Problem Of Corruption in Kenya

Kenya's competitive edge has long been held back by high corruption levels that have infiltrated each and every sector of the economy. Kenya ranked 137th out of 180 countries in the Corruption Perceptions Index in 2019, with a perceived corruption score of 28 out 100 of the countries public sector (Where 0 is perceived as being highly corrupt and 100 as very clean. The country ranked in the lowest quarter of countries that are part of the corruption index we are also part of the lowest scoring region which is Sub-Saharan Africa. Our perceived corruption index is at its highest in the past five years, it was 25 out 100 in 2015. (Transparency International, 2019)

Corruption is estimated to account for 8% of gross domestic product (Mwangi, 2008: 281). Current Kenyan Treasury estimates show that at least 20–30 percent of budgeted monies are lost each year through rigged bidding, fraudulent procurement and so on (Kariuki, 2011: 60). The immense opportunity costs in terms of human welfare and national development of this gap in effective expenditure cannot be doubted. To borrow a phrase from Adebanwi and Obadare (2011: 190), corruption in Kenya often appears to be 'a directive principle of social policy'.

The corruption in Kenya is attributed to the weak judicial system and frequent demands for kickbacks i.e. bribes by public officials, as well as government tenders being handed out to contractors who have not intention of offering services to the tender bids that they won through unlawful methods with the aid of government officials. In addition, the widespread tax evasion of Kenyan civilians and civil servants alike. Furthermore, fraud in public procurement is rampant. All these factors contribute to hindering Kenya's long-term economic growth.

Report of Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Republic of Kenya, 2004), more widely known as the Ndung'u Report after its chairperson (Clay, 2005: 4). The Report highlights the role of the legal profession in land grabbing. It presents an image of lawyers wholly at odds with that which the profession presents to the Kenyan public and, indeed, with the role envisaged for it in the governance agenda of donors and the IFIs. In this section we read the findings of the Ndung'u Report using Clay's satirical method, interpreting lawyers' involvement in land-grabbing as an instance of institutional hypocrisy.

Land grabbing, which was inaugurated by colonialism in Kenya, has continued in diverse forms since independence (Harbeson, 2012; Boone, 2012). While corruption in land matters is both widespread and widely recognized to exist in Kenya, it has received less international attention than examples of graft involving export credit and procurement scams (Southall, 2005; Manji, 2012). The latter has involved secret looting on a grand scale (Wrong, 2009: 61–65). By contrast the form of corruption recorded by the Ndung'u Commission is distinctive for the prominent – and, as we show below, indispensible – involvement of mid-level professionals and bureaucrats.

The Ndung'u Commission was appointed by President Kibaki on taking office in 2002 in pursuance of the new government's generalized commitment to deal with widespread corruption (Kibaki, 2004). Its report, made public in 2005, provides a detailed account of the illegal land awards made over the years to the families of President Kenyatta and President Moi,

to numerous former ministers, members of parliament and civil servants, as well as to individuals in the military and the judiciary (Republic of Kenya, 2004: 182–183). It is admitted that it only provides a snapshot of the illegal and irregular land allocations that have actually taken place (Republic of Kenya, 2004). The Commission found that ‘illegal allocation of public land is one of the most pronounced manifestations of corruption and political patronage’ in Kenya (Africog, 2009: 10-11; Republic of Kenya, 2004: 192) The public land affected has included forests, national parks and game reserves, civil service houses, government offices, roads and road reserves, wetlands, research farms and the lands of state corporations. The Report confirms that illegal allocations took place either on the direct orders of the President of the day or at the instigation of prominent, senior public officials and well-connected business people and politicians (Republic of Kenya, 2004: 14). Those who benefited included ministers, senior civil servants, politicians and business people, as well as religious groups of all denominations (Republic of Kenya, 2004: 182). The Report also provides an invaluable source of information about the specific legal mechanisms used to defeat ‘the public interest’ in the administration of land and the role of practising lawyers in this (Republic of Kenya, 2004: 8–9; Southall, 2005: 146). Of the wide variety of ways in which lawyers used their technical knowledge and professional skills to facilitate the illegal and irregular acquisition of land we focus on just four in the following discussion.

However, when the Commission tried to trace the names of those who had acquired land through the structures of companies, it encountered serious problems in identifying the those behind companies that had been allocated land. Sometimes the companies did not exist in law (Republic of Kenya, 2004: 40). In these cases, individuals had acquired blank Certificate of Incorporation forms that they submitted to acquire public land, but which were not filed or reflected in the records of the Companies Register. In other cases, companies that had not been fully incorporated acquired land (Republic of Kenya, 2004: 40). The Ndung’u Report shows that most high profile allocations of public land were made to companies incorporated specifically for that purpose, largely to shield the directors and shareholders of such entities from easy public view (Republic of Kenya, 2004: 40). It was apparent to the Commission that the skills of lawyers familiar with Kenyan company law had been engaged to allow those involved in land corruption to hide their true identities.

A high level of corruption proposes a great threat to Kenya’s natural resources. Six senior officials from the Kenya Wildlife Service (KWS) were suspended due to alleged corruption and gross negligence of duty that lead to pervasive poaching (Save the Rhino, 2014). In spite of the government’s efforts to reduce corruption in the KWS, the conviction rates for corrupt officials and wildlife offenders are very low (Save the Rhino, 2014). Extensive deforestation and forest degradation in Kenya are direct result of extensive corruption by the forest management officials (United Nations Reducing Emissions from Deforestation, 2013).

It is alleged that some members of the Kenya’s Forest Service colluding with loggers in in unlawful logging corruption schemes (Standard Media, 2016).

High-profile government officials are involved in a plethora of corruption cases. Former governor of Nairobi County, Evans Kidero was arrested in April of 2019, with him facing charges of illegal procurement and payments schemes. Similarly, the current Governor of Nairobi County, Gideon Mbuvi was brought under similar scrutiny in December of 2019 and was thereafter arrested. Other top officials arrested in recent years include the Chairman of the National Land Commission, the managing director of the Kenya Railways Corporation and the permanent

secretary of the Ministry of Public Service (Voice of America News, 2019). This level of unchecked corruption in the highest offices in the country leads to public outcry and mistrust of the Government officials and by in large the government. The citizens of Kenya cannot in good faith take Kenya's, "War on Corruption" that has been the basis of President Uhuru Kenyatta's domestic policy seriously with non-if any of the aforementioned officials facing any convictions and incarceration. At most the culprits of these crimes received a slap on the wrist.

Of the 27 Kenyan Government officials charged in a crackdown that involved the embezzlement and fraud of two hydropower and irrigation dams that never were, the highest-profile is Kenyan Finance Minister Henry Rotich. A Harvard-trained economist, Rotich pleaded not guilty to a raft of charges including abuse of office, conspiracy to defraud the public, failure to comply with guidelines relating to procurement, and financial misconduct, among others (Aljazeera, 2019). The roots of those alleged crimes stem from the Arror and Kimwarer dam projects in Elgeyo Marakwet County in Kenya's Rift Valley region. An Italian firm, CMC di Ravenna, won the contract to build the dams four years ago. But ground has not been broken on either project, despite $180m being paid out, according to prosecutors (Mpungu, 2019).

President Kenyatta has said that he will not relent in the fight against corruption until "the country is swept clean of corruption." The President is having a hard time enforcing on his promises accusing the country's judiciary of weakening the war on graft by releasing suspects on favourable bail terms or issuing lenient sentences. In February of 2019, Kenya's Chief Justice, David Maraga, added more magistrates to the anti-corruption court and directed them to sit longer hours to expedite the caseload (Mpungu, 2019).

Financial abuse, graft and fraud have long plagued Kenya, hampering its development, exacerbating inequality and suppressing its economic potential. The ongoing "War against corruption" is at a precipice, with the laws and judiciary in place to prosecute corrupt individuals and the government agencies tasked with investigating and exposing corruption. It is not a matter of how but when will the law and justice prevail in Kenya in the fight against corruption.

References

1. Transparency International e.V. (2019, November 22). Transparency International - Kenya. Retrieved from https://www.transparency.org/country/KEN
2. Harrington, J., & Manji, A. (2012). Satire and the Politics of Corruption in Kenya. Social & Legal Studies, 22(1), 3–23. https://doi.org/10.1177/0964663912458113
3. Mpungu, P. (2019, July 26). Kenya's corruption crackdown: New era, or political theatre? Retrieved from https://www.aljazeera.com/ajimpact/kenyas-corruption-crackdown-era-political-theater-190726154554617.html
4. Kenya Corruption Report. (2016, April 26). Retrieved from https://www.ganintegrity.com/portal/country-profiles/kenya/
5. Ombuor, R. (2019, December 11). Is Kenya's Government Fighting Corruption or Just Conducting Political Theatrics? Retrieved from https://www.voanews.com/africa/kenyas-government-fighting-corruption-or-just-conducting-political-theatrics