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AFRICAN PARLIAMENTARIAN NETWORK AGAINST CORRUPTION *Hurdles and successes in Kenya*

An exclusive interview with Hon. Musikari Kombo, Ass. Minister for Planning and National Development, and Chairman, APNAC-Kenya



What is APNAC and what does it do?

The African Parliamentarian Network Against Corruption (APNAC) was formed in 1999 drawing together parliamentarians from across the continent who were committed to the fight against corruption. We needed to use this association to share experiences in the fight against corruption. Our chair is in Kampala

but we have chapters all over Africa

The Kenyan chapter of APNAC has been instrumental in coming up with legislations that would help fight corruption. In the Anti-corruption and Economic Crimes bill and the Public Service Ethics bill, APNAC had a lot of input. It worked together with the Attorney General to come up with these legislations. Two years ago, after the demise of the Kenya Anti-corruption Authority (KACA) the KANU government wanted to introduce an amnesty clause in the constitution, but APNAC fought a heavy battle against it.

Thus APNAC looks at legislations and how they can strengthen anti-corruption efforts. Later in the year, APNAC is going to hold an international high profile conference here in Nairobi which will bring together parliamentarians from across Africa. The theme of the conference will be *New Challenges for Parliamentarians in the Fight against Corruption*. Corruption gets sophisticated all the time thus posing new challenges. The corrupt are always inventing new methods in the game and we have to counter that. So APNAC is looking at those challenges and what the parliamentarians can do to deal with those challenges.

What were the challenges that APNAC faced in the previous regime in the fight against corruption?

There was lack of good will from the then government; it was not interested at all in fighting corruption. So they placed hurdles before us all the time. Now we are lucky that the goodwill is there and the new challenge is how to get the Kenyan society to accept that it is their role and everybody's role to fight corruption. APNAC intends to go advocate for this and get Kenyans to understand that we now have goodwill from the

top. All we need is goodwill from the bottom and together we can fight corruption.

What would you say were the successes that APNAC achieved in the previous regime?

We made sure that the issue of corruption remained on the agenda, and was also picked up by the donors. The fact that APNAC kept this on the agenda was good for the country. The fact that the current government has placed it top on their agenda is as a result of our success and we are proud of it.

What are APNAC's strategies for working with other partners outside parliament such as civil society?

We are already working with civil society. Transparency International- Kenya (TI-Kenya) is a good example, and it also happens to be APNAC's secretariat. We have also built coalitions with the churches. We attended the 10th International Anti-Corruption Conference in Prague in 2001. We went as a coalition of civil society, government and parliament. APNAC and TI-Kenya were instrumental in putting together this coalition. We have also been working on transitional justice issues with the civil society and churches.

However, my big dream, that I hope to achieve this year, is to take APNAC to the grassroots through elected local council leaders. We have communicated with the Nairobi Mayor his Worship Mayor Joe Aketch that we would like to establish a chapter within the Nairobi City Council (NCC)

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...APNAC: hurdles and successes in Kenya

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We want the Kenyan chapter to have a network of elected leaders at the grassroots. If all the local councils could be networked, then we can be holding forums to learn from each other's experiences. That would help bring about a coordinated war against corruption.

Then we would encourage these elected leaders to incorporate other players such as churches and community-based organizations so that we can effectively reach people at the grassroots.

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How is APNAC assisting the current government in the fight against corruption?

Last year we had 24 committed members in APNAC. Twelve of them got re-elected to the house and eight of them are in the cabinet. So the government is heavily stocked with APNAC members, and that is why the anti-corruption crusade is very strong.

What is your view on the issue of declaration of assets as a means to address corruption?

Corruption has no quick fix. People hurry issues and want immediate results. In the Kenya context, the fact that we now have leaders who believe in the fight against corruption is in itself a result. The fact that everybody can talk about corruption is a result. These are achievements to be proud of.

There are leaders from the previous government now in the current government. It has been alleged that they are dragging down the government's anti-corruption efforts. What is your opinion on this?

There have been various issues on the whole question of the declaration of assets. The act sets clear time frames, for instance that by 2nd August all the rules must have been gazetted. Now the process of gazetting the rules is going on, secondly the 2nd of August has not come. The rules of parliament, the rules for the electoral commissioners, the rules for the public service commissioners which are all supposed to be done by parliament are ready and are going to be gazetted before 2nd August.

The law says that thereafter, we will have 60 days within which you must declare your assets. So until October, one cannot say that we are late because we are operating within the legally set time frame.

It has always been thrown at us that there were people in government from the old regime, but there will be no sacred cows. If any of the current leaders is found to be corrupt, they will be dealt with accordingly. I know this is going to be the case and the President is serious about it. But we should not be afraid.

The fight against corruption has always been seen to be donor driven i.e. efforts are geared towards getting donor support. What are your comments on this?

On the contrary, people may not have realised that the donors jumped on what APNAC and other groups had initiated. In this regime we believe that the fight against corruption is good for Kenyans and not anybody else. If the donors came and pushed us to do things not in our interest, we will not do them. We will go at our own pace as we understand it. It so happens that we and the donors have a common interest, which is good for all of us. Our assurance to people is that this regime believes the fight against corruption is for the good of this country and not for outsiders.

What, in your opinion, are the challenges facing the anti-corruption crusade so far?

The main challenge is that corruption is done in darkness and done with a lot of sophistication. Secondly, the new regime is looking into cases of people in the old regime who were corrupt and so the accusation of witch-hunting really comes to the fore. The new regime therefore has to create the balance between dealing with those people who are criminals, and not to be seen to be witch-hunting anybody. This is a delicate balance and especially so because it is dealing with transition and justice in this transition period. The old group will always cry foul and say they are being victimised, vilified and so on. It is a major challenge and we have to deal with it within the rule of law.

We will also balance it with how much should we dwell with the past while at the same time moving forward.

What would you say are the achievements of the new government in the fight against corruption so far?

The fact that we have passed the anti-corruption and economic crimes legislation is a major achievement. We have also passed the Public Officers Ethics bill. Now we are moving on to having people declare their wealth. These are major achievements.

The Goldenberg enquiry, which is also a process in the fight, is another instance which is actually making people understand the magnitude of the crimes. There is also the judicial reforms and the Harambee taskforce.

What is the vision of APNAC in the next five years?

The vision is to have corruption in Kenya totally under control. APNAC believes corruption has been the cause of economic decline in this country. If we can get every Kenyan wherever s/he is to know and accept that to be served is their right and they don't have to pay for services means Kenyans themselves will say no to corruption. At the moment, Kenyans think corruption is a way of life and this ideology should be changed completely.

MORE ACTION, LESS TALK NEEDED IN CORRUPTION FIGHT

An interview with Hon. Justin Muturi, MP and Opposition Chief Whip

What is your view on anti-corruption measures by the government?

The measures taken so far are encouraging but they don't go far enough to address all the problems that exist. The measures are still focused on the legitimate framework or putting structures, but as yet people are a bit more anxious to see action. Parliament is putting law(s) into place. We have been discussing a code of conduct for parliamentarians and parliamentary staff, the electoral commission, the public service commission and the comptroller and auditor general.

Appointing commissions like the Goldenberg inquiry is

encouraging. These are good moves and measures but people still want to see action. People who eight months ago would point fingers at obviously corrupt cases and people have suddenly stopped holding those views and decided to let the law take its own course. This makes one wonder whether past allegations of corruption were merely based on hear-say or hard evidence obtained from police investigations.

Seven months is a long time to considering that citizens know have been involved in what would be called grand corruption. Since no action has been taken in these cases, is it that grand corruption only existed in our minds? There are obvious cases of land grabbing, illegal land allocations and tax evasion among others. Yet there is nothing the government has done about this.

There are rumors that some of those who have been evading taxes are now paying quietly, but that is not good enough because the laws provides for penalties in addition to what one owes the government in tax and its accumulated interest. So if all this things are being done quietly, are we getting value for the effort we are putting? It's like there is something amiss somewhere.

We do know that people have been avoiding to appear to be witch hunting, but where there are clear cases of breach of the law, you cannot start taking half measures. We also know of people who are quietly paying what they had avoided to pay in breach of the law and are themselves members of government.

We have always talked about land grabbing and now we are setting up a commission. Isn't land grabbing a serious form of corruption? The 10th and 11th Parliamentary Investment Committee (PIC) reports have cases of Agricultural

Development Corporation (ADC) farms and names of people who were allocated this land under dubious circumstances. Kenya Agricultural Research Institute (KARI) land has been misappropriated and allocated to known personalities, ADC land has also been allocated to people who are well known. I do appreciate that some are on both sides of the house.

Parliament has already recommended that these people should be investigated because the process through which they acquired these properties was not only irregular but actually against the existing laws. But the government has instead set up a commission.

If we address corruption in half measures we will not get far. People are merely going to metamorphose into what they were in the past years.

At the end of the day, we will be left wondering if it was worthwhile putting into place all these regulations.

Is the declaration of wealth by public officers a necessary and effective way of curbing corruption?

It can only curb in a very small way in that, you know that in future whatever you acquire will be compared with what you declared. If you acquire things that are disproportionately out of your way, you may be called upon to account for it, hence this may help curb corruption. And remember in the anti-corruption act there is that issue of unexplained assets. So in a sense it may help to curb corruption in the future.

But Kenyans are very innovative. We are assuming they will not come up with other tricks to go round the law with regard to declaration of wealth. Of course we don't know the position with regard to holding of companies trusts outside there. It is an area which only addresses the middle level players and not the movers and shakers of power.

What recommendations would you give to make sure past crimes are penalised?

The law has always existed. It may well be we may not be retroactive in the sense that we cannot now declare something that happened yesterday to be a crime if by the time it happened yesterday it wasn't defined as a crime by statutes. Nevertheless there are those areas of economic crimes which are obvious and which existing laws could still punish. But we don't appear to have the will power or sufficient muscle to confront that past.

We are doing things in piecemeal, in half hearted measures. We are apparently not willing to address the past which is extremely important for Kenyans. If we ignore it, we may



More action, less talk in corruption fight

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not have moral authority to talk about the future. A crime is a crime and unless somebody has been taken to a court of law, found guilty or has pleaded guilty and sought pardon, we cannot just give a blanket amnesty. We need to know the extent of crimes committed. We may be talking about things that are merely but a tip of the iceberg.

I suspect there are many investigative reports with the police and various other arms of government which are gathering dust in various cupboards in government offices. The government should investigate, prosecute and punish. If a person is found guilty, he should be dealt with according to the law. They don't necessarily have to be re-sent to jail.

... are mere pronouncements which will not take us anywhere... there is too much talking and very little action

As a former magistrate, I know that we have a lot of leeway even when dealing with convicted criminals. But our courts have not been innovative and proactive in the way they have applied the law. They've tended to be extremely conservative in implementation of the law.

On the judicial reforms we are only reading about investigations and task forces. These are mere pronouncement which will not take us anywhere. There is too much

talking and very little action. We really need to move to the area of action.

What is the role of the opposition in the fight against corruption?

The opposition has to keep prodding the government. Whatever we do as the opposition, the implementation still lies with the government. It is for that reason that the opposition must never keep quiet but tell the government that, "that which you have done is good but you could do better". It is for us to urge the government to go further than it has in the fight against corruption.

In your opinion, why has Kenya been rated as one of the most corrupt countries?

I suppose it is because of institutional collapse and decay. It had to do a lot with people fearing the sudden agitation for clamor for multi-party politics. Certain people started feeling threatened that their positions would go and believed the best course of action was to start amassing wealth disregarding the way it was amassed. It is moral decadence, disregard for the rule of law.

There has been evidence of serious decay. We need to address the issues of values; what do we value most? Do we value honesty? Even in religious circles, people do not clap when a looter tells you "don't contribute anything; I am going to build the church for you". It is a question of moral decadence and no serious effort has been taken to arrest the situation. Unless we show greater seriousness we will fall into the same trap.

PLAYING THE WATCHDOG'S ROLE

Civil society's participation vital in combating corruption

An interview with Gichira Kibara, Executive Director, Centre for Governance and Development

What was civil society's role during the last regime in addressing corruption?

The issue of de-legitimation of corruption was actually done by civil society because the previous government had no interest in fighting corruption. The private sector was too scared to point fingers at those who were corrupt because most of those involved in mega corruption were in government. The private sector in many countries cannot afford to confront government. Therefore it was the civil society that started the campaign against corruption by exposing people who were corrupt. The media, for instance, did a good job especially the investigative journalist who blew the whistle on corruption scandals such as that of the Goldenberg. Most of the sources for the media were actually civil society.

The civil society also provided the intellectual leadership in these areas. They have for instance analysed the impact of corruption on public finance. Transparency International- Kenya (TI-Kenya), Centre for Governance and Development (CGD), and Centre for Law Research International (CLARION) have done studies on this. So, the civil society is actually the one that led the fight against corruption.

As a member of the civil society, what is your view on NARC's efforts in fighting corruption?

The efforts are laudable so far. Clearly the intentions are there although they are uncoordinated. The government seems to assume that corruption in Kenya, is not as deep as it really is. For instance, they do not appreciate that corruption was part of the structure of the government and oiled the entire government system.

So unless you dismantle the structures and remove the people who were involved, and they are very many in government and in very key positions, there is no way you can fight corruption. So far the measures are still in the initial stage. There has been no radical campaign that has been embarked on. For instance in terms of legislation, only two bills have been passed by parliament, but the institutions themselves that are supposed to fight corruption have not been firmly put in place such as the Kenya Anti-Corruption Commission. Even the radical surgery promised in the judiciary has not been done.

Currently, what is civil society's role in the fight against corruption?

The civil society still continues in its traditional roles, which are normally to point out where corruption is taking place and also to do analysis. CGD is, for instance, doing a study on Parliamentary Investments Committees report while TI-Kenya and CLARION are doing a number of studies.

The government is still very young and like a child is trying to run before it can crawl. There is a lot of excitement both in the populace and government as to the capacity of the government to fight corruption single-handedly, which is totally mistaken. The fight against corruption is multi-sectoral and multi-dimensional which requires participation of all stakeholders

including the private sector, government and civil society. It is not something that can be fought by trying to submerge any of these sectors into the other. All of them have their contributions to make, although one does not expect the hostility that has been there between the then government and civil society to continue. There is going to be more collaboration between the two than before.

Will civil societies be rendered redundant now that the government has embraced civil societies' agendas such as corruption, HIV and governance?

The work of the civil society can never be done by government, nor can the civil society do the work of government. The civil society has been trying to fill gaps where the government was totally inadequate. But that does not mean that the civil society does not have its own role which is separate from government. One role, for instance, that can never be removed from civil society is that of being a watchdog. However good and progressive a government is, it cannot audit its own books nor be accountable to itself. In any case, civil society is simply an organization of citizens. So if we accept that government is elected by people and people form their own organisations called civil society, then the government must always be responsible to civil society. Civil society can never be swallowed or its agenda submerged by government. There is no government anywhere that can survive without civil society, even in the most democratic societies.

The government is incorporating so many members of the civil society. How will the checks and balances on the government in corruption and other areas be done?

What people don't understand is that the role of the civil society in the Kanu regime was a very difficult one. Civil society had to literally replace government. But civil society still works even in countries where good governments exist. So the idea that civil society is not required where there is a good government is mistaken.

There is no incorporation of civil society people in government to a detrimental extent. Actually, there are much fewer people incorporated in government than had been expected. In any case the entire government in all societies comes from civil society. If we go by the understanding that civil societies are organizations of society, then everybody comes from the civil society. So civil society is not a separate entity from the society, but is organizations of the society that nurture people into leadership especially when there is a big change like the one we recently had.

How best can citizens be involved in the fight against corruption?

There are various ways of involving people. One is to make sure the structures of governance allow them participation in decision making. If people have a say in, for instance, the way land is allocated by the lands board at the local

...civil society's participation vital in combating corruption

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level, or how the local authority spends its money, and they can hold the council accountable, then they can help fight corruption.

The challenge is for government to create structures that recognize people's participation and allow people to hold government accountable. So long as the government is not willing to be held accountable, there is no point of talking about zero tolerance for corruption.

The other way is by creating awareness on the damage that corruption causes in order to change the attitude of people towards corruption. This will make them feel they are suffering because of corruption.

The government should also employ public awareness mechanisms in creating awareness on how the people can help arrest corruption. Dissemination of this information can be done through radio programmes. The Kenya Broadcasting Corporation, for instance, should introduce some regular programmes to this effect and dedicate some time each day for a call-in show where people can talk about corruption.

The other way is to open up an ombudsman's office where people can report incidents of bribery or denial of services. Most people, especially the poor, are not corrupt except through coercion. They are forced to bribe because they have to get services, so if services are actually available many people would not bribe.

When people say that for bribery to take place there has to be a giver and a receiver, it is actually not true. The guilty person is the receiver because he is making it impossible for the giver to get essential services. For instance, to get a birth certificate, the service provider makes it impossible for one to get it without paying something. If the government makes it impossible for those offering public services to deny these services, then bribery will die on its own. So bribery comes from the demand rather than the supply side. Otherwise there is nobody who will voluntarily go and give a bribe.

We should also encourage whistleblowing especially through removing inhibitive legislation such as the defamation laws and the oath of secrecy for civil servants. People should know exactly what the government is doing in everything including openness in tendering, the Tiomin issues and others, which should be made public and make the information available to the public. Then the people must be encouraged to report corruption by providing places where they can report corrupt cases as well as providing protection to them.

Concerns have been raised that the fight against corruption is to ensure resumption of donor funds. What is your view on this?

There is need for concern in terms of the ownership of the fight against corruption. So far it is clear the campaign is

not people driven. It is still a government-donor agenda, not because people do not believe corruption is bad, and not because people do not want to fight corruption, but they have not been given the opportunity to be players, nor facilitated to express their outrage against corruption. When citizens started arresting policemen for corrupt deeds, which is allowed by the law as a *citizen's arrest*, they did not get any support from the government, but instead were harassed. There are no mechanisms to effect people's participation in this fight.

What would you say has been the role of the opposition in the war against corruption?

The opposition's parliamentary performance has been good. They have already defeated two bills. The opposition has the capacity and it is an illusion that people have that it is a weak opposition. The only weakness the opposition has, and especially Kanu, is that they are afraid of their past because they are the ones that caused the mess that is now being cleaned up. Otherwise, in as far as holding the government accountable is concerned, they have the capacity.

What would you say are the shortcomings or failure in the government's effort against corruption?

The most critical failure is the failure to provide people with the capacity to fight corruption. Ownership of agenda is still seen as a government-donor agenda, and surely you cannot fight corruption by making it a private agenda. The campaign has been projected as if it is a government one and has nothing to do with the citizens.

There is lack of provision of facilities such as whistle blowing under the new corruption act. There's also the issue of disclosure being kept secret which is a failure because it means that that information is only for the government and ordinary people, media and civil society members cannot access this information and thus cannot fight corruption.

The government does also not have the capacity for prosecution of corruption cases, and has not prosecuted any case so far this year. To prosecute corruption, especially mega-corruption, requires serious capacity and that capacity is not there. It will take sometime before they start this as it is not as yet adequately addressed in our laws.

...citizens started arresting policemen for corrupt deeds, which is allowed by the law as a citizen's arrest

Last comments?

The fight against corruption can be won quite substantially, but it requires more of a systemic approach and not general statements about corruption. It requires structures, policies, change, repeal and amendment of legislations, prosecutions and an overhaul of government. Putting two or three people in key positions, then leaving the public service intact cannot fight corruption in Kenya.

SEVEN MONTHS OF MIXED FORTUNES

By Ken Opala

Seven months after the epoch making elections that saw Kanu humbled by a fledgling political union, the National Rainbow Coalition (Narc) government is in the spotlight over its implementation of the anti-corruption strategy.

The obvious lingering question in the minds of Kenyans is, how has the administration fared? Has been there any advance in arresting corruption and prosecuting wrongdoers? What loot has been recovered, and what is the road map ahead for the strategy?

Whereas NARC's win in the December 27 general elections can now be viewed as a protest vote against former President Daniel arap Moi, the coalition's electoral promises had something to do with the triumph over a party that had ruled Kenya since independence, 39 years ago. The electorate perceived the pledges to be bold and a distinct departure from the old corrupt days where the incumbent party used state funds and machinery to sustain itself in power.

The Coalition promised to free the tattered country from the malignant corruption. Indeed, a powerful vow by NARC's candidate, and now Kenya's President H.E. Hon. Mwai Kibaki to the effect that aspirants for public positions, such as ministers, would be required to first declare their wealth interests before assuming office, did much to galvanize voters. It charmed a public hardened by deep-rooted corruption.

Indeed, that Kanu, the incumbent, had dilly-dallied in arresting sleaze in the public service, Hon. Kibaki's assurance was a departure from the past where policies were viewed as a mere conduit for oiling pockets of unscrupulous government officials and the politically well-connected, who strolled State House, seizing any little chance to perfect their wily ways.

Also, despite the annual Sh290 billions raised from taxes, there was little indication that any of these funds were ploughed back into running the government. Roads became impossible amidst news reports that billions of shillings were either going to waste or oiling individuals in well-crafted tendering irregularities while healthcare delivery had collapsed. Donors took a walk from Kenya complaining of massive looting of bilateral assistance.

Yet a negligent fraction of the pilfered funds remained to circulate in the economy. Last April, Justice and Constitutional Minister, Hon. Kiraitu Murungi said 10 Kenyans had stashed away Sh160 billion (about \$2.2 billion) in foreign or offshore accounts. By all standards, this is big money. It can build 16 dual carriageways linking Busia to Mombasa. Also, supposing the President earns Sh2 million as he does, this money can guarantee the Head of State

16,000 months of earnings; about 153 years of salary! If it were distributed out, every Kenya would earn Sh533.

Yet this is a mere tip of the iceberg, as it were, of the kind of money misappropriated by poor policies, greed and self-interests by those in power. In fact, Hon. Robinson Githae, Assistant Minister for Justice and Constitutional Affairs said recently that 100 Kenyans "are keeping away at least Sh240 billion in bank accounts in Switzerland, the Isle of Man, Cayman Island and Monaco." And according to Roads, Housing and Public Works Minister Hon. Raila Odinga: "There is a lot of our money out there. We want people to bring back that money."

How Kenyans survived graft for four decades is a study in resilience

Interesting, and perhaps more hurting, is that the state will require Sh4 billion to have these funds brought back into circulation in Kenya. The economy was harmed by the mere act of channeling out the money, and it will continue to suffer to have it back – if it gets to that.

Yet how Kenya, as a country and a people, waltzed through this madness and rot and managed to survive for almost four decades remains a miracle, a study in humility and resilience. As politics took centre-stage in the 1980s and 1990s, an administration bent on sustaining its longevity at State House consigned the economy to the dustbin. It was thus understandable when scholars of politics drew parallels between Kenya and Zaire, the antecedent of Democratic Republic of Congo.

Author/journalist Michela Wrong, in attempt to dissect Mobutu and Mobutuism in her book *In the Footsteps of Mr Kurtz*, says the late Zaire strongman Mobutu Sese Seko knew the price of anything but understood the value of nothing.

"His mental landscape was a jumble of half-learned lessons, gut convictions and practical wisdom, lacking structure and discipline. Though he was ready to fill certain gaps by reading up on political strategy and military tactics, the same did not apply to another, equally important field – economics," Michela says of Mobutu.

In the same predicament was Kanu, by extension the party's top brass. When the subject of economics came up, it appeared Kanu dithered and dazzled, unable to demystify figures.

Even the move to craft a Bill that intended to force public employees to declare their wealth was merely a public relations exercise aimed at assisting the party win the impending elections, which were seen as crucial because President Moi was stepping down at long last but was yet

...Seven months of mixed fortunes

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still engrossed in sustaining his hold on power while preserving his wealth and that of his aides.

In fact, critics worried that once in power again, Kanu was, as usual, likely to renege on its promise. It would go back to its old ways of promising this and that but still opening the public coffers to private benefit.

It was thus hardly out of the blues that in the run-up to the epoch-making polls, Narc targeted graft and promised good governance. Kanu, on the other hand, after decades of rule by the aged Jomo Kenyatta and Daniel arap Moi, decided to introduce young leadership to the country's politics. Yet Kanu's Presidential candidate Uhuru Kenyatta was surrounded by individuals widely accused of bringing Kenya to its knees by stripping off the country's little income from taxes.

The peoples' verdict was overwhelming support for NARC, a collection of 15 disparate parties weaved together by a common denominator, it appeared then, of stripping Kanu, and in particular Daniel Moi, of power.

Kanu is now the key opposition party, having been humbled out of State House by the makeshift coalition. NARC's government is six months old. Within the period it has been inpower, the coalition has moved, although critics claim the pace has been inordinately slow, to please the electorate.

The anti-corruption catalogue was a bit long, so I will have to plough through, to see whether any meaningful gains have been made.

The Goldenberg affair, the mind boggling legal mess, is now unraveling to the wonder and astonishment of the public, having been suppressed by the previous regime. Even those who believe in rocket science, claims that Sh180 billion (more than 22 per cent of the national income, the Gross National Product) exchanged hands as shrewd individuals moved to reap where they never sowed, is beyond sheer imagination.

By the time it rests, the Goldenberg Commission of Inquiry will have given Kenyans a glimpse into corruption at its best – or at its worst. Indeed, names and numbers involved are beyond the scope of imagination, so to speak.

Perhaps what is crucial in the anti-corruption strategy was the move by Finance Minister David Mwiraria to lock conduits for fraud. He closed cracks that allowed the flow of corrupt cash, in procurement, revenue collection, privatization, price controls and business regulations. In fact, he predicted Sh30 billion jump in government revenue this fiscal year.

Other achievements in the anti-corruption include:

- Suspension of 2,000 procurement officers
- Stopping irregular disposal of public land and utilities

- Stopping irregular tendering in roads and public works, and the sacking of what the Minister of Roads, Housing and Public Works Hon. Raila Odinga calls “cowboy” contractors, the ministry engineers who used their own private companies to rip off the government.
- The seizing of the management of some public utilities that had been taken over by the previous regime. These include the Kenyatta International Conference Centre (KICC) and Kenya Cooperative Creameries (KCC).
- Passing of the Corruption and Economics Crimes Bill and the Public Officers Ethics Bill
- Formation of task forces to investigate corruption in different sectors and ministries.
- Arraignment in court a number of senior government officials accused of abuse of office and corruption, especially those who deposited millions of taxpayers' funds in the collapsed Euro Bank.

Yet critics claim Narc's anti-corruption grand march is stillborn. Kanu's emergent leaders, Uhuru Kenyatta and Mutula Kilonzo, claim that little has been achieved so far. In fact, they contend that little has changed so far, after seven months of NARC's leadership.

And recently, an MP claimed in Parliament that top Cabinet ministers were hosted by a contractor in Nyeri, for a nightlong “goat-eating party”.

“There are also claims that the original heat mounted against the corrupt by the Narc ministers when they took over power from Kanu in January, has quickly cooled off, as the ministers began to pocket huge bribes from the corrupt. And despite huge cacophony against the corrupt since January, not a single corrupt man has been jailed.”

One will be tempted to believe Kanu's utterances are driven by malice, bearing in mind that the party was bundled out of the government. Yet echoes from remarks by NARC MPs Soita Shitanda and Wycliffe Osundwa (sacked recently following his protracted public disagreement with his boss Hon. Kipruto arap Kirwa, Minister for Agriculture, over the problems in the sugar sector) raise questions about the declared anti-corruption strategy.

Indeed, even within the NARC camp, dissatisfaction seems to be brewing over the contentious import of sugar. Accusations and counter-accusations by ministers Mukhisa Kituyi and Kipruto Kirwa has shed little light on who is behind the imports. It would appear the two have been comfortable in distancing themselves from the issue but have done little to help Kenyans understand the forces behind the importation.

...Seven months of mixed fortunes

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Other areas where Narc has done little, include:

- Declaration of wealth. The state appears to be dilly-dallying as to when the deadline should be. Only three months ago, Hon. Kiraitu Murungi promised that President Kibaki was to declare his interests within a month. This did not happen. Yet the dithering smacks in the face the President's electoral vow to have public servants declare their wealth before taking up their positions.
- A chunk of forestland is still in private hands. Assistant Minister for Environment and Natural Resources Hon. Wangari Maathai, who once threatened to go to court to have forest excision orders revoked, is conspicuously quiet since her appointment.
- Not all players in the infamous Euro Bank affair are in court. Government critics claim there appears to be selective prosecution.
- Not much has been done to explain how far the government has gone in recovering looted public resources and funds. Reports by the Public Investment Committee, Public Accounts Committee, Auditor General and the Parliamentary Select Committee on Corruption (Musikari Kombo Committee) revealed names and figures of the extent of graft, yet the NARC government has failed to use them as guidelines to pursue wrongdoers.

CORRUPTION LAWS PUT IN PLACE

Their effectiveness depends on government's commitment to implement them and remedy their flaws

By James Luh, Harvard University

In May, President Kibaki signed two major bills aimed at combating corruption. One act, the Anti-Corruption and Economic Crimes Act, creates an independent anticorruption commission and creates legal mechanisms for prosecuting corruption and recovering the proceeds of economic crimes. The second, the Public Officer Ethics Act, imposes codes of conduct on government officials and employees and requires all public officials and employees to file annual declarations of their finances. Without doubt, the two new laws are welcome advances in the country's fight against corruption. However, the laws only lay out the most basic framework for action—whether their potential translates into material change will depend on whether government leaders commit themselves to implementing the laws effectively and remedying their flaws. Examined below are the two Acts.

Anti-Corruption and Economic Crimes Act (2003)

The Anti-Corruption and Economic Crimes Act of 2003 contains a number of reforms aimed at reducing corruption. The law classifies certain kinds of misconduct, such as bribery and abuse of office, as corruption and economic crimes. It provides for the appointment of special magistrates to try cases involving these crimes and creates a Kenya Anti-Corruption Commission (KACC) to investigate corruption and assist corruption prevention efforts. The Act allows victims of corruption, including individuals, companies, and the government, to sue to recover funds lost to corruption or economic crimes. It creates new legal and evidentiary rules to facilitate prosecution of corruption and recovery of lost funds.

The Act creates the new KACC, an independent body charged with investigating corruption and advising government on how to prevent corrupt practices. The KACC replaces the Kenya Anti-Corruption Authority, which disbanded in 2000 after the Constitutional Court declared it unconstitutional. The Act grants the KACC broad investigative powers, launch an investigation on its own initiative, on receiving a complaint, or at the request of

Parliament, the Attorney General, or the Minister of Justice and Constitutional Affairs. In the course of investigating suspected corrupt activity, the KACC may require a person or his associates to account for their assets, demand documents and information from any person, obtain search warrants, request a court order to seize travel documents, and arrest suspects. Its investigators may also exercise any other powers of police officers. The KACC has no power to prosecute criminal cases itself, but it can refer cases to the Attorney General for prosecution and can file civil actions to recover illicitly obtained assets on behalf of a public body.

The KACC director and assistant directors will be appointed by the National Assembly based on recommendations from an advisory board. The members of the advisory board will be composed of members nominated by various professional, business, and religious organizations. Gideon Mutua, the former head of the Anti-Corruption Police Unit, became the KACC's interim director pending assembly of the advisory board and appointment of a permanent director. The advisory board has not yet been assembled; a parliamentary committee rejected an initial list of nominees in June.

The law defines a number of offences as corruption and economic crimes. It allows victims of such crimes to sue offenders for compensation or restitution of property. The law also introduces new "unexplained assets" provisions designed to make it easier to prosecute corruption and recover lost funds. Under the law, public officials suspected of corruption bear responsibility for showing that their assets were obtained legitimately. If a suspect has unusual assets and cannot account for assets to the court's satisfaction, the court will be able to conclude on that basis that the assets were obtained through corrupt conduct. The court will then be able to order the suspect to give up the unexplained assets.

Corruption laws put in place...

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The KACC can investigate any of the crimes defined in the Act, as well as certain related crimes. The Act also provides for the appointment of special magistrates to hear cases involving the crimes defined in the Act; only these special magistrates will be able to hear such cases.

Generally, the Act creates a sound framework for the structure and operation of the KACC, but the law contains some unclear areas that could pose problems.

For one, the law allows the KACC to refer cases to the KACC for prosecution by the Attorney General, but it makes no provision for cases where prosecution by the Attorney General is not a satisfactory option. This would include cases where the KACC uncovered corrupt activity by the Attorney General, or by the President, who has constitutional immunity from prosecution.

The law also uses somewhat unclear language to define some of the offences it creates. Instead of using specific language that targets acts involving public officials or persons in certain fiduciary relationships, the definitions use abstract language that covers activity in a wide range of relationships inside and outside the public sector. This may make it difficult to discern whether certain types of conduct constitute offences under the Act. Regulation and judicial interpretation may help clarify the outlines of the offences, but the lack of clarity may create some problems early on.

Successful efforts in Hong Kong, Australia, and Singapore have demonstrated that one of the most crucial elements in an anticorruption agency's success is something that cannot be built into legislation: widespread political support for the agency's efforts. The Act makes the KACC largely independent, but Parliament, the courts, and other elements in government can still check its power in various ways. The KACC could be weakened if other elements in government attempt to limit its effectiveness through inadequate support or deliberate obstruction.

Public Officer Ethics Act

The Public Officer Ethics Act contains two major reforms: a requirement directing government offices to provide codes of conduct and ethics for public servants and a new requirement for public officials and employees to file annual declarations of their income, assets, and liabilities.

The Act designates eight offices as responsible Commissions charged with applying the Act's provisions to particular groups of public officials and employees. By July 31, each Commission must publish a code of conduct and ethics that conforms to the requirements of a general code of conduct set out in the Act. Commissions may investigate and discipline breaches of their codes of conduct or refer cases to other appropriate authorities.

The Act also requires all public officials and employees, no matter what their rank or pay, to file annual declarations

of their income, assets, and liabilities, as well as those of their spouses and dependent children under 18. Public officers must submit their declarations to the various responsible Commissions. The Act makes it a crime to fail to file a declaration or to file a false declaration. Declarations will remain confidential; the public will not be able to access them.

The Act requires responsible Commissions to publish administrative procedures for collecting wealth declarations by July 31. Once a Commission has published its administrative procedures, public officers reporting to that Commission must file their first declarations within 60 days. Thus, by September 29, all public officers should have declared their wealth.

While it takes steps in the right direction, the Public Officer Ethics Act and the scheme it creates have a number of flaws. First, the requirements for keeping public officials' wealth declarations confidential is likely to limit the law's effectiveness. A better scheme would have allowed public access to wealth declarations. A public declaration system would have been more in line with the spirit of openness and public accountability. The prospect of media and public scrutiny would have made falsifying declarations much more risky for unscrupulous officials.

The Public Officer Ethics Act also fails to outline anything more than the most basic standards and procedures for administering or enforcing the Act's provisions. For example, the Act does not require Commissions to do anything with officials' wealth declarations apart from keeping them on file for 30 years. And while the Act empowers Commissions to investigate ethical breaches and refer possible criminal activity to prosecutors, it does not require them to do either.

Codes of conduct and wealth declaration will have little effect unless they are backed by stringent enforcement. The Act should have prescribed standards that required Commissions to develop robust procedures for handling ethics issues. It should have required Commissions to designate personnel to take responsibility for executing those procedures. The Act also should have required Commissions to establish procedures for reviewing and verifying selected wealth declarations.

The Act's wealth declaration requirements also fail to provide clear guidelines on precisely what information must be included on declaration forms. This may tempt unscrupulous filers to try to evade declaration requirements. Also, the Act fails to require declaration of interests and obligations that are not of a financial nature but may nevertheless conflict with official duties, such as positions held in outside organizations.

The Public Officer Ethics Act and the Anti-Corruption and Economic Crimes Act also fail to answer a number of questions about how the two laws act together. The Anti-

TRANSPARENCY INTERNATIONAL COUNTRY STUDY ON KENYA COMING SOON

The concept of a National Integrity System (NIS), developed by Transparency International, is a holistic way of looking at the institutions and practices that collectively assure a society of its basic integrity. With the ultimate goal of promoting good governance, the NIS also forms the basis for an approach to anti-corruption reform programmes. TI has undertaken a series of country studies to assess the NIS in practice.

The country studies highlight the strengths and weakness of a country's National Integrity System, and make clear recommendations for remedial action, targeting the general public, opinion-formers and national governments. A survey of Kenya will be among the next TI country study reports due out this autumn.

The country studies are part of a programme developed by the TI Centre for Innovation and Research and managed by the Fraud Management Studies Unit of the Teesside Business School in the United Kingdom. NIS surveys are now being conducted in Commonwealth countries around the globe. The countries surveyed are: Antigua & Barbuda, Australia, Bahamas, Bangladesh, Barbados, Dominica, Gambia, Grenada, Guyana, India, Jamaica, Kenya, Macedonia, Malawi, Malaysia, Mauritius, Mozambique, New Zealand, Nigeria, Pakistan, Papua New Guinea, St Kitts & Nevis, St Lucia, St Vincent & Grenadines, Sierra Leone, South Africa, Sri Lanka, Tanzania, Uganda, United Kingdom, and Zimbabwe. A TI country study report on Zambia was published in March.

A first round of 18 country study reports – on Argentina, Botswana, Brazil, Bulgaria, Canada, Colombia, Fiji, Ghana,

Jordan, Kazakhstan, Lithuania, Mexico, Mongolia, Nepal, Netherlands, Senegal, Republic of Korea, Trinidad and Tobago – was published in 2001.

The approach of the National Integrity System Audit shows that by looking at a country's institutions - the executive, the legislature, the judiciary, the watchdog agencies, the mass media, the private sector and civil society - it is possible to construct a framework within which to study the pluses and minuses in accountability and transparency. It enables us all to diagnose weaknesses and to address them in context and in a co-ordinated way. It provides a road map for those who are serious about addressing their country's deficiencies.

The *Transparency International Source Book 2000, Confronting Corruption: The Elements of a National Integrity System* is a handbook to the National Integrity System approach. As its author, Jeremy Pope, writes: "What is the benefit of a sound and 'clean' Judiciary ready to uphold the Rule of Law, if there is corruption in the police, investigators, prosecutors or the legal profession? The Judges would simply not receive the cases they should hear; they would then sit in splendid isolation – honest, capable, yet able to achieve little."

The TI National Integrity System Country Studies are available online at

http://www.transparency.org/activities/nat_integ_systems/country_studies.html

The UN anti-corruption convention: A golden opportunity for the world's governments

In early 2002, a UN committee began quietly working on a treaty text with the ambitious goal of harmonising international anti-corruption laws. Now, on the eve of the final drafting session of the UN Anti-Corruption Convention, TI is emphasising the need for an instrument with "teeth and global reach."

At the end of July when governments sit down in Vienna to pen the document's final draft, they will have a golden opportunity to signal their commitment to integrity and financial accountability.

There will certainly be some debate, given the diversity of International views on corruption. To help guide the creation of a rigorous and robust text, TI has submitted a detailed set of proposals to the Convention committee. According to David Nussbaum, Managing Director of TI's International Secretariat, "the final stages of the drafting process will be crucial."

Specifically, TI asks that the convention target private sector bribery, political party corruption as well as allow for the extradition of corrupt officials. It also demands recognition of the role of civil society.

The influence of private sector bribery is often underestimated, although it directly undermines sustainable development. It destroys public confidence in the private sector, bleeding through into government operations, and as such, must be addressed.

The existing convention draft also includes an article aimed at curbing political party corruption, the bane of so many nations. TI urges governments to support and strengthen Article 10, requiring declarations of all significant financial donations to political parties. It also

Upcoming Events

August 1: A Public forum on the declaration of wealth
Organisers: Transparency International-Kenya
Contact: Wambui Gachucha
Tel: 2727763/5
Email: tikenya@wananchi.com
Website: www.tikenya.org

August 15-16: Conference on the Truth and Reconciliation Commission, key note address by Archbishop Desmond Tutu
Organisers: Truth & Reconciliation Commission

On a lighter note

In this era, every officer shall be held personally accountable for what they do or fail to do.

Hon. Chris Murungaru, Minister for Internal Security, during a Seminar at the Kenya School of Monetary Studies

Think about it...

There was a glass on the table... One man says, "It's half full". He is an optimist. Second man says, "It's half empty". He is a pessimist. Third man says, "It's twice too big". He is a management consultant.

...golden opportunity for the world's governments

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feels that this article should be extended to include candidates as well as parties.

In a direct corollary, TI asks that the Convention significantly enhance levels of international legal assistance, to facilitate the recovery and repatriation of stolen assets and the extradition of public officials who face corruption charges.

The conventions 'teeth' will be in the form of legally binding provisions. TI demands that these mandatory prevention measures be included in the document. They are essential to reducing levels of corruption and should address independent anti-corruption bodies; recruitment; hiring and promotion of civil servants; codes of conduct for public officials; public procurement and public financial management; and funding of political parties.

However far-reaching the terms of the convention, TI argues that effective monitoring mechanisms are critical in making sure the provisions are carried out and that problems of interpretation are minimised. It is especially here that TI sees a potent role for Civil Society groups in shaping the battle against corruption.

The UN Anti-Corruption Convention 6th Session takes place in Vienna on 21 July - 1 August, and the Convention launch is scheduled to take place in Mexico in December 2003.

For TI's proposals to the negotiation sessions, see http://www.transparency.org/building_coalitions/intern.institutions/un/6th_session_ti_proposal.pdf

Corruption laws put in place...

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Corruption and Economic Crimes Act empowers the KACC to review government practices and make recommendations for preventing corruption. This presumably includes codes of conduct and enforcement practices, but the Public Officer Ethics Act makes no mention of the KACC's authority in this regard. Neither law makes clear how the KACC should advise government offices on how to improve their practices or whether the KACC has authority to order government offices to adopt its recommendations.

The Ministry of Justice and Constitutional Affairs has indicated that it intends to use the Public Officer Ethics Act together with the Anti-Corruption and Economic Crimes Act to confiscate any assets that government officers fail to declare. However, the two laws do not create a clear connection between the failure to declare assets

and the forfeiture provisions of the Anti-Corruption and Economic Crimes Act. The laws also do not make clear when or how the KACC may gain access to public officers' wealth declarations.

The Anti-Corruption and Economic Crimes Act and the Public Officer Ethics Act both hold promise, but the laws do not amount to meaningful reform by themselves. Government offices and officials must do their part to see that the laws' provisions are carried out properly, effectively, and in the spirit of promoting honest government. Parliament should move to correct the flaws in the two Acts and augment them with additional reforms in other areas. The acts will only deliver real benefits if the government, public officials, and the private sector cooperate to see them through.