownership Regulations case studies,
2. Working with Counties,
3. Facilitating Institutional strengthening of public institutions

TI also focuses on the use of Information and Communication Technology (ICT). Amongst others in this regard, TI has introduced Rada Corruption database, Public Audit Database, Dashboard on detailed analysis of the county governance status.

TI has also focused on Political Party funding.

TI works and collaborates with the government and sits on government oversight bodies.

TI has developed Parliamentary Oversight tool which assists with the assessment of parliament on its oversight.

Article 10 of the Kenya Constitution upholds values that include public participation. While there are limitations in the procurement process with regard to confidentiality of procurement information, TI does facilitate monitoring of project implementation including the monitoring of Public Debt.

TI has also facilitated the creation of county anti-corruption forums.

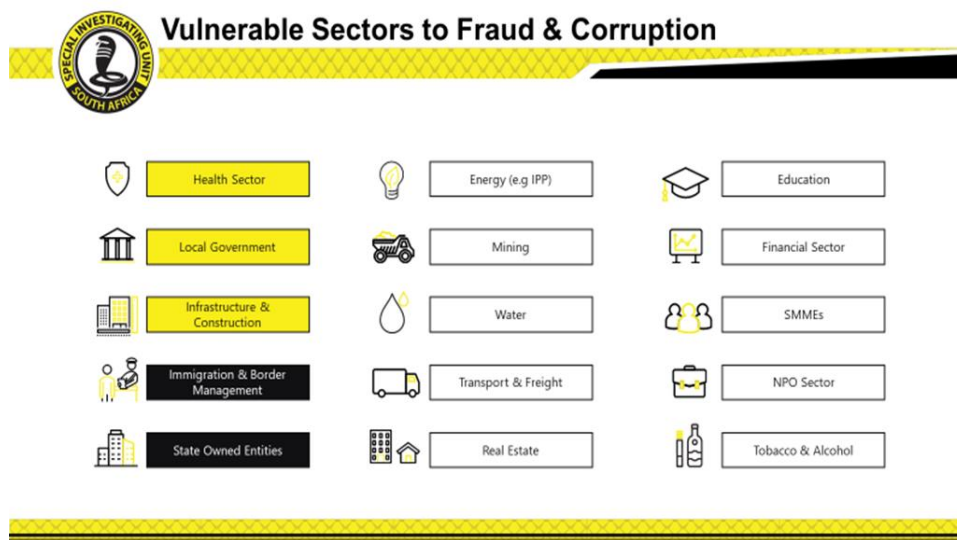
Best practices/takeaways to use in South Africa

From the meeting with TI, it is clear that involvement of Civil Society is entrenched in Kenya.

In comparison, the South African National Anti-Corruption Strategy encourages a whole of society approach which includes the involvement of Civil Society in the fight against and prevention of corruption, maladministration and malpractices.

South Africa has established Anti-Corruption Task Team (ACTT) constituted by Law Enforcement Agencies and other departments and agencies. ACTT action plan consists of four programs. The fourth program focuses amongst others on the inclusion of all stakeholders including Civil Society. This fourth program is led and coordinated by the SIU. This program has enabled a Risk-based Approach to identification of Corruption Vulnerable Sectors.

Below are the vulnerable sectors identified:



To date, there are three Anti-Corruption Forums created as follows:

1. Health Sector Anti-Corruption Forum, launched by the President in 2019,
2. Infrastructure Build Anti-Corruption Forum, launched by Minister of Public Works and Infrastructure in 2021.
3. Local Government Anti-Corruption Forum , launched by Minister of Cooperative Governance and Traditional Affairs in 2022.

These forums include participation of civil society amongst other stakeholders and have demonstrated that a sector approach to the fight and prevention of corruption, maladministration and malpractice is an effective approach. Parties to the forums have adopted terms of reference according to which the forums are governed. The Forums are chaired by the SIU and Co-Chaired by the relevant Departments. An initiative is currently underway to compile a report on the effectiveness of the forums.

Meeting with the Uganda delegation

The Uganda delegation attended the meeting at Gem Suites Riverside Apartments and Hotel in Nairobi. The original plan was that South Africa Delegation would visit Uganda, but due to the current situation it was agreed that it would be prudent to cancel that leg and rather request the Ugandan presenters to travel to Nairobi.

Governance and security programme

The discussion centered around the Governance and security programme/ Hub.

Key takeaways:

- We should not lose the bigger picture of illicit financial flows: Corruption, money laundering and asset recovery.
- Effectiveness of institutions positively correlate with external environment: Political and social dictates.
- Transparency and public call for action without consistent enforcement action will lead to cynicism.
- Covert ant-corruption action and nudging systems and society is required to build a nation-state.
- Elusive best practices and plotting reforms on the governance trajectory.

Inspectorate of Government (IG):

The presentation covered the experiences and lessons of the IG in the fight against corruption and promoting accountability and transparency. There was a ten-point program of the National Resistance Movement: program item 7 was to; “eliminate all forms of corruption and misuse of power” once and for all. First established by the Inspector General of Government statute in 1988 as a department in the President’s Office with both the Anti-corruption and Human Rights Mandate. The Constitution of the Republic of Uganda 1995 as amended entrenched it therein under chapter 13, which prescribes its mandate, functions and powers. The IG unit comprises of technical staff who are of various competences including Lawyers, Accountants, Social Scientists and forensic Analysts. The IG appointment board appoints all IG staff on 4 year renewable contracts. The IG is funded through annual appropriation by Parliament (Consolidated Fund). It also receives funding support from development partners such as the World bank, Danish Development Aid, European Union and GIZ.

Creatures of Statutory Action (acts of parliament)

Public Procurement & Disposal of Public Assets

Financial Intelligence Authority

Creatures of Executive Action

Directorate of Ethics and Integrity

State House Anti-Corruption unit

The Department of Ethics and Integrity coordinates the Inter-Agency Forum

Protection from Political environment

- The Ugandan Constitution affirms the independence of the Inspectorate of Government. It is only responsible to Parliament and reports to parliament by way of Bi-annual reports with copies to the President.
- Whistleblower Protection – Whistleblower Protection Act of 2002 provides responsibility mechanisms and remedies for whistleblowers. Provides for incentives of 5% of recovered funds
NB: there is a spillover or knock-on effect on relatives of whistleblower/s. This needs to be factored in for costs and duration of protection.
- Societal Mobilization – the IG uses the Framework of Transparency, Accountability and Anti-Corruption (TAAC). TAAC is a framework comprising a bundle of safeguard interventions implemented to identify, profile, monitor and control risks associated with project implementation. The interventions are:
 - Citizen and stakeholder engagement using various tools and platforms to promote citizen participation in providing oversight in service delivery.
 - Sensitisation and awareness to empower citizens with information and knowledge about government programs and their role to demand for accountability and improved service delivery.
 - Monitoring and inspection of implementation of government projects and provision of service delivery.
 - Enforcement where the above three interventions have not been successful.

Ideas that SA should consider for adaptation and application

- Corporate status and the need to sustain independence.
- Use of research to generate and target interventions (a few are Cost of Corruption sponsored by GIZ Uganda, Impact evaluation on TAC, NIS, IV and Public Service Delivery studies).
- Establishment of Leadership Code Tribunal (LCT) for quick adjudication of leadership code breaches.
- Citizen apathy towards corruption and the corrupt: opportunity for citizen engagement (why lynch a chicken thief in their poor neighbourhood but do not rise up when service delivery in their localities is extremely poor?)
- Mainstream TAAC in budgets, plans and projects of government (the design options).
- Leveraging abilities of civil society organs for oversight.
- Leveraging donor financing to the institution as in DRDIP, NUSAF projects.
- The IG ODS, CMS+, website (registration, supervision, declarations, and identification of defaulter and intelligent verification tool, integrating with other government agencies).
- Low digitization of government systems, especially local governments.
- Cash economy.
- Dominance of informal sector.
- Whistleblowers motivation and subsequent protection. Information for benefit from a portion of the recovered assets.
- Legal procedures e.g., appeals delay conclusion of cases/results (need to use Alternative Dispute).
- Involvement of media and in particular investigative journalism in exposing corruption.
- Effective use of information, communication and technology (ICT) can aid in the detection, investigation and reporting of corruption.
- Stakeholder engagements with duty bearers to improve transparency, accountability and anti- corruption (TAAC).
- Constantly engage policymakers for adequate budgetary funding to cover both physical and human resources.
- Lifestyle audit campaign launched by the President.
- Giving corruption a face (redefining corruption in the local context).
- Numerous anti-corruption institutions. What is the ideal according to literature? This can be interrogated further through research.
- Assessments of the “cost of corruption” in monetary terms. How much should be invested and for what returns?
- Application of risk management approaches to anticorruption.