

Towards a better future: working with Kenya against corruption



British
High Commission
Nairobi



>>One must acknowledge that the war against corruption and waste is far from won. The Government wants more effective investigations and prosecutions involving corruption. This will help regain and retain public confidence in public institutions. In this regard, I direct accounting officers to institute sanctions, including prosecution and sacking of any officers serving under them who commit acts of corruption. I am also asking the public to fearlessly expose all officers who solicit bribes from them, so that we can tame and eventually eradicate corruption. The private sector must also play its part and stop inducing public servants with bribes in order to win favours<<

President Mwai Kibaki, Kenyatta Day national address, October 2009

>>Quite often, the war against corruption has not only been politicised but also ethnicised. If we hope to comprehensively deal with corruption, we must accept that it is a crime whose perpetrators act in their own selfish interests to the detriment of the Kenyan people<<

Prime Minister Raila Odinga, 3rd Annual Integrity Review Conference, July 2008

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**British High Commission, Nairobi
December 2009**



Working with Kenya to fight corruption

The UK Government is determined to help fight corruption in Kenya. This brochure explains why fighting corruption matters, what initiatives there are in Kenya and how we are supporting them.

The nature of corruption

Corruption is a global problem. It crosses borders and affects all countries and sections of society. But the extent and impact of corruption is most acutely felt amongst the poorest of the developing world.

»»The effect of corruption is polarising:
the rich get richer and the poor get
poorer – and society as a whole is
impoverished by the loss of trust ««

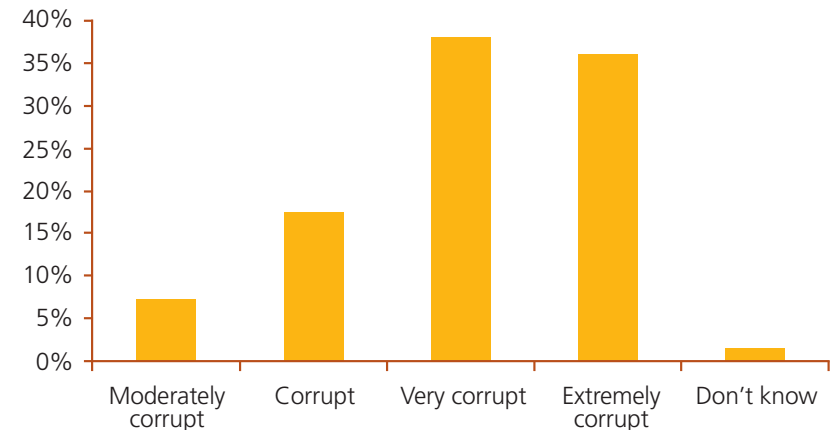
Jack Straw, UK Anti-Corruption Champion

Corruption in Kenya

While Kenya is not unique in facing the problems of corruption, a range of indicators show that corruption remains a serious problem and a major concern to Kenyans and the international community. Allegations of corruption, from petty extortion to national scandals, are common. Domestic and international investors regularly cite corruption in Kenya as a deterrent to doing business.

Opinion polls also consistently show corruption as a key issue for Kenyans, undermining their faith in government, judicial and security structures. In 2009, Kenya was once again seen amongst the most corrupt countries in the world, coming 146th out of 180 countries polled in the Transparency International Corruption Perceptions Index.

How Kenyans rate corruption levels in the country



Source: East African Bribery Index 2009

How corruption affects Kenyans

Tackling impunity and corruption, improving governance and targeting the corrupt and their networks is vital to the future prosperity, stability and growth of Kenya and the development of all Kenyans.

Corruption affects Kenya and its international partners in a variety of ways.

In particular:

- > **corruption undermines governance, democracy and the rule of law**, intensifying injustice and conflict
- > **corruption hurts the poorest most and erodes development**, adding to basic daily costs and taking money away from fighting poverty and delivering services
- > **corruption destroys investor confidence**, raising the costs of doing business, driving investors and employers away and reducing economic growth
- > **corruption increases crime and seriously threatens security in Kenya and abroad**, providing an attractive environment for terrorists, drug traffickers, money launderers and other criminals

Corruption and development

Corruption and poor governance also directly affect development assistance partnerships. The UK is Kenya's second biggest bilateral donor, and is committed to maintaining current aid levels. But only 30% of our aid, closely audited, goes through the Government of Kenya, because of concerns about financial accountability. British aid to Kenya could be significantly higher each year if corruption and governance concerns were credibly addressed.



In 2009/10, the UK will spend over £70 million in development assistance to Kenya, helping Kenyans like these women in Turkana.

Corruption costs lives

34,000 Kenyans die each year from malaria. Yet malaria can be prevented through the use of treated bed nets. The cost of buying and distributing one of these nets is \$7. If the money lost through the Goldenberg scandal alone – estimated at over \$0.5 billion (or around 40 billion shillings) by a local Commission of Enquiry - had instead been used to provide anti-malarial nets, the entire Kenyan population could have been provided with nets. Put simply, Kenya could now be almost malaria free.



Child deaths are reduced by up to 44% by those who use insecticide treated nets compared to those who don't

Corruption costs growth

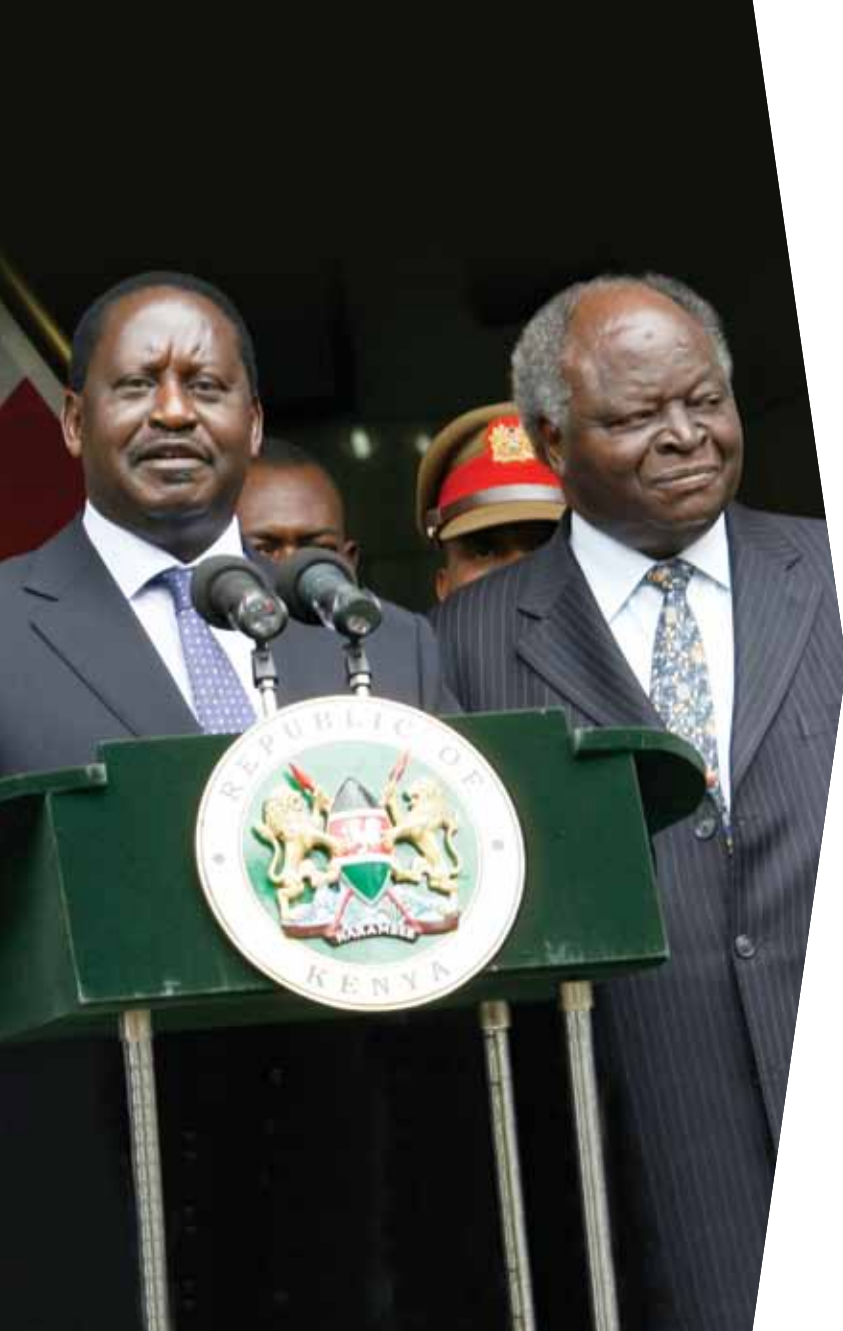


Congestion at Mombasa port (photo: Maarufu Muhammed/Standard)

The World Bank Assessment of the Investment Climate in Kenya 2009 notes that corruption cost Kenya up to 4% of annual sales value, and up to 12% where it involved public procurement. This is a high amount by international standards and added to other indirect costs, like those associated with insecurity, negatively affects investor confidence and economic growth.

»»The web of corruption foils every effort to improve infrastructure, attract investment and improve educational standards <<<

Tim Harford, *Financial Times* editorial board



Kenyan efforts in the fight against corruption

Since 2002, Kenya's Government has made repeated commitments to tackle corruption. Some progress has been made: in building institutions like the Kenyan Anti-Corruption Commission (KACC), and in introducing legislation to encourage transparency and deter corruption, like the Public Officers Ethics Act. But there have been few results:

- > investigations into major scandals like Anglo-Leasing remain stuck in court
- > few senior figures have been prosecuted or lost their jobs
- > billions of shillings stolen from taxpayers have yet to be returned
- > public officers' wealth declarations, when they are made, are still private

The signing of the National Accord in February 2008 gave Kenya another opportunity to tackle corruption. Addressing impunity is a major component of the reform agenda agreed by all parties. Kenyans expect their government to meet the commitments on corruption in its policy agenda, to quicken the prosecution of the corrupt and to help recovery of stolen assets. These commitments include:

- > development of a national anti-corruption policy
- > enhanced performance of the asset recovery programme
- > enactment of new land laws and recovery of illegally taken land
- > reform of the Kenyan police and judiciary
- > enactment of freedom of information and anti-money laundering legislation



Kenya's international anti-corruption commitments

Kenya was the first country to sign up to the United Nations Convention Against Corruption (UNCAC). The UN has worked with the Kenyan Government and civil society to identify serious gaps to address if Kenya is to meet its obligations and tackle corruption more effectively. These include key areas which are currently hampering the fight against corruption in Kenya:

- > **protecting those with evidence on corruption** by enacting and implementing robust whistleblowing laws
- > **enabling better co-operation with overseas law enforcement agencies** by enacting a Mutual Legal Assistance law
- > **making it more difficult for constitutional court orders to stop corruption investigations** by entrenching KACC in the Constitution
- > **ensuring public officers, however senior, who have accumulated wealth corruptly are exposed** by introducing proper checks on public officers' wealth declarations

Kenya's support for a peer review mechanism at the November 2009 UNCAC conference in Doha should help in monitoring its efforts to address these gaps. Individual country reports will now be produced for Kenya and other UNCAC signatories to monitor progress and summarise technical assistance needed.

UK Government support for anti-corruption efforts

Working closely with EU and other international partners, the UK stands ready to support the commitments made by Kenya's Government on corruption and wider Kenyan efforts that genuinely seek to address impunity.

The UK's anti-corruption work in Kenya is co-ordinated by the Foreign and Commonwealth Office and the Department for International Development through the British High Commission in Nairobi. It also involves support from various departments in the UK, such as the UK Border Agency, the Department for Business, Innovation and Skills, the Serious Organised Crime Agency, as well as the Serious Fraud Office, the Metropolitan Police and the City of London Police.

Our approach includes:

- > **improving accountability** by working with other donors to support the Kenyan Government's public financial management and public sector reforms, where there is clear political leadership to improve systems. This is reducing opportunities for corruption in ministries and makes government spending more transparent. We supported the Africa Peer Review Mechanism's country review process in Kenya. This clearly stated that Kenya needs to reverse the culture of impunity.
- > **increasing transparency** of government spending, for example, by providing support to Parliament and supporting decentralised management in the education sector. The UK is co-funding support to strengthen important parliamentary oversight committees such as the Public Accounts Committee, the Public Investments Committee, the Budget Committee and the Implementation Committee amongst others. This is also helping to enhance MPs' capacity to scrutinise budgets and audit reports.
- > **using visa bans to stop those considered to be involved in corruption travelling to the UK.** Those already facing exclusion include parliamentarians, senior government officials and high profile members of the business community from across the political spectrum. This is an ongoing policy, expanded by UK ministers in 2006 in line with G8 commitments. It aims to change incentives, reduce future corruption and help tackle impunity.
- > **funding civil society efforts to raise public awareness and increase demands for accountability.** Civil society, the media and the public have a vital role to play in exposing corruption at central and local levels. The UK is supporting groups including the National Taxpayers Association to carry out citizens' audits of Community Development Fund projects to ensure value for money for Kenyans.
- > **pursuing British connections to Anglo-Leasing cases through UK law enforcement agencies** to progress investigations and prosecutions. On the Anglo-Leasing cases, the Serious Fraud Office has made extensive investigations across a number of countries and has evidence to share that could help Kenya progress a number of cases and deter future corruption, if the Government of Kenya is able to co-operate.

> **helping Kenya freeze and return any corruptly obtained assets which might be held in the UK.** Examples from across the world show this can be done with the necessary political will and evidence. The work of the Metropolitan Police Proceeds of Corruption Unit had led, by October 2009, to £20 million of Nigerian money being recovered. An additional £55 million of Nigerian assets and £61 million of Brazilian assets have been frozen in the UK.

> **advising British companies interested in investing in Kenya on corruption issues and their legal obligations under UK law and international conventions.** Our UK Trade & Investment team in the High Commission regularly helps British companies assess the opportunities for investment in Kenya by providing a variety of information requested by companies. This includes information on the Kenyan political landscape, business practices and legal matters and regulations, and anti-corruption legislation and obligations under UK law.

> **complying with the UK's commitments under UNCAC and the OECD Anti-Bribery Convention,** in so far as they relate to Kenya. Our officials are obliged to alert UK authorities to any allegations of UK companies involved in corruption. British law enforcement agencies will continue to action Mutual Legal Assistance requests and launch investigations where appropriate, including for the recovery of stolen assets passing through the UK financial system.

> **ensuring British aid money is only used for its intended purpose of poverty reduction.** We only channel aid through Kenyan Government systems when we are confident that the development benefits outweigh the risks, and after a rigorous financial management risk assessment. In such cases, aid delivery is accompanied by strict controls and monitoring mechanisms to prevent corruption and to ensure swift follow up if it does occur. Where we do not have confidence in government systems, we use alternative delivery mechanisms such as UN agencies, NGOs and private contractors.

> **speaking out publicly** when we think this can add to the pressure for action on corruption.



British High Commissioner to Kenya, Rob Macaire, addressing a civil society meeting

Regrettably, corruption remains endemic in Kenya. Altering the incentive framework will take time. But these measures will help promote Kenyan capacity, and pressure, to address corruption.



National Taxpayers Association

pesa zetu, haki yetu

PUBLIC FORUM ON DEVOLVED FUNDS AND PUBLIC SERVICES IN YATTA CONSTITUENCY

VENUE: KENYATTA MARKET

DATE: 17th JULY 2009 FROM 10.00 am



Monitoring progress

By its nature, corruption is hard to measure objectively, as is the impact of strategies and action to address it. Though tracking trends is difficult, we will keep the following indicators under review as evidence of the commitment and success of the Government of Kenya's approach:

- > **use of corruption-related assistance**
- > **action on any new cases of grand corruption**, including those involving aid money
- > **passing and implementation of key anti-corruption legislation** (relating to areas like increasing access to information and combating money laundering)
- > **ensuring comprehensive protection for whistleblowers**
- > **amendments to procurement and other procedures** as a result of any new corruption cases
- > **repatriation of corruptly obtained assets**, including from the UK
- > **movement towards credible prosecutions in new and old cases** (like Anglo-Leasing and Goldenberg)



Public Accounts Committee (PAC) Chairman, Dr. Bonny Khalwale and member Charles Kilonzo address the press

- > **implementation of recommendations of Commissions and other commitments** (like the 2004 Ndungu Commission on illegally and irregularly acquired land and the 2005 PAC report on Anglo-Leasing)
- > **effective police reform** leading to reduced corruption and change in public perceptions
- > **assessment of risk and progress on public financial management**
- > **attainment of a new constitution** that helps address the long-term issues of impunity and increases accountability and transparency

We will also continue to track ratings in national and global polls measuring corruption levels in Kenya. The Government of Kenya has a clear interest in seeking to improve these ratings to restore public, donor and investor confidence and to attract further investment and development assistance.

Global challenge, UK commitment

Fighting corruption is a global challenge, but one in which we must succeed if we are to improve people's lives and defeat poverty. Nowhere is this more true than Kenya. Reducing corruption will generate greater aid provision and facilitate long-term trade and investment.

In 2006, following the Gleneagles G8 meeting, then British Prime Minister, Tony Blair, said:

>>African leaders and the heads of the G8 countries were united in identifying the importance of fighting corruption to help reduce poverty in Africa and worldwide<<

The UK's commitment to this responsibility is undiminished.

Further information on the anti-corruption work of British Government departments and agencies can be found at:

Department for International Development: www.dfid.gov.uk
Foreign & Commonwealth Office: www.fco.gov.uk
British High Commission: www.ukinkenya.fco.gov.uk
Department for Business, Innovation and Skills: www.bis.gov.uk
Serious Fraud Office: www.sfo.gov.uk
Metropolitan Police: www.met.police.uk
City of London Police: www.cityoflondon.police.uk
Serious Organised Crime Agency: www.soca.gov.uk

Other useful links for information on Kenyan and international anti-corruption work:

National Anti-Corruption Campaign Steering Committee: www.naccsc.go.ke
Kenya Anti-Corruption Commission www.kacc.go.ke
African Parliamentarians Network Against Corruption: www.apnacafrika.org
National Taxpayers Association: www.nta.or.ke
Transparency International – Kenya: www.tikenya.org
Africa Centre for Open Governance: www.africog.org
Mars Group: www.marsgroupkenya.org

G8 commitments on corruption: www.dfid.gov.uk/g8/corruption.asp
United Nations Convention Against Corruption: www.unodc.org/unodc/en/treaties/CAC/index.html
OECD: www.oecd.org/corruption
EU: www.europa.eu/pol/fraud/index_en.htm
European Anti-Fraud Office (OLAF): www.ec.europa.eu/anti_fraud/index_en.html



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