The Anti-Corruption Tool Kit
A Tool Kit to Support Youth and Women in Training on Local Corruption in Public Service Delivery
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## Abbreviations and Acronyms

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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACECA</td>
<td>Anti-Corruption and Economic Crimes Act</td>
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<td>ACPU</td>
<td>Anti-Corruption Police Unit</td>
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<tr>
<td>AIDS</td>
<td>Acquired Immunodeficiency Syndrome</td>
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<td>APRM</td>
<td>Africa Peer Review Mechanism</td>
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<tr>
<td>C&amp;AG</td>
<td>Controller and Auditor General</td>
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<tr>
<td>CACC</td>
<td>Constituency Aids Control Committee</td>
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<td>CBF</td>
<td>Constituency Bursary Fund</td>
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<tr>
<td>CBK</td>
<td>Central Bank of Kenya</td>
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<td>CBOs</td>
<td>Community Based Organizations</td>
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<tr>
<td>CBS</td>
<td>Central Bureau of Statistics</td>
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<td>CDA</td>
<td>Constituency Development Account</td>
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<td>CDF</td>
<td>Constituency Development Fund</td>
</tr>
<tr>
<td>CDFC</td>
<td>Constituency Development Fund Committee</td>
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<tr>
<td>CLARION</td>
<td>Centre for Law and Research International</td>
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<tr>
<td>CMA</td>
<td>Capital Markets Authority</td>
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<td>CPS</td>
<td>Country Programme Strategy</td>
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<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
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<td>DPP</td>
<td>Director Public Prosecution</td>
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<td>EMU</td>
<td>Efficiency Monitoring Unit</td>
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<td>EMU</td>
<td>Efficiency Monitoring Unit</td>
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<td>FPEF</td>
<td>Free Primary Education Fund</td>
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<td>GJLOS</td>
<td>Governance, Justice, Law and Order Sector</td>
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<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<td>IEC</td>
<td>Information Education Communication</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>JSC</td>
<td>Judicial Service Commission</td>
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<td>KACC</td>
<td>Kenya Anti-Corruption Commission</td>
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<td>KANU</td>
<td>Kenya Africa National Union</td>
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<td>KCODA</td>
<td>Kibera Community Development Association</td>
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<td>KCPA</td>
<td>Kenya Community Paralegal Association</td>
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<tr>
<td>KCPE</td>
<td>Kenya Certificate of Primary Education</td>
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KCSE  Kenya Certificate of Secondary Education
KEMSA  Kenya Medical Supplies Association
KENAO  Kenya National Audit Office
KIF    Kenya Integrity Forum
KIF    Kenya Integrity Forum
KIPPRA Kenya institute of Policy Research and Analysis
KRA    Kenya Revenue Authority
LAS  Local Authorities
LASDAP Local Authorities Service Delivery Action Plan
LATF  Local Authorities Transfer Fund
MOJNCCA Ministry of Justice National Cohesion, Justice and Constitutional Affairs
MOPA  Movement for Political Accountability
MP    Member of Parliament
NACCSC National Anti-Corruption Campaign Steering Committee
NACCSC National Anti-Corruption Control Steering Committee
NACP  National Anti-Corruption Plan
NARC  National Rainbow Coalition
NASCON Name and Shame Corruption Networks
NENAO Kenya National Audit Office
NSE   Nairobi Stick Exchange
NWPCPC National Water Conservation and Pipeline Corporation
OECD  Organization for Economic Cooperation and Development
PAC   Public Accounts Committee
PET   Public Expenditure Tracking Survey
PIC   Public Investment Committee
POEA  Public Officers Ethics Act
POEA  Public Officers Ethics Act
PPARB Public Procurement Administrative Review Board
PPDA  Public Procurement and Disposal Act
PPOA  Public Procurement Oversight Authority
PPOA  Public Procurement Oversight Authority (PPOA)
PREMAP Pastoralist Resource Management Programme
PSIP  Public Service Integrity Program
PSIP  Public Service Integrity Programme
<table>
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<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>RMLF</td>
<td>Roads Maintenance Levy Fund</td>
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<td>RRI</td>
<td>Rapid Response Initiative</td>
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<td>SIPs</td>
<td>Sector Investment Plans</td>
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<tr>
<td>SJCC</td>
<td>St. John Community Centre</td>
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<td>SMS</td>
<td>Short Message Service</td>
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<td>SSEF</td>
<td>Subsidized Secondary Education Fund</td>
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<td>TI-K</td>
<td>Transparency International Kenya</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNCaC</td>
<td>United Nations Convention on Corruption</td>
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<td>WBs</td>
<td>Water Boards</td>
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<td>WPA</td>
<td>Witness Protection Act</td>
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<td>WSPs</td>
<td>Water Service Providers</td>
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<td>WSTF</td>
<td>Water Services Trust Fund</td>
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Acknowledgements

Young people have been involved in a mission to promote and entrench a culture of accountability and transparency. This tool kit provides the youth of this country with in-depth knowledge on corruption that will enrich them as they offer leadership in reversing existing trends. The production of this tool kit is an effort of many people and institutions that we may not be able to mention by name but wish to acknowledge some of those who made critical and timely contributions.

We would first and foremost like to thank the Tool Kit development team that conceptualized the idea, collected and collated data all whom we may not be able to mention here by name but whose, findings, contributions and comments were extremely useful in producing this Tool Kit. We also recognize the time taken and the helpful comments and suggestions given by the Ms Kenya -Youth Agenda local partners in the four districts in Kenya namely Kibera Community Development Association (KCODA) and St. Johns Community Centre in Nairobi, Pastoralist Resource Management Programme (PREMAP) based in Isiolo District, Kenya Community Paralegal Association (KCPA) in Siaya District.

Our sincere appreciation goes to our consultants Mr. Fredrick Fadey Oundo for his expert analysis, and final development of this Tool Kit. We also remain indebted to Mr. Barasa Nyukuri who generated Youth in Action against Corruption in Kenya; A Tool –Kit to Support Youth and Women in Advocating against Local Corruption in Public Service Delivery (unpublished) which has now facilitated the production of this edited Tool Kit for the Change Agents.

We would like to thank and make a special mention of the efforts of the YAA staff throughout the project’s execution specifically Ms. Rita Kijala Shako, our Executive Director, Ms. Judith Nguru and Mr. Kevin Ogema - the Project Officers charged with implementing the project for their leadership invaluable technical support, inputs, comments and value adding to this publication.

We acknowledge with gratitude MS Kenya who provided the financial and invaluable technical support that made the production and publication of this Tool Kit possible. Special thanks to MS Kenya Anticorruption Programme Officer Mr. Edward Alitsi who was always at hand for consultations during the entire period of this Tool Kit production, and the entire staff of MS Kenya for their invaluable support.
This is a Tool Kit dedicated to all young men and women as well as those who support and facilitate their work and endeavors to bring about social change in Kenya, particularly through initiatives to eradicate corruption and its impact on all social, political, cultural and economic facets of our lives.

Susan Kariuki
Programmes Coordinator/ Deputy Executive
Youth Agenda
Preface

“Corruption is one of the most damaging consequences of poor governance. It undermines investment and economic growth, decreases the resources available for human development goals, deepens the extent of poverty, subverts the judicial system, and undermines the legitimacy of the state. In fact, when corruption becomes entrenched, it can devastate the entire economic, political, and social fabric of a country...corruption breeds corruption – and a failure to combat it effectively can lead to an era of entrenched corruption” (Human Development in South Asia, 1999:96).

This therefore means that eradicating corruption provides multiple benefits to society. In countries where corruption is successfully controlled, there is greater inflow of foreign investments, higher per capita income growth, higher literacy rate and increased business growth. Hence, eradicating corruption inevitably helps further poverty eradication and economic development.

Youth form the largest component of Africa’s social movements. These range from religious organisations (including evangelical and Pentecostal churches and militant Islamic movements), sports clubs and student unions. In each of these cases, youth are more than mere followers; they are taking positions of authority and often leading substantial groups. This has arisen without directives or plans, instead arising from opportunity and talent. Where the avenues for advancement are open, young people will take the chances they are given with alacrity and vigour. Where the doors are closed—as in most formal state centred institutions—they will look elsewhere. As such marshalling young people in the fight against corruption could bear more fruit than all past initiatives.

The starting point for this project was informed by the fact that efforts to generate social change, especially with regard to youth, must be what young people are already doing for themselves. Many young people in Kenya are bewildered, demoralized and exploited. Many see no future for them in the country and instead aspire to leave to seek a new life in Europe or America. Yet at the same time, young people are the principal actors in Africa’s social and political creativity today. Under the onslaught of a range of adversities - HIV/AIDS, unemployment, political repression, conflict, and the collapse of education system - young people are actively fashioning new social orders. Most of these emergent social networks, organizations and belief
systems are poorly understood. Many are feared by those in positions of authority, because any change can represent a threat to the established order.

This Tool Kit marks a key milestone for the young people of Kenya because it is a primary document that generates knowledge on the frustrations this key constituent has shared on corruption, the culture of impunity and unresponsiveness that has been contributed by poor leadership, lack of integrity and accountability and weak institutional reforms. The Tool Kit offers MS Kenya anti-corruption programme partners, Youth Agenda and its anti-corruption local and strategic partners, and Civil Society in general an understanding of corruption and anti-corruption campaign in Kenya. It will specifically be useful for the change agents, who will inform and monitor petty corruption to protect and promote the poor people’s access to quality and adequate public social services, in the health, water, education and local authority sectors.

Rita Kijala Shako
Executive Director
Youth Agenda
Introduction to the Anti—Corruption Tool Kit

The broad objective of this Anti-corruption Tool Kit is to provide Change Agents with sufficient grounding to understand what corruption is and strategies for fighting petty corruption. The knowledge gained should be sufficient to enable participants/community members to engage in anti-corruption initiatives especially in devolved funds management and service delivery, especially health, water and education projects.

What is this Tool Kit about?

This Tool Kit is a reference material to be used in the MS Kenya – Youth Agenda Anti-Corruption Programme engagement. It aims to support MS Kenya anti-corruption programme partners; Youth Agenda and its anti-corruption local and strategic partners, and Civil Society in general, to understand corruption and anti-corruption strategies in Kenya. They will act as Change Agents who will in turn pass on the information to participants/community members to create, nurture and sustain an informed citizenry and an environment which protects and promotes the poor people’s access to quality and adequate public social services, in the health, water, education and local authority sectors.
At a general anti-corruption awareness creation forum, the Tool Kit provides sufficient information and knowledge on the subject of corruption and the fight against corruption in Kenya. For many of the trainers, this may be the only source of information at their disposal. However, even where other sources are available, their unconsolidated form and constraints of time may not permit further references.

**About the Anti-Corruption Programme**

**Goal of the Anti-Corruption Programme**

The ultimate goal of the anti-corruption support initiative by MS Kenya is to ensure that poor people of two rural and two slum sites can better afford existing public services by the year 2012. The rural sites are namely; Isiolo and Siaya, while the informal settlements are Kibera and Kariobangi. This was in line with its Five Year Country Programme Strategy (CPS): 2008-2012, which was the basis of its partnership and financial assistance from MS Kenya.

The Youth Agenda is the National Anti-Corruption Partner and the local partners in the four districts in Kenya are Kibera Community Development Association (KCODA) and St. Johns Community Centre in Nairobi, Pastoralist Resource Management Programme (PREMAP) based in Isiolo District, Kenya Community Paralegal Association (KCPA) in Siaya District. The programme focus is on petty/local corruption in the three service sectors namely, Heath, Water, and Education.

**Development Objective 1:** That poor people can better afford existing public services in four (4) districts in Kenya by the year 2012.

**Immediate Objective 2:** By 2012 national policies and campaigns to fight corruption are reflective of young people’s values against petty corruption in service delivery.

**Output 1:** Values of zero tolerance for petty corruption in service delivery popularized at local and national levels. The programme will harness youth views and aspirations as building blocks for national anti-corruption policies through strategic lobbying and advocacy.

**Output 2:** A broad based Youth anti-corruption agenda is formulated, published and fed into the national policy process.
Strategic Focus of the Anti-Corruption Programme

The programme aims at influencing change of attitudes and a culture of impunity among individuals, organizations and society at large. The anticipated changes should be reflected in anti-corruption policy dialogue, institutionalized frameworks and implementation structures that fully recognize and incorporate views and inputs from youth and women.

**Key Targets of the Programme:** The youth and women are the key targets of the anti-corruption programme due to their vulnerability and poor access to service delivery in the selected sectors in the country at both local and national levels.

**Key Activities in the Country Programme Strategy**

The activities highlighted in the Country Programme Strategy for the five years include the following:

- Development of youth-anti corruption tool- kit for use in outreach activities and an online interface (via website) categorically stating what corruption is in public office and its effects on the youth.
- Conduct Training of Trainers Workshops for youth change agents selected by the anti- corruption local partners in the four project sites.
- Development of Information, Education and Communication (IEC) materials around petty corruption in public services and how it affects youth.
- Designing activities and leadership roles for youth as agents of change.
- Setting up a website for use by partners and for posting feedback from agents of change.
- Initiate interactive Short Message Service (SMS) educational campaign and competition on the theme of integrity.
- Identifying and training at least 50 youth change agents in each of the four project sites/ districts.
- Holding youth mobilization and sensitization events in the four project sites.
- Formation of anti- corruption clubs in the selected project sites.
- Organize in collaboration with strategic partners annual anti-corruption week, with activities such as music concerts, arts, media initiatives, essay competitions and awards for best presenters/ performers.
Introduction To Corruption, Definitions, Classification & Effects Of Corruption

Introduction

Corruption is an act of social deviance that is as old as human society and the history of corruption in Kenya could therefore be located in as far back as the pre-colonial period. Today, corruption can be found in all walks of life ranging from matters involving petty issues to those of great significance and value.

Youth Agenda in the Recreating our Republic publication, lauded as the Youth Manifesto, presents corruption as one of Kenya’s problem in the public life that has become a disease that has reached endemic proportions. It has damaged the economy and reduced the development potentials. The ambitions of this generation as resolved in 2002 is to create a new republic by promoting and entrenching a culture of accountability and transparency.

While the government has taken into consideration anti-corruption programs since the mid-1970s, the malpractice has persisted and in some cases intensified, suggesting that the remedial measures have not been significantly rewarding.

Transparency International (TI) rankings over the past years has placed Kenya in very poor position. For 2007, the TI’s Kenya Bribery Index, showed that the level of corruption as reflected by the experiences of ordinary citizens in the year 2006 remained largely unchanged compared to 2005. The survey respondents encountered bribery in just over half (54%) of their interactions with institutions, both public and private, up from 47 percent in 2005. The average number of bribes paid doubled from 1.2 to 2.5 per person, the bribery cost burden increased from Kshs. 2,000 to Kshs. 3,000, an increase of 50 percent.

The TI Kenya Bribery Index for 2007 further identifies the Ministry of Labour as among the ten most corrupt ministries in the country, placing it at the 10th most corrupt institution in the country in 2007. Besides government ministries, other government institutions perceived as corruption prone include the Judiciary, the Prisons and the Constituency Development Fund (CDF) offices and state corporations such as the
Kenya Revenue Authority (KRA), the Kenya Ports Authority, the Transport Licensing Board, the Kenya Police, the Kenya Medical Supplies Authority (KEMSA) and the National AIDS Control Council (NACC).

**Definition of Corruption**

There is no single definition of corruption that is universally acceptable. Corruption can be defined as;

a) The misuse of entrusted power for private gain,
b) An abuse of office for private gain,
c) Abuse of the rule of law, and
d) Acting contrary to the legitimate and moral expectations of a group or society.

**The Anti-corruption and Economic Crimes Act (ACECA), 2003** presents the following as constituting corruption offences; Bribery & bribing of agents (employees), Secret inducement for advice, Deceiving the principal (employer), Conflict of interest, Improper benefits to trustees for appointment, Bid rigging, Abuse of office, Dealing with suspect property, Embezzlement or misappropriation of public funds, Fraud, Breach of trust, an offence involving dishonesty in relation to; Taxes, Election of persons to public office.

**Economic Crimes** consists of; Unlawful acquisition of public property, mortgage or disposal of public property, service or benefit, Damage to public property, Failure to pay taxes, fees, levies, or charges payable to a public body, Effecting or obtaining non-payment of taxes, levies, fees or charges to a public body to which they are payable, Fraudulently making payment or excessive payment from public revenues for; Substandard or defective goods; goods not supplied or not supplied in full; or services not rendered or not adequately rendered, Failure to comply with applicable procedures and guidelines for procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring expenditures.

The definition of corruption under the ACECA, 2003 not only refers to public sector, but also to NGOs, private companies, political parties, etc.

**Classification of Corruption**

Corruption can be classified into different types. The two most important classifications are;
1) Political/bureaucratic corruption, and
2) Controlled/uncontrolled corruption.

<table>
<thead>
<tr>
<th>Political corruption</th>
<th>Bureaucratic corruption</th>
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<tr>
<td>Politicians and state agents making and enforcing the laws which are themselves corrupt. Politicians use their decision-making power mainly to enrich themselves.</td>
<td>The civil servants implementing the laws and policies are corrupt and extort money from the citizens. Civil servants exploit their authority to enrich themselves and their superiors.</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Controlled corruption</th>
<th>Uncontrolled corruption</th>
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<tbody>
<tr>
<td>The regime has strict control over the processes and proceeds of corruption. It is a clear and predictable system.</td>
<td>There is not central control over the demands for bribes. You are never entirely sure that you get what you “paid for”.</td>
</tr>
</tbody>
</table>

**Effects of Corruption**

Corruption hinders economic development, reduces social services, and diverts investments in infrastructure, institutions and social services and also undermines efforts to achieve other country specific targets. Evidence from across the globe confirms that corruption impacts the poor most. Corruption leads to anti-democratic environment characterized by uncertainty, unpredictability and declining moral values and disrespect for constitutional institutions and authority. Corruption reflects a democracy, human rights and governance deficit that negatively impacts poverty and human security.

Corruption has devastating consequences such as wasteful spending, bigger deficits, greater economic inequality, disinvestments as well as unorthodox trading practices. It has the potential of causing a crisis of confidence that sparks capital flight and disrupts markets.

**Effects of Corruption on Service Delivery in Kenya: Case Study for Health & Education sectors, & Local Authorities**

The following are some of the effects of corruption in the priority sectors of the MS Kenya – Youth Agenda Anti-Corruption Programme:
Health Sector Effects

- Inefficient and ineffective medical services
- Compromised medical standards
- Scarcity and inadequacy of health services and facilities
- Misuse of drugs and facilities
- Lack of essential drugs supplied by the Ministry of Medical Services
- Low motivation of health workers due to low salaries
- Poor remuneration and poor working conditions for medical staff
- Some poor patients condemned to early death from preventable illness due to inefficiency and ineffectiveness in service delivery in health centers
- Public health workers running private clinics and pharmacies where they refer their patients
- Regular absenteeism among medical workers

Education Sector Effects

- Very few children accessing education institutions
- Inefficiency and ineffectiveness in school inspection and supervision
- Poor standards of learning and teaching materials due to embezzlement of free education funds
• Low ranking of District and Schools in national examinations such as KCPE and KCSE
• High rate of school drop outs
• Low number of pupils joining high schools, tertiary colleges and universities
• Cohort wastage of pupils who drop out of school, with some engaging in prostitution and other social crimes like robbery with violence
• Mushrooming of poor quality private schools and private tuitions by regular teachers on Government payroll
• High level of illiteracy and ignorance

Local Authority Effects
• Inefficiency and ineffectiveness in service delivery
• Low quality services vis-à-vis the rates charged by the Council
• Poor remuneration of workers yet they are involved in collecting revenue from business operators and matatu terminus
• Existence of poor roads and many potholes
• Poor garbage collection and general waste management
• Poor sewerage system yet resident pay for such services
• Grabbing of public utility plots by council officials and their syndicates
• Selective or lack of enforcement of Council by-laws
• Poor Local Authority revenue base
Manifestation, Forms & Causes of Corruption in Kenya

Corruption manifests itself in both public and private spheres of our relationships and interactions. It also involves a process where an individual or group unfairly gets access to undeserved resources, goods, services, opportunity or position. Corruption is a monster, which affects all sectors of society, including the social, economic, political, educational, cultural, religious and environmental aspects of life.

It manifests itself at different levels such as individual, family, community, organization, government departments, local authority, institutions like schools, hospitals and water management boards, among others. Most citizens in one way or the other have either encountered and/ or been involved in a corrupt transaction. Some of us have either knowingly (consciously) or unknowingly (unconsciously) participated in corrupt activities at different levels in our lifetime. There are three broad categories of corruption, thus Petty (local) Corruption, Looting and Grand Corruption.

Forms of Corruption

1) The Petty/Local Corruption
This is the focus of MS Kenya, the Youth Agenda and other partners. Petty corruption involves small scale corruption activities such as stealing of drugs in public health centers, misuse of free education funds and bursary fund, non- provision of public social services like water, cabbage collection, despite payment of rates and taxes by the citizens to the concerned authority or government institution.

2) The Looting Corruption
This category of corruption involves incidences where money or resources are spent but no goods or services are delivered. It is usually a syndicate between the purported suppliers of goods/services and those purporting to be the clients or recipients. For instance, the Principal of a certain Secondary or Primary school paying for undelivered goods using fictitious and dubious procurement procedures and entries in the official records.

3) The Grand Corruption
This involves large-scale resources or amount of money as was the case of Goldenberg and Anglo- Leasing Financial Scandals during the Moi and Kibaki regimes in Kenya. This category usually involves abuse of office or abuse of rule of law by powerful individuals or their syndicates in influential public and private offices. Some of the
Offices that are prone to grand corruption include: the Office of the President, Office of the Prime Minister, Office of the Vice President, Ministry of Local Authorities, Ministry of Water and Irrigation, Ministry of Medical Services, Ministry of Public Health and Sanitation, Ministry of Education, Science and Technology, Ministry of Trade, Ministry of Internal Security, among other Government Ministries and Departments, Multi-National Companies, among other institutions.

The three categories of corruption manifest themselves in different scales in the three arms of Government thus the Judiciary, Legislature and Executive in terms of illegal transactions, misuse of funds and corrupt allocations of tenders involving little monies and millions of public funds with far reaching negative consequences in terms of poverty and access to public social services like health, water, education, among others.

The youth and women should be very vigilant and pro-actively participate in monitoring and evaluation of all the projects supported by public funds, since they are the majority of those affected by poor access to basic services like education, health and water. However, for them to be able do so effectively; they need to obtain
appropriate information from the relevant authorities or offices. Indeed, access to relevant information is an important step in ensuring that youth and women are effective in their anti-corruption initiatives.

**Causes of Corruption**

There are different types of corruption as there are different types and dimensions. There are many circumstances that encourage corruption, but mostly it takes place where opportunities and discretionary powers are prevalent and where individuals are only accountable to appointing authority (i.e. where patronage rather than merits was the main criteria for hiring that particular individual). The causes can be broadly categorized as; political, social, economic, legal, cultural, psychological and administrative. However, the specific causes include the following:

- Individual’s greed, selfishness, materialistic tendencies and lust for power and desire to accumulate wealth by or get rich quickly by any means.
- Lack of commitment to the rule of law or to follow established procedures and regulations in transacting business.
- Too much power of discretion tends to lure people into corruption.
- Weak law enforcement mechanism and poor remuneration of law enforcement agents tempts them to engage incorrupt practices.
- Low risk of being netted in corruption ventures and high payoffs encourages many to take risk or bribe their way out.
- Weak or compromised management and monitoring systems.
- Lack of effective checks and balances in structures of governance.
- Inefficiency in service delivery and/or the existence of too much bureaucracy and unnecessary regulatory systems tempts individuals or groups to look for shortcuts.
- Loopholes in the procurement and tendering procedures for public service goods.
- Scarcity of essential commodities and services causes corruption, especially among those who fear to lose access to such goods and services. This is reflected in negative competition and adoption of dubious means to gain access to the said goods.
- Abject poverty and helplessness may drive some people to engage in corruption.
- Lack of professionalism and work ethics results into corruption.
- Abuse of the African value system, break down of social norms and taboos that
governed people’s relationships and interactions.

- Weak, compromised and / or infective judicial systems tend to perpetuate corruption.
- Defective laws and lack of morals drive people to engage in corruption. The negative attitude towards hard work, honesty, transparency and accountability resulting from a culture of impunity or inaction (i.e. after all or don’t care attitudes).
Kenyan Anti-Corruption Policy & Legal Framework

The historical perspective on the fight against corruption in Kenya

Prevention of Corruption Act (Cap 65) of 1956 was the first and only legislation that was used to curb corruption. With time, however, it became toothless and ineffective. Between 1960s and the late 1980s, corruption grew in magnitude and permeated through much of the public sector, mainly because of the repressive nature of government which did not allow for wider accountability to the ordinary citizen. Institutions meant to provide checks were subverted to the executive, making them unable to regulate executive excesses.

In the mid 1990s, corruption had grown to become a major issue that worried all sectors of society, including the donor community. With the re-introduction of political pluralism and economic liberalization in the early 1990s, sectors of the society especially parliament and the donor community began piling pressure on government to act on corruption. Responding to the pressure, the government reviewed the Prevention of Corruption Act of 1956 in 1992. The amendment led to formation of an Anti-Corruption Police Squad, with the responsibility of curbing corruption both in the public and private sectors. The Squad, however, failed to stop corruption, largely because it had no legal basis that could bolster its operations.

The government further amended the Prevention of Corruption Act in 1997. This amendment created the Kenya Anti-Corruption Authority (KACA). This legislation was however, weak because it did not anticipate conflict between the body it was to create and the prosecutorial powers of the Attorney General. KACA also did not enjoy political good will necessary for its work, resulting in the suspension of its first Director, John Mwau, when he attempted to prosecute senior Treasury and tax department officials for graft.

Eventually in 2001, KACA was declared unconstitutional and was subsequently scrapped, mainly because of the appointment of Justice Aaron Ringera as Mwau’s replacement, which was seen to have violated constitutional provisions. In the place of the disbanded KACA, the Anti-Corruption Police Unit (ACPU) was formed, while the Attorney General took on all the cases which had been instituted by KACA and were pending in court. In line with his pledge to continue the crusade against corruption, the AG published the Kenya Anti-Corruption and Economic Crimes Bill 2001 in July.
2001. The main objective of the Bill was to introduce comprehensive legislation to address the shortcomings of the current legal framework in dealing with corruption and economic crimes. It sought to establish both a Kenya Anti-Corruption Authority and a Kenya Anti-Corruption and Economic Crimes Board. The Bill however had a controversial proposal, which sought to grant amnesty for all offences committed prior to 1st December 1997. Largely because of this controversial clause, it was rejected on the floor of Parliament on the 14th August 2001. On the other hand, the ACPU, like the Anti-Corruption Police Squad before it, made little headway in stopping corruption to the point of even having itself getting sucked into the vice.

The 2002 General Elections saw combined opposition under the banner of the National Rainbow Coalition (NARC), running on a platform of anti-corruption, defeat KANU and end its 40-year hold on power. The new regime declared zero tolerance towards corruption and pledged to end the vice. The new government quickly embarked on a number of measures aimed at ending corruption.

The first year of the new regime’s ascent to power saw a number of measures undertaken against corruption, among them the suspension of judges and magistrates suspected of being corrupt in what the media referred to as ‘radical surgery,’ the formation of the office of Permanent Secretary for Ethics and Governance in the Office of the President and the re-introduction on the floor of Parliament of the anti-corruption legislation that had been defeated in the KANU era.


In 2003, the government enacted the Public Officer Ethics Act and the Anti Corruption and Economic Crimes Act. Prior to the tabling of these two laws, the Minister for Finance published Legal Notice No 161 under The Exchequer and Audit Act, to regulate government’s procurement of goods and services. In late 2005, the Public Procurement and Disposal Act, was endorsed by the President so as to reform even more deeply the public procurement system.

ACECA 2003 became the most important anti-corruption legislation enacted in the period. It created KACC as a body with legal backing for the first time in Kenya’s history to combat corruption. Besides, the new law created a range of economic

In addition to legislations, the Ministry of Justice and Constitutional Affairs introduced the sector wide Governance Justice Law and Order Sector (GJLOS) reform programme, with support from the donor community. Many institutions and mechanisms were set up to fight corruption besides the Kenya Anti Corruption Commission. These included the special magistrate’s courts, the public declaration of wealth and the National Anti-Corruption Campaign Steering Committee and the Office of Permanent Secretary, Ethics and Governance in the Office of the President. In an effort to strengthen the role of the Parliamentary oversight, the Public Accounts Committee (PAC) and Public Investment Committee (PIC), a new legislation to guide the operations of the Controller and Auditor General was proposed and enacted by parliament. Under the Public Audit Act, the Controller and Auditor General is mandated to audit the accounts of all public entities, namely the government, local authorities and public corporations.

Although all these measures were undertaken, the war against corruption is far from
over, since the NARC regime had a fair share of its own scandals involving senior government officials, the most prominent of which is the Anglo Leasing Financial scandal that came to the fore in 2005, three years into the NARC administration. Besides, Kibaki’s second and final term commenced on a controversial note as far as corruption is concerned due to the controversy surrounding the sale of the Grand Regency Hotel to the Libyan government in early 2008, Triton Oil Company, maize sagas and inflated supplementary budget in 2009.

Anti-corruption Laws in Kenya

Since 2003, the government has been putting in place legal and policy framework for addressing corruption as well as creating new institutions as well as strengthening those that existed. The primary law in Kenya is the Anti-Corruption & Economics Crimes Act (ACECA), 2003.

The Anti-Corruption & Economics Crimes Act (ACECA), 2003,
This is the most important anti-corruption legislation in Kenya. The Act creates an independent Kenya Anti-Corruption Commission (KACC) as a body with legal backing for the first time in Kenya’s history to combat corruption.

The law created a range of economic crimes punishable under the Act. ACECA 2003 expands the definition of corruption and widens the number of corruption and corruption-related offences that it prohibits. It defines corruption to include bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust, and any offence involving dishonesty, in connection with any tax, rate or impost levied under any Act or dishonesty relating to elections of any persons to public office. The Act also makes provisions for corruption offences under a wide range of situations involving principals and agents, secret inducement for advice, conflicts of interest, improper benefits to trustees for appointments, abuse of office and fraudulent deals in regard to public property. The definition embraces almost every sphere of the business environment, which the previous laws never envisaged.

Complimentary Anti-Corruption Laws
Taken together with other laws including the Political Parties Act 2007 which provides for registration, regulation and funding of political parties, the Public Officer Ethics Act, 2003 whose purpose is to advance the ethics of public officers by providing a code of conduct and ethics and requiring wealth declaration from public officers, the Public Audit Act, 2003 which led to the expansion and transformation
of the Controller and Auditor General’s office into the Kenya National Audit Office, the Government Financial Management Act, 2004, the Privatization Act, 2005 and the Public Procurement and Disposal Act, 2005 which provides for an efficient system for the procurement of goods, services, works and the disposal of stores and equipment, they provide the legal framework for sanctioning and criminalization of corruption in Kenya.

**Weaknesses in the Kenyan Anti-Corruption Legal Framework**

**On Public Officers’ Ethics**
Enforcement of the laws, especially the Public Officer Ethics Act on conflicts of interest is weak. Though Codes of Conduct and Ethics exist in the Public Service, especially under POEA, their enforcement is not effective to a large extent.

**On Witness Protection**
Although Kenya has operationalized the Witness Protection Act (WPA), reporting of cases of corruption is still being hindered by the absence of a law on freedom of information and whistle blowing. Both WPA and ACECA do not provide penalties for those who intimidate and/or victimize informers. There is no coordinated manner in which corruption reports are made by public officials to the various appropriate bodies. This has resulted in duplication of investigations.

**On Declaration of Wealth**
There are no mechanisms put in place to ensure that the declaration made by any officer is correct as to the true position of his wealth and liabilities. The law does not provide for ascertaining the veracity of the information given and periodic assessment of the same. There are no strict penalties prescribed for breach of provisions in POEA apart from the issue of wealth declarations. The enforcement of the codes of conduct is weak.

**On Public Procurement**
The Public Procurement Oversight Authority (PPOA) set up by the Public Procurement and Disposal Act 2005 (PPDA) lacks sufficient technical capacity for procurement oversight as required by PPDA.

**On Public Audits**
There is a backlog by Parliamentary Committees on the reports by the Controller and Auditor General and non-implementation of the recommendations by relevant
institutions and non-action by Parliamentary Committees (Parliamentary Accounts Committee (PAC) and the Parliamentary Investments Committee (PIC)) and accounting officers of the various Government departments and public institutions on the implementation of reports from the Controller and Auditor General. There is no legal provision to enforce compliance to accounting and auditing standards. There is lack of a legal framework and time limit for appropriation of funds and in the processing of payment.

**On Access to Information**

Whereas there are a few channels that enable the public to have access to information, they need to be improved. The existence of the Officials Secrets Act curtails the release of information to the public. There is no effective legal mechanism to ensure that financial documents released by private entities are kept in the appropriate format and for the required time. Information regarding public bodies is still widely inaccessible to the public. Most operations of the public institutions still remain top secret to the public and they are not in a position to question what goes on in those bodies. There is still a gap in giving information which opens up avenues for corruption. There is no published information in public institutions on the existence or likelihood of corruption occurring. There is no legal requirement for self assessment and publication of the reports on corruption.

**On the Judiciary**

The financial independence of the Judiciary is still lacking. The Judiciary’s pay needs to be enhanced as a means of minimizing corruption in the Judiciary. This has not been achieved and some of the officers are still lowly paid which makes them susceptible to corruption. Both the complexity of the court process and lack of awareness of laws provide opportunities for corruption. The appointment of Judges is the prerogative of the President and Parliament plays no role in the appointments. Although the Law Society of Kenya and the Judicial Service Commission are involved in recommendation of persons to be appointed as judge, it is the President who has the final decision. Besides, only the Attorney General has security of tenure. The Director of Public Prosecutor (DPP) who is in charge of prosecutions does not have security of tenure.

**On curbing Political Corruption**

The Political Parties Act (PPA) does not bar corrupt individuals or those suspected to have engaged in corruption from running for political offices. There is partial compliance by political parties and politicians to the Electoral Code of Conduct.
PPA focuses more on political parties and not individual candidates with regard to funding. Under the PPA, individuals are not required to disclose the source of funding.

**On the Private Sector**
The provisions under ACECA are not specific to tackling corruption in the private sector. The Capital Markets Authority Act is limited to Companies that are listed at the Nairobi Stock Exchange (NSE), while the Companies Act is limited to the extent that directors may appoint nominees in their place and trade with the same companies. Thus, enforcement of these sections of the Act as regards private sector is weak. The Capital Markets Authority Act does not empower the CMA to effectively regulate the activities at NSE.

The Companies Act is outdated and does not address the emerging issues such as corporate governance, information technology and risk management among others. Cooperation between law enforcement agencies and the private entities is weak. There is ineffective monitoring of public disclosure requirements of corporate entities. There are no legal provisions to deal with post public sector employment and there are opportunities for corruption created by lack of specific legislation that defines post public sector employment. Internal auditing controls in private entities are insufficient or optional. There are no internal reporting mechanisms for corruption in the private place. Although the Income Tax Act allows deduction of an expense which is wholly and exclusively incurred in the production of income, it does not specifically mention the word ‘bribe’ or acts of corruption.

**On the Civil Society participation**
Although there is sufficient legal framework for civil society’s participation in the fight against corruption, there is no structured platform for collaboration between the Government and civil society. There is no sufficient framework to enhance engagement. However, the Name and Shame Campaign network which was conceived by civil society organizations continue to face threats from the police and the Government when they expose and name corrupt leaders and incidences. The civil society also lacks adequate funding to engage in public/civic awareness activities. There is widespread corruption within the ranks of the civil society that also calls for monitoring frameworks.

**On access of public to Anti-Corruption Agencies**
Although the anti-corruption bodies such as KACC are known to the public, access by
the public is limited owing to their locations in cities. For instance, KACC has offices in Nairobi and Mombasa, but not in the districts where the majority of the public resides. The National Corruption Perception Survey of 2007 indicated that reporting system in the country still has to improve with 53.6% of the public unaware of where to report corruption. The Business Keeper Monitoring System (BKMS) which is a whistle blower system is only accessible to members of the public who have access to the internet.

**On Anti-Money Laundering Policies**

Although the CBK Prudential Guidelines are enforceable, they are only so for institutions operating under the Banking Act. Although the provisions of the Proceeds of Crime and Anti-Money Laundering Bill 2008 meet the international standards as it also provides for the establishment of a Financial Reporting Center and Anti-Money Laundering Advisory Council, it is only institutions regulated by CBK that can report such information. Information availed to CBK can only be used for intelligence purposes by other law enforcement agencies. There is weak co-ordination between CBK and immigration offices in monitoring cross border cash movements. Additionally, money transfer institutions are licensed by CBK, but they are not supervised and regulated by CBK. The CBK guidelines are not adequate and comprehensive.

**Enforcement and Implementation Weaknesses**

**General Weaknesses**

- The existing policy documents are scattered and do not address the issues effectively and comprehensively.
- The implementation of initiatives is uncoordinated among the stakeholders in the anti-corruption process.
- Lack of synchronization of training calendars between KACC and Government ministries/ departments.
- Lack of ownership and institutionalization of Public Service Integrity Programme by public institutions.
- The process of reviewing the law is long and complex. Furthermore, there is usually lack of or little consultation with other stakeholders in the law review process.
- The Special Magistrates’ Courts are few and overworked by other case laws, leading to backlog of cases and slow determination of cases of corruption.
- There is no structured collaboration and co-ordination between the various anti-
corruption bodies in Kenya.

- There is lack of enforcement mechanism for participation by sectoral actors in NACP.
- There is no structured collaboration between anti-corruption bodies and non-state actors in the dissemination of information about corruption.

**On the Public Employment Procedures**

- The law is not always adhered to by public employment recruitment agencies, particularly, by political appointing authorities.
- Promotions in some cases are not streamlined due to lack of or updated guidelines. For example, some professionals in the Public Service such as teachers and nurses either lack Schemes of Service or have outdated ones and this creates lack of transparency in the promotion exercise.
- Most of the laws on appointment to Public Service do not require parliamentary vetting of the appointees and this erodes the independence of those offices from interference by the appointing authority.

**On Reforms to Improve Service Delivery**

- Performance appraisal system is one way-based, that is, it is not all rounded meaning that it is only the seniors appraising their juniors.
- The development of Service Charters in some cases is not inclusive and participatory hence lack of ownership by the staff who are expected to implement them.
- The public who is supposed to benefit from Service Charters is not aware about them.
- Rapid Response Initiative has been affected by lack of follow up and sustainability of set targets.
- There are no clear criteria for selection of individuals for training in most public offices.
- Performance contracting as a tool has not been institutionalized and embraced by many institutions and officers in the Public Service. Consequently, attempts for compliance have occurred due to the annual appraisal system instead of being self-driven.
- There is lack of regular review of the remuneration scales.

**On Curbing Political Corruption**

- Although penalties and electoral rules in the Election Offences Act are in place, they are not strictly enforced.
• There is lack of an effective institutional framework for enforcing electoral laws.
• There is no limit on expenditure by political parties and the law does not deal with the activities of special interest groups who carry out political activities on behalf of political parties or individuals.
• The law also does not prohibit contribution from corrupt individuals, public bodies, government contractors as well as illegal sources such as money laundering, drug trafficking and other organized crimes.
• There is lack of technical capacity to vet expenditure of political parties.

On regulating the behavior of Public Officers
• The enforcement of the Public Officer Ethics Act 2003 is hampered by the fact that public officers engage in activities/businesses some of which relate directly to their public duties hence the likelihood of conflict of interest.
• Enforcement of Codes of Conduct and Ethics is weak due to lack of commitment from top management and little or no involvement of staff in their development.
• There is lack of sensitization of staff members and selective application of the code, hence no ownership.
• Responsible Commissions set up by the Public Officer Ethics Act 2003 lack the capacity to effectively enforce the Codes of Conduct and Ethics under them.
• Some provisions of the Code of Conduct and Ethics under POEA lack in-built enforcement mechanisms.
• Responsible Commissions lack the capacity to effectively scrutinize the Wealth Declaration Forms to authenticate the veracity of information given by public officers.

On regulating Public Procurement
• The operationalisation of the Public Procurement and Disposal Act (PPDA) and Regulations is faced with some challenges since procurement in certain institutions is not transparent e.g. such as the establishment and composition of Tender Committees in public primary and secondary schools.
• Public officers circumvent the law such as splitting tenders to defeat the requirements of PPDA and the Regulations.
• The use of prequalification lists of suppliers/contractors is still subject to abuse because of lack of effective controls on how to conduct the process.
• There is inadequate capacity of procurement professionals.
• There is lack of specialized procurement knowledge.
• Codes of Conduct for procurement professionals is still lacking.
On Public Audit Processes

- There are no provisions giving timeline for debate by Parliament on the reports by the Controller and Auditor General.
- Recommendations by PAC and PIC are not implemented by the Executive and law enforcement officers.
- There are inadequate skilled personnel.
- There are audit systems in place but their enforcement is weak.
- Although the law provides for public reporting of audit reports through the Kenya Gazette, the circulation of the Kenya Gazette is limited and the accessibility is also limited.
- The administrative procedures are not simple enough and there is too much bureaucracy.
- Access by the public to the decision making authorities is not always guaranteed.
- The use of web-based reporting only targets people who are Internet literate. In some cases, the information posted on the Internet is scanty and outdated.
- Where the reports are published, the language used may be too technical to be understood.

On the independence of the Judiciary

- There is no competitive process in the appointment of Judges in Kenya.
- The composition of the JSC is not representative and inclusive.
- The DPP’s Office is not independent.
- Appointment to DPP’s Office is not shielded from political interference.
- Police Prosecutors are rarely supervised by DPP to ensure efficient prosecution of cases. There is lack of co-ordination and harmonization between the two bodies.
- Police prosecutors lack the capacity and skills to efficiently undertake prosecutions.
- There is no clear line of accountability to make police prosecutors answerable to the Attorney General. Presently, they are directly answerable to the Commissioner of Police.

On the Private Sector

- The Capital Markets Authority (CMA) does not have the power to reign in on rogue stockbrokers at NSE.
- Most of the Codes of Conduct for the private sector lack legal backing. They rely on goodwill of members.
• There is ignorance about the existence of some of these measures by players in the private sector especially Code of Conduct and Regulations for the private sector.
• There is no mechanism for accountability and transparency in the operations of the civil society.
• Lack of supervision and regulation of money transfer institutions.

**Anti-Corruption Policies, Institutions and Measures**

A variety of anti-corruption measures, policies and institutions have been introduced to facilitate corrective action against corruption. The measures, policies and institutions target different aspects of corruption.

**Anti-Corruption Policies**

Main Policy Actions include;
1. The National Anti-Corruption Plan, 2005 – sets out the responsibilities of each of the stakeholders in the war against corruption and regular reviews of activities implemented are conducted.

**Anti-Corruption Measures**

A number of the measures are focused on fighting corruption through special investigative and audit methods. In this regard, special investigative and audit commissions have been set up. Other measures are mere codes of conduct that seek to enforce certain acceptable behavior amongst public officers.

**Anti-Corruption Institutions in Kenya**

In total, there are 14 institutions leading the war against graft. Eight of them fall within the executive branch of government, two within the legislature and four within the judiciary.

Those falling within the executive are the Office of the Permanent Secretary of Governance and Ethics, the Cabinet Anti-Corruption Committee, the KACC, the Police, the National Anti-Corruption Campaign Steering Committee, the Ministry of Justice, National Cohesion and Constitutional Affairs, the Office of the Auditor General and the AG’s Office.
Those that fall within the legislature include the Parliamentary Accounts Committee (PAC) and the Parliamentary Investments Committee (PIC). Those within the Judiciary include the special anti-corruption courts and the commercial courts and laws such as the Public Officers Ethics Act and the Anti-Corruption and Economic Crimes Act which are enforced through judicial processes.

Other anti-corruption institutions include various responsible Commissions created by the POEA to advance the integrity of public officers. Among these are the Teachers Service Commission, the Electoral Commission of Kenya and the Judicial Service Commission.

The commissions in turn establish and enforce Specific Codes of Conduct and Ethics for the public officers for whom they are responsible. In public procurement, the institutions created to curb corruption include the Public Procurement Oversight Authority, the Public Procurement Oversight Advisory Board and the Public Procurement Administrative Review Board.

The former institutions and ad-hoc tribunals/commissions that have been involved in the fight against corruption in Kenya include;

1) Government Properties Investigation Committee,
2) Presidential Commission on Illegally Acquired Land – Ndungu Land Commission,
&
3) Judicial Commission of Inquiry into the Goldenberg Affair

Although all these measures were undertaken, the war against corruption is far from over, since the NARC regime has had a fair share of its own scandals involving senior government officials, two of which are Anglo Leasing and the controversial sale of the Grand Regency Hotel in early 2008.

**The Effectiveness of Anti-Corruption Initiatives in Kenya: Institutions, Laws, Policies and Regulations**

The effectiveness of the anti-corruption in the country depends on both external and internal factors. For the initiatives to be effective, a number of measures are called for;
a) KACC should be made independent and free from executive interference,
b) Provide for a transparent, objective process of appointment and dismissal of KACC directors,
c) Provide for independent powers of investigation,
d) Create independent set of tribunals (separate from KACC) for judging cases for the KACC,
e) KACC should have an independently determined budget and report directly to Parliament,
f) Allow for civil as opposed to criminal suits in cases of corruption so as to ease the burden of proof,
g) Privatize the management of public agencies,
h) Transparently enforce prudent banking regulations, auditing and accounting standards,
i) Reform government institutions including the civil service through such reform programmes as Rapid Results Initiative, placing greater emphasis on internal competition and meritocracy in the public sector,
j) Enhance the transparency of government budgeting, financial management and tax administration,
k) Ensure independence of the judiciary and autonomy of the law enforcement bodies,
l) Strengthen internal and external checks and balances,
m) Increase the likelihood of corruption being detected and punished,

n) Ensure transparent and strict enforcement of the laws,
o) Strengthen mechanisms for information gathering and dissemination,
p) Safeguard freedoms of expression by the media and citizens,
q) Enhance public awareness and mobilize constituencies of civil society,
r) Encourage the development of reform minded anti-corrupt groups in civil society,
s) Add voice and support to international efforts to combat corruption,
t) Prosecuting and jailing officials implicated in graft,
u) Dismiss officials involved in corruption,
v) Reposes properties acquired illegally and return them to public ownership (restitution),
w) Put emphasis on prevention, i.e. on measures designed to reduce opportunities for corruption, and
x) Increase the risk to those who undertake corrupt activities.
Challenges in Enforcement of Anti-Corruption Policies/Laws in Kenya

The following challenges still face enforcement of Anti-Corruption policies and laws in Kenya;

- State Capture that makes Kenya’s anti-corruption measures are prone to manipulating.
- Administrative Corruption is still prevalent as before even with the withdrawal of the State from economic affairs.
- Substantial number of the measures and policies against corruption has also been donor-driven, especially by attaching them as conditionalities for aid. However, there is a limit to which such anti-corruption initiatives can go in combating corruption.
- Weak provisions within the anti-corruption law, measures and policies have made them ineffective in the fight against corruption.

Kenya’s compliance with the International Instruments: United Nations Convention against Corruption (UNCaC) and the Kenyan Anti-corruption measures

Kenya’s anti-corruption legislative and policy framework largely borrows from the international anti-corruption instruments. Many of Kenya’s policy and legislative measures are derived from the articles and principles of these instruments. In adopting the international instruments to the domestic context, Kenya has met with both progress and shortcomings. Measured against the provisions of United Nations Convention against Corruption (UNCaC) articles and principles, Kenya’s efforts towards combating corruption show some gaps in policies, legislation, regulations and administrative measures.

Gaps in Kenya’s adoption of UNCaC

Policies

Kenya lacks a comprehensive National Anti-Corruption Policy to co-ordinate anti-corruption activities at all levels. Although there are a number of initiatives to ensure compliance with most of the UNCaC articles, some of the requirements of the articles have not been complied with.
Legislations
Kenya currently has sufficient laws to fight corruption, with the main law being the ACECA 2003, supported by several other complimentary laws. The main anti-corruption bodies established by the law lack adequate capacity to enable them exercise their full mandate. For example, KACC is established under ACECA as a statutory body, it lacks constitutional entrenchment which would provide more permanency and independence. However, the main challenge is the enforcement of the laws.

Administrative Measures
Various bodies have been established to directly address issues of inefficiency associated with corruption in both public and private institutions. KACC and the Kenya Anti-Corruption Advisory Board of KACC are the principal bodies in the fight against corruption.

Other complementary anti-corruption agencies are the Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA), the Efficiency Monitoring Unit (EMU), the NACCSC, the Kenya National Audit Office, the Public Procurement Oversight Authority (PPOA), the State Law Office, the Ethics and Integrity Committee of the Judiciary, the Public Complaints Standing Committee (Ombudsman), Kenya Integrity Forum, Public Procurement Administrative Review Board among other responsible Commissions set up by the Public Officers Ethics Act, (POEA) 2003 to come up with Codes of Conduct for various public agencies. Despite these numerous administrative measures corruption still thrives in Kenya.

Regulations
There are many regulations that Kenya has come up in its pursuit of an anti-graft environment. These include Performance Contracting agreements, Performance Appraisal Systems, Service Charters and General Regulations guiding operations in certain public institutions such as the Public Service Commission Regulations and the Paymaster General Regulations. Others include Codes of Conduct establishing rules on how to employ certain public cadres, Rapid Results Initiative and Results Based Management, Ministerial circulars from the Office of the President, the Risk Based Audit Approach within the Internal Audit Department, CBK’s Risk Management guidelines for use by commercial banks, Treasury circulars, the Constitution, various Acts of Parliament, Manual for Prosecutors are all part of the regulations government has come up with containing corruption.
The State of Corruption in Kenya: Case Studies of Devolved Funds

Introduction to Devolved Funds

There are several devolved funds that exist at the constituency and district levels in the country. These among others include the following:

a) Constituency Development Fund (CDF) managed by the Constituency Development Fund Committee (CDFC),
b) Local Authority Transfer Fund (LATF) managed by the Local Authorities,
c) Constituency Bursary Fund (CBF) managed by the Constituency Bursary Committee,
d) Constituency HIV/AIDS Fund managed by the Constituency Aids Control Committee (CACC),
e) Water Services Trust Fund (WSTF) managed by the Water Boards,
f) Free Primary Education Fund (FPEF) managed by primary schools,
g) Subsidized Secondary Education Fund (SSEF) managed by secondary schools, 
h) Roads Levy Maintenance Fund (RLMF) managed by the District Roads Committee, 
among others.

For the purpose of this Tool Kit we shall focus on the CDF, LATF and WSTF; these are 
the funds that directly affect the MS Kenya and Youth Agenda selected service sectors 
thus water, education and health.

Whereas, a few constituencies and districts have realized some development as a 
result of devolved funds, most of them have not due to increasing incidences of 
corruption through mismanagement of funds and in some cases outright looting. 
Indeed, there are numerous unreported and reported issues of corruption in the 
management of the devolved funds.

It is the right and responsibility of the community members, especially the youth and 
women to not only become knowledgeable about these funds, but to proactively 
participate in project identification, planning budgeting, implementation and 
monitoring of all development projects in their areas.

**The Constituency Development Fund (CDF)**

The implementation of the fund is guided by the CDF Act 2003, the CDF (Amendment) 
Act 2007, CDF Regulations, Ministerial and Treasury Circulars, Public Procurement 
and Disposal Act, 2005 and 2006 Regulations, Implementation guidelines, prepared 
by the CDF Board.

The CDF Act provides that at least 2.5% of the Government ordinary revenue 
collected annually is allocated to this Fund. The following are CDF allocations over 
the years;

- 2003/4 - 1.26 billion,
- 2004/5 - 5.6 billion,
- 2005/6 - 7.2 billion,
- 2006/7 – 10.1 billion,
- 2007/8 – 10.1 billion,
- 2008/9 – 10.1 billion,

According to the CDF Act, 3% of the total Fund is set aside for administration of 
the CDF Board. The remaining balance, 75% is allocated equally to all the 210 
Constituencies and 25% based on their poverty ranking (poverty index) using a
formula to ensure that poorer constituencies get more money. The poverty index considers factors such as the total number of people living below the poverty line in a constituency, the total population, and so forth to give additional funds to those constituencies that have the highest numbers living in poverty.

CDF management structures comprise of;

- Locational Meetings,
- Constituency Development Fund Committee (CDFC),
- District Projects Committee,
- Constituency Funds Committee,
- Constituency Development Fund Board and
- Projects Management Committee.

**Important Questions**

Q. Do you know how much was allocated to your constituency in the past year?
Q. Do you know that CDF is your money?
Q. Should you allow your money to be mismanaged?

Despite the positive attributes of the CDF, it has drawn controversy over some of its features, among them;

i. Its structure, legal basis and operations.

ii. The role of the MP in selection of CDFC members has been criticized as tantamount to exposing the Fund to manipulation by parliamentarians.

iii. The involvement of MPs in the operations of the Fund has been challenged as unconstitutional.

iv. The constitutionality of CDF within the context of doctrine of separation of powers has also been questioned.

v. The operations of the CDF are widely viewed as lacking in transparency. In its interim report, the African Peer Review Mechanism (APRM) Country Review Report said that there seemed to be a lack of transparency in the decision-making process for the selection of projects financed by the resources from the Constituency Development Fund.

In an opinion poll commissioned by the International Republican Institute, a majority of Kenyans (61%) stated that they believed that CDF matters were not managed in an open manner. In another survey on decentralized funds that was conducted by Kenya Institute of Public Policy Research & Analysis (KIPPRA), corruption in the running of the CDF was reported.
Among the offences observed in the operationalization of the CDF include:

a) Conflict of interest, which involves members of CDFCs participating in tendering processes in which companies associated to them are implicated.

b) Fraud and embezzlement.

c) Failure to undertake project identification exercises, which amounts to an economic crime under ACECA.

One limiting factor in the fight against corruption in the CDF operations is that although crimes punishable under existing law have been committed, they have not been punished and the legal provisions have not been enforced to the letter, despite existence of sufficient evidence to prosecute the culprits.

Besides punishable offences, there are other legal bottlenecks that stand in the way of efficient management of the CDF;

- The role of MPs in the management of CDF for example still exposes the Fund to corruption.
- The CDF still stands on a constitutional quicksand.
- CDF has not been subjected to serious anti-corruption scrutiny. The KACC has, for instance, given little attention to the accusations of corruption leveled against the management of the CDF. In fact, since the establishment of KACC, only one CDF case had been forwarded to courts as at May 2006.
- There exists no special mechanism for reporting and investigating corruption in CDF.

**Anti-corruption measures under the CDF Act**

- Section 51 of the CDF Act criminalizes and provides for a penalty for misappropriation of the Fund which amounts to a prison term of up to 5 years and/or a Kshs. 200,000 fine,
- Section 4 of the CDF Act links the operations of the Fund to the annual national budget system in order to synchronize the disbursement and accounting cycles with the Government’s financial year,
- Any withdrawal from the Constituency Development Account (CDA) must be on the basis of minuted resolution, and
- CDF Account Managers are public officers who are custodians of the Fund and all records of the fund operations.

Besides these internal anti-graft measures within the CDF operations, there is need to strengthen the capability of CDF to fend off corruption. This can be done by;
Exploring alternative models for ensuring popular participation in CDF management,
- Emphasizing broad-based and ethically sound criteria for representation of interest groups and communities,
- De-linking the Fund from Parliament or sanctioning the role of MPs,
- Strengthening the capacity of the CDF Board in terms of enforcing the provision of the Act in order to secure probity and accountability,
- Having KACC develop an anti-corruption strategy targeting CDF among other decentralized funds,
- Exerting public pressure to enforce the provision of ACECA and POEA against errant CDF members, and
- Sensitizing both the CDFC and the public on the operations of CDF.

The Local Authority Transfer Fund (LATF)

The Local Authority Transfer Fund (LATF) was established in 1999 through the LATF Act No. 8 of 1998, with the objectives of;
- Improving service delivery,
- Improving financial management, and
- Reducing the outstanding debts of local authorities (LAs).

LATF comprises 5% of the national income tax collection in any year. LATF should not constitute more than 40% of local authority revenues.

The table below shows national LATF allocations since inception;

<table>
<thead>
<tr>
<th>FY</th>
<th>Kshs. Billions</th>
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</thead>
<tbody>
<tr>
<td>99/00</td>
<td>1.00</td>
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<tr>
<td>00/01</td>
<td>2.306</td>
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<td>01/02</td>
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<td>07/08</td>
<td>8.25</td>
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<tr>
<td>08/09</td>
<td>9.25</td>
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</tbody>
</table>
LATF is allocated to the 175 LAs on the following criteria;
• 3.5% divided equally according to all 175 LAs,
• 60% according to population size – (1999 census),
• 36.5% is distributed based on the size of the urban population of LAs.

An advisory committee comprising the private sector, the Ministry of Finance, the Permanent Secretary Ministry of Local Government, and the Kenya Local Government Reform Programme’s secretariat, guides LATF operations. LATF annual reports and other disbursement information are disseminated through newspaper advertisements. 60% of LATF allocations are released based on LAs meeting set requirements. The remaining 40% is released based on LAs performance measured through LASDAP and other indicators. Budgeted LATF allocations are gazetted but no disbursement is made unless LAs meet the requirements.

LATF monies are combined with the local authority’s own revenues to implement local priorities such as service delivery and capital projects in accordance with the Local Authorities Act, Cap 265.

Corruption in Local Authorities
Local Authorities have been among institutions perceived consistently as most corrupt. Several reasons have been given for corruption in Local Authorities;

• Procurement of goods and services for councils provide a fertile ground for corruption. Officers of the councils normally collude with outsiders to loot the councils of huge sums of money. In most councils, no open tenders are advertised for the public to tender. Suppliers are simply contracted to supply goods at a price fixed by the officers. In this way the officers have every opportunity to manipulate the prices and fix their cuts in the purchase price. Areas most affected include supply of stationery, spare parts, water treatment chemicals, medical supplies and uniforms.

• In the provision of services such as housing, health services, inspection of construction projects and water among others, officers have found a way of extorting bribes from the public. In provision of water for instance, council officials may disconnect water purposely to big hotels, pretend there is a burst somewhere when there is none so that they can be paid bribes.
In licensing businesses within their jurisdiction, councils move deliberately slowly in order to attract bribes.

Councils normally own land in their jurisdictions. However, instead of allocating this land free to the community, officers of the council and the councilors actually sell the land to the public at exorbitant prices.

On employment, most councils have faulty and sometimes non-existent employment procedures. Chief Officers and councilors see the council as an avenue for employment of their relatives and disregard qualifications while recruiting people for employment. The procedures and criteria for promotions are vague and many times disregarded.

In a study of the reports from the Controller and Auditor General’s Office (now called KENAO), CLARION found out that the key graft problems the C&AG identified as plaguing the Local Councils were:

- Serious weaknesses in financial control, particularly inadequate internal control and supervision over receipts and expenditure,
- Incomplete and poorly maintained records relating to accounting documents as well as laxity in the control of receipts books resulting in revenue losses through misappropriation,
- Poorly maintained subsidiary and other records such as registers relating to plots, rents, rates, private trunk calls, stores, ledgers, inventories, vehicles, permits and petrol records, and
- Misuse of the imprest system by officers and councilors.

The Water Services Trust Fund (WSTF)

The Water Services Trust Fund (WSTF) was established under the Water Act, 2002 and a Trust Deed drawn up by the Ministry of Water and Irrigation. The projected demand is of Kshs. 1 billion a year; in the financial year 2005/06 the government approved a budget of Kshs. 60 million and in the following financial years 2006/07 and 2008/09 respectively, it approved a budget of Kshs. 80 million per each year.

The Act provides for the setting up of various institutions such as WSTF, Water Appeal Board, Water Resources Management Authority, Water Services Boards, and Water
Service Regulatory Board to harmonize and streamline the management of water resources, supply and sanitation services.

Section 83 of the Water Act mandates WSTF to mobilize resources and provide financial assistance towards capital investment costs of providing water and sanitation services in Kenya that lack adequate water services especially in areas with poor and disadvantaged people, thus contribute to elevation of poverty.

The fund receives financial assistance from the government budgetary allocation, development partners, Kenyan citizens, CSOs and private sector.

Special attention is paid to mobilizing resources from individuals across Kenyan society and private companies with the aim of building strong national ownership of the WSTF among Kenyan citizens.

WSTF has established formal, long-term partnerships with a range of organizations in order to support the provision of quality water and sanitation services to underserved communities throughout Kenya. The most important of these partnerships is with the 8 Water Service Boards.

The following water boards have been established under the Act;
- Coast Water Service Board,
- Tana Water Service Board,
- Athi River Water Service Board,
- Rift Valley Water Service Board,
- Lake Victoria South Water Service Board,
- Lake Victoria North Service Board, and
- Northern Water Service Board.

A critical indicator in marketing the success of the WSTF to potential funding individuals is how successful Community Based Organisations will be in managing their WSTF – funded projects, and providing quality water and sanitation services to their members over the long-term. Also important is the data on socio-economic impacts of improve access to, and quality of water & sanitation services to the target communities.

WSTF advocates for the adoption of business fundamentals, such as cost-recovery user charges, collective decision making, and transparent financial management to
ensure that water services are sustained over the long-term.

WSTF encourages CBOs to view their grants as investments in water and sanitation income generating assets to ensure that investments are sustained and improved upon over the long-term. Communities should hold their CBOs to account for the provision of quality services to all members.

Functions of the WSTF include;
- Mobilize resources from bilateral and multilateral development partners, from organizations and individuals in Kenya and abroad,
- Apply the raised resources in provision of water supply and sanitation in areas of Kenya that are underserved,
- Establish linkages with WSBs to ensure pro-poor targeting and implementation of projects, transparency, accountability, and equity while mainstreaming good governance, gender, HIV/AIDS and environmental conservation in the financial process, and
- Strengthen the Funds’ institutional capacity to effectively function and upgrade staff skills

Criteria used to select areas for funding include;
- Level of investment in water and sanitation infrastructure,
- Access to water services,
- Sanitation coverage levels,
- WSTF in collaboration with WSBs has developed rapid assessment method based on the CBS Geographic Well-Being in Kenya Report, 2003. By this method, the Fund has identified 362 poorest locations in the country to receive funding to implement water & sanitation service projects.

Achievements of the WSTF so far include;
- Over 600 requests received,
- 62 water projects funded amounting to Kshs.596,812,00 and
- Population of 639,000 people spread in the 7 Water Boards benefitted.

**Challenges of Service Delivery in Water Sector**
- The capacity of the new institutions to deliver on their mandates is still low due to the short period of existence (their young systems are yet to be streamlined and developed).
• Efficiency and effectiveness in record keeping is still a challenge to the water institutions.
• There are serious governance issues as most citizens are not knowledgeable on the existence of these water institutions, hence cannot make informed participation.
• The Water Service Providers’ Board of Directors merely represents stakeholders and not shareholders as would be expected in a typical private company, thus compromising accountability.
• The water services providers (WSPs) have also not been spared of political interference due to the fact that local authorities, which are by their very nature political, wholly owned by them.
• The pro-poor orientation, which is key ingredient to meeting the Millennium Development Goals, is yet to be engrained among WSPs. The poor are still paying a high cost for water and often lack even basic sanitation services. Indeed the urban and rural poor in the four project sites have limited access to water and sanitation services.
• The liabilities (past loans, electricity bills, debts to suppliers, statutory deductions) on existing water and sanitation schemes are too heavy for the new water service providers. Hence the need to lobby for the formulation of clear policy guidelines.
• There are inadequate monitoring and evaluation tools and systems to effectively monitor progress in the water sector by capturing accurate data and statistics on water and sanitation coverage.
• The capacity of WSPs to monitor and evaluate water service provision is very weak, just like their reporting and documentation capacity.
• The current water pricing policies are not pro-poor and cannot guarantee access and equity.
• Most of the WSPs lack sector investment plans (SIPs) and collaborative budget process.
• Community contribution to the water sector funding is currently very weak. The management capacities of community water supply schemes are inadequate and should be strengthened.
• Some of the water service providers have staff from up to four different previous employers; Ministries of Water and Irrigation, National Water Conservation and Pipeline Corporation (NWCPC) Local Authority (LA) and the water service providers (WSP). The terms of employment of these officers are not yet harmonized which causes difficulty in staff management.
• The Water Services Trust Fund (WSTF) is yet to assist the urban poor and rural poor through its community project cycle.
• The indicators of efficiency or otherwise in the water sector service delivery include; regularity of supply, accurate billing, timely billing, leak detection, timely connection, quality and quantity of water, efficiency of staff and their customer relations, timely repair of water bursts.
Civil Societies Organizations (CSOS) & Citizens in the Fight Against Corruption

Besides national level measures, policies and institutions against corruption, there are international initiatives against the vice. Through the initiative of the UN, several anti-corruption agencies were established to fight global corruption. One of the leading global anti-corruption bodies is Transparency International, which was founded in 1993. It has grown to spread around the globe. It sets anti-corruption agenda through its annual Corruption Perceptions Indices which serve to monitor and give country-to-country ratings of corruption internationally.

In addition, the Organization for Economic Cooperation and Development (OECD) is also another institution fighting corruption on the global scene. It recommended in 1994 that all member states ‘take effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions.’ Although the OECD recommendations, much like the recommendations and resolutions from other international initiatives are non-enforceable, they have encouraged some governments to try putting in place local legislations to enforce the recommendations.

In 1996, two of the world’s leading financial institutions, the IMF and WB at their joint annual meeting in Washington adopted a resolution to eliminate corruption from their own lending programs and to encourage governments to act against the malady. They also introduced conditionalities urging governments to introduce anti-corruption reforms in their countries if they are to qualify for loans from the two institutions and their affiliates. The measures and policies from government have received complementation from the civil society in Kenya. The civil society has also played a critical role in setting the agenda and initiating parallel mechanisms of dealing with corruption. For instance, as part of the Kenyan civil society, TI Kenya has led the other CSOs to fight corruption through its annual reviews of the situation of corruption in the country.

Strategies for Citizens Participation in MS Kenya Anti-corruption Thematic Area

Genuine anti-corruption efforts must begin by empowering ordinary people to fight
back. There are some successful experiments in grassroots efforts in which ordinary people have been given the tools to fight back. In India, for instance they have successfully organised local “vigilance commissions” in many towns that brought together interest groups to investigate corruption. The commissions have worked.

In Bangalore, city residents have been involved in rating the quality of all major service providers. The results are used to put pressure on government officials to ensure the service providers are accountable to the citizens.

In parts of Brazil, they counter corruption by engaging citizens in participatory budgeting. That way, they have been able to reduce corruption and cronyism.

In Kenya, Centre for Law & Research International (CLARION) has employed; Name & Shame Corruption Networks (NASCON), State of Corruption Reports, Research & Publication of books – the Anatomy of Corruption in Kenya, Control of Corruption in Kenya, etc. TI, Kenyan Chapter periodically releases Corruption perception surveys and Bribery Indexes. The Youth Agenda designed an effective devolved funds monitoring model; the Constituency Parliament which seeks educate young people to monitor devolved funds. This was a buildup of its efforts in fighting corruption as summarized in two Youth Agenda publications; The Constituency Development fund; For Development or Campaigns? (2003) and The Re-creating our Republic, The Ambitions of a Generation (2002).

MS Kenya is using Budget Monitoring and Tracking, Action Aid Kenya; Public Expenditure Tracking Surveys (PETS), Community Aid International; Community Score Cards in public service delivery, Youth Agenda and St John’s Community Centre (SJCC); through Youth Leadership Program, Nairobi Anti-Corruption Strategy Project, an advisory body to the government consisting of members from the public sector, civil society, business, media and academic institutions; develops and provides comprehensive national anti-corruption policy and relevant recommendations to the government, among others.

**Other Workable Anti-Corruption Strategies applicable at the local levels in Kenya include:**

- Reporting to relevant authorities,
- Investigation,
- Public scrutiny and access to information,
• Monitoring & Tracking,
• Legal Actions,
• Routine publication of information,
• Public Education,
• Community Mobilization,
• Campaign, Advocacy and Lobbying,
• Naming & Shaming, and Hall of Fame,
• Exposure and Whistle blowing,
• Citizens Accountability Charters – Movement for Political Accountability (MOPA) Charters,
• Role of the media – profiling and publicity, public education, and campaign,
• Social Audits – Community Score Cards, Citizens Report Cards, Public Expenditure Tracking Surveys (PETS), among others.

Youth Anti-Corruption Initiatives in Devolved Funds Management
The youth should develop public service delivery charters with Specific, Measurable, Achievable, Realistic and Time- Bound indicators and targets for the local authorities and the specific line ministries/ departments and committees, thus in the water, health and education sectors, including the Constituency Development Fund Committee
(CDFC), the Local Authority Transfer Fund (LATF), Water Services Trust Fund, Constituency HIV/AIDS Fund, Constituency Bursary Fund, Free Primary Education Fund and Subsidized Secondary Education Fund. They should form parallel project management committees to track down the allocation, utilization and overall management of project funds at the local level. For instance parallel youth school task force or youth health task force for purpose of monitoring and evaluation of services delivered.
References

4. Youth Agenda (2003), Mwalulu J and Irungu D (ed) CDF The Constituency Fund, For Development or Campaign?

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The Anti-Corruption Tool Kit
25. The Kenyan Vision 2030.
34. The Exchequer & Audit Act, Cap 412.
38. The Education Act.
The Anti-Corruption Tool Kit

A Tool Kit to Support Youth and Women in Training on Local Corruption in Public Service Delivery