



Republic of Kenya

**GOVERNANCE STRATEGY FOR BUILDING
A PROPEROUS KENYA**

Prepared by the Government of Kenya

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I. INTRODUCTION AND BACKGROUND

A: Background

1. The performance of the Kenyan economy deteriorated markedly in the 1980s and 1990s, with growth falling below its potential. A number of factors contributed to this poor performance, including external shocks and broad-based decline in productivity of investments, near collapse of physical infrastructure and inefficient use of public resources. These problems were compounded by serious weaknesses in institutions of governance, which undermined competitiveness as well as investor confidence in Kenyan economy. The failure to generate adequate economic growth led to increased unemployment, poverty and worsening in almost all social indicators.

2. To address these economic challenges, NARC government (NARC) set out an ambitious and comprehensive programs of economic renewal under the Economic Recovery Strategy (ERS) with emphasis on policy and institutional reforms. The strategy is aimed at: (i) accelerating sustained economic growth underpinned by stable macro-economic environment; (ii) enhancing equity and poverty reduction to improve the welfare of Kenyans; and (iii) improving governance to ensure efficiency and effectiveness of public service delivery and to create an enabling environment for sustainable business growth and development.

3. As part of its commitment to ensuring efficiency in the public sector and to facilitate private sector participation in the economy, various structural reforms have been implemented in the public sector, including restructuring of public enterprises and public financial management reforms. In addition, efforts have been made to create fiscal space to shift resources to priority development areas of; core poverty programs, agriculture, human capital development by improving access to education and health services; and revamping the nation's physical infrastructure. While on the fight against corruption, the government has among others, (i) enacted several governance and anti-corruption related legislations (ii) implemented the on-going sector-wide reforms under the GJLOS¹ reform initiative; and (iii) developed a one-year Governance Action Plan (GAP).

B: The Impact of Recent Governance Reforms

4. The implementation of these measures has improved governance, transparency, accountability and efficiency in the management of public affairs, and as a result, made the public sector more effective in its delivery of services. In addition to the measures already undertaken, the government fully recognizes that accelerating and deepening the reform agenda in the areas of governance and anti-corruption is critical for accelerating economic growth, a necessary condition for sustained reduction in poverty. To this end, and in addition to the administrative, policy and legislative interventions so far implemented, the government has since developed concrete and systematic actions

¹ The GJLOS reforms are aimed at scaling up the fight against corruption, improving transparency and accountability, empowering the poor, marginalized and the vulnerable through promotion of right-based approaches, promoting equal access to justice and preventing crimes as well as police and penal reforms

under the Kenya Anti-Corruption Commission² Strategic Plan and the Governance Action Plan for building a prosperous Kenya.

5. Reflecting government's commitment to the implementation of its governance reforms, investor confidence has been restored and the economy now enjoys a broad-based expansion, the highest in two decades. Real GDP expanded by 5.8 percent in 2005, up from 0.6 percent in 2002, while inflation rate, exchange rate and interest rates have remained relatively stable since 2003. The lower interest rates and relatively contained core inflation rates over the past one and half years have increasingly made credit affordable and accessible for enhanced private sector participation, thereby encouraging investment and economic growth and supporting the government's effort towards poverty reduction. In addition, the continued implementation of appropriate and prudent monetary and fiscal policies and various financial reforms have restored confidence in the money and capital markets thus deepening capital development. Further, the implementation of these governance related reforms have, in addition, resulted in: (i) an increase in revenue collection from KShs.190.6 billion in 2002/03 to KShs.345.6 billion projected for 2006/07 (representing 81 percent growth over the period) due to improved tax administration; and (ii) marked improvement in the performance³ of public enterprise as reflected by substantial dividends paid to the Treasury.

C: Organization of the Report

6. The rest of this report is organized as follows: section II highlights recent achievements under corruption prevention, investigation and prosecution/restitution, while section III discusses challenges that continue to constrain the fight against corruption in Kenya. And Section IV highlights the government's strategy for the way forward through December 2007 in deepening the fight against corruption in Kenya, while section V provides the conclusion.

II. RECENT DEVELOPMENTS ON THE GOVERNANCE FRONT

7. Many bold reform measures have been implemented over the last four years to institutionalize good governance and the rule of law in Kenya's development process to eliminate rent-seeking opportunities and corruption. These measures are being implemented within the framework of the generally accepted key pillars of any well designed anti-corruption strategy, namely: (i) corruption prevention and public education; (ii) investigation; and (iii) restitution. The aim of the government's anti-corruption strategy is to make the public sector operate in ways that make corruption difficult to commit, likely to be detected, and certain to be punished.

² The Kenya Anti-Corruption Commission was established by the Anti-Corruption and Economic Crimes Act, 2003 as a body corporate

³ Some of the factors explaining the improved performance by some public enterprises include: enforcement of performance contracts; implementation of structural reforms, including appointment of independent and competent boards; and improved economic environment

A: Prevention and Detection of Corruption

8. The government is fully aware that the war against corruption can not be permanently won through investigations and prosecutions alone. To sustain good governance and a corruption-free environment, other reforms in the economic and social areas are necessary to seal the many loopholes that provide opportunities for corruption. As part of corruption prevention program, the government has strengthened governance and anti-corruption institutions by providing a solid legislative foundation and educating Kenyans to appreciate the virtues of good governance and the harm caused by corruption to the political and socio-economic systems. With a view to strengthening prevention of corrupt practices, since 2003 the following reform measures have been implemented:

i: Legislative Actions Since 2003

The Public Officer Ethics Act 2003(POEA), introducing Codes of Conduct and Ethics and requiring Public Officers to file annual declarations of income, assets and liabilities; *The Anti-Corruption and Economic Crimes Act 2003*, which set up the Kenya Anti-Corruption Commission (KACC) as Kenya's premier anti-corruption institution. *The Government Financial Management Act (2004)*; *The Public Audit Office Act (2004)*; *The Public Procurement and Disposal Act 2005* was enacted. It established an autonomous Public Procurement Oversight Authority responsible for the regulation of procurement in the public sector, including procurement of security related contracts. Similarly, in 2005; *The Privatization Act*, which provides for a Commission to ensure transparency in the privatization of state owned enterprises, thereby strengthening accountability. The new Privatization Act sets the stage for the scaling down of the public sector, which should enhance governance and reduce rent-seeking behavior, as well as improve the efficiency of resource use and increase competitiveness. And in November 2006, the government enacted the *Statistics Act 2006*, which provides for the establishment of a National Bureau of Statistics.

ii. Administrative Actions

Various administrative measures have also been implemented over the last four years to enhance prevention of corruption in Kenya, including through improvement of transparency and accountability in public service. These include:

- Curbing abuse of the harambee systems by barring public officials from being guests of honour and/or soliciting for harambees in their places of work;
- Introduction of ministerial Code of Conduct to complement the provisions of *The Public Officer Ethics Act 2003* and improve ministerial accountability in public affairs management. Among other provisions, the Code requires Ministers to take personal responsibility for their stewardship of ministries that they head. Already three ministers stepped aside to facilitate investigations;
- Dismissal of the entire cadre of both procurement officers and forest officers to facilitate new recruitment based on integrity; and

- Suspension by the KRA of several senior officers that work at the port pending investigations into why they were not achieving performance target for customs revenues.
- Enforcement of *The Public Officer Ethics Act (POEA)*, which requires every public officer to make annual declarations of their assets and liabilities and those of their spouses and children below the age of eighteen years. Plans are also at an advanced stage to make asset declarations by ministers and senior officials open to public scrutiny and verification. In addition, all ministers declared their assets, the verification of these declarations is on-going by KACC and report will be submitted to the appointing authority.
- Improvement of the capacity of the Police Force through organizational reforms, including improve leadership and incentives to enhance enforcement of law and order. Among the interventions implemented, include: (i) reorganization and appointment of officers with strong reform credentials; (ii) improving terms of service of the force; (iii) provision of decent housing to the staff; and (iv) efforts to strengthen oversight of the police;
- Examinations by KACC of systems, policies, procedures and practices conducted on the Nairobi City Council, the Ministries of Transport and Health, the Kenya Revenue Authority, the Kenya Police, and the Kenya Medical Supplies Agency;
- On enhancing the administrative capacity of KACC to investigate and provide strong leadership in corruption prevention, the KACC launched in mid 2006 its Strategic Plan which was developed through wide consultation with stakeholders. The strategy focuses Commission's operational and measures to be implemented to achieve the set objectives and foster zero-tolerance to corruption in Kenya; and
- Other reforms implemented, which include: (i) completion of surveys on perceptions of corruption and experience with corruption; (ii) interdiction of the head of the National Aids Control Council pending conclusion of investigations on alleged fraud; and (iii) actions taken against civil society organizations involved in fraud

iv: Public Sector and Financial Management Reforms

A central pillar of the government's governance and anti-corruption strategy is the reform of the internal management of public resources and administration aimed at reducing the opportunity and incentives for corruption. This has entailed instilling a meritocracy with adequate pay and depoliticizing public administration, clarifying governance structures, enhancing transparency and accountability in fiscal management, and focusing policy reforms on improving the delivery of government services. Among the legal and institutional reforms implemented since 2003 include:

- Introduction of a Results-Based Management (RBM) system as a tool for helping public sector institutions to focus their work and plan strategically to ensure efficient and accountable use of public resources. The Government has also introduced performance contracts to improve public service

performance and accountability for all its senior officials including those in parastatals. The government also adopted, in 2004, the policy of competitively hiring chief executives of parastatals from the labor market. These policies have already begun to bear fruits. For the first time in decades, the public enterprises have been making large profits and issuing dividends to the Treasury, as well as paying taxes on time. This has facilitated reductions in transfers to public enterprises and created fiscal space for increased expenditures on social and economic programs;

- Under public financial management, the government has rolled out an Integrated Financial Information Management System (IFMIS) in a number of ministries—notwithstanding the slow progress in operationalizing the system, strengthened the expenditure commitment control systems, improved budget transparency by eliminating unclassified budget votes, and set out clear guidelines for Exchequer issues to line ministries, including requirement for up-to-date bank reconciliation, which underpins the Public Expenditure Management (PEM) reforms;
- The establishment of an autonomous Kenya National Audit Office (KENAO) under *The Public Financial Management Act (2004)*. The strengthening of its operational efficiency resulted in clearance of the entire accumulated audit backlog—it is expected to remain current in its future audit programs. With the improved oversight capacity of the public sector financial accounts, it is now possible to detect early enough any financial irregularities and take immediate corrective actions;
- Following the enactment of *The Public Procurement and Disposal Act 2005*, the government has developed regulations for public procurement which are now with the Attorney General’s office for gazetting and plans to establish and make operational the Public Procurement Oversight Authority, and to roll out the procurement regulations and guidelines during 2006/07 FY;
- The introduction of tax administration reforms has been aimed at reducing corruption and the cost of doing business in order to facilitate business and trade in Kenya. The measures implemented include: (i) full integration of Income Tax and VAT Departments; (ii) introduction of computerized audits; and (iii) implementation of customs modernization reforms to reduce corruption and facilitate trade. Reflecting largely the effects of these reform measures, revenue as a proportion of GDP has expanded significantly during 2002/03 to 2005/06 period. This growth is expected to continue in 2006/07; and
- The overhaul of the business licensing regime is aimed at reducing opportunities for corruption and the cost of doing business in Kenya. Specifically, the government has reviewed over 1,400 licenses with a view to: streamline the licensing regime to ensure that only those licenses that serve a useful purpose are retained; improve the business environment; and reduce opportunities for rent-seeking. To this end, one hundred and eighteen licenses (118) were repealed in FY 2005/06 and FY 2006/07.
- The government has also made significant progress towards improving accountability through audit and increased involvement of stakeholders’

participation for CDF and LATF expenditure and other devolved funds, including funding of free primary education. In addition, the government has finalized the resolution of pending bills, resulting in rejection for payment of over 95% of the claims.

V: Increasing Accountability and Efficiency through Private Sector participation

Privatization and restructuring of parastatals remains an integral part of the government economic reform agenda intended to improve efficiency in the use of public resources. The reforms implemented since 2003 include:

- The sale of 30 percent of Kenya Electricity Generating Company (Kengen) to the public through an Initial Public Offer to strengthen transparency and accountability and enhance corporate governance; and Concessioning of the Kenya-Uganda railways, which has now been finalized;
- The commercialization of water services with handing over of responsibility for water provision to private, independent subsidiaries and water services providers regulated by water services boards;
- The restructuring and/or privatization of state-influenced banks: Cabinet has approved the restructuring of the National Bank of Kenya. Other institutions under-going restructuring/privatization include: Telkom/Safaricom, Mumias Sugar, Kenya Re and the sale of more government shares in KenGen.
- In the telecommunications area, the government has sold licences for the second fixed-line provider as well additional licence for a third mobile phone provider and for international telecom gateways; and
- Reforms implemented under agriculture aim to improve efficiency and productivity in order to reduce poverty in rural areas and include, among others: (i) amending *The Coffee Act* to enhance the regulatory capacity of the Coffee Board and to allow for private sector participation in the industry by eliminating the monopoly of the Coffee Board over marketing; (ii) restructuring of the dairy industry; (iii) separating the regulatory and commercial functions of the Pyrethrum Board and improving governance in the co-operative sector.

B: Public Education and Anti-Corruption Campaigns

9. Aware that investigation of offences and prosecutions alone cannot bring significant and sustained improvement on governance and the war against corruption, the government has since 2003 focused on targeted education and awareness campaigns to empower Kenyans to participate in the fight against corruption. As part of the effort to change the mindset and behavior of Kenyans as a prerequisite for a successful fight against corruption, the government has undertaken the following:-

- Appointed in 2004 a National Anti-Corruption Campaign Steering Committee, whose members come from a cross-section of the Kenyan society, to spearhead a comprehensive anti-corruption public awareness. The campaign was officially launched by H.E. the President in March 2006;

- Initiated anti-corruption awareness seminars in the public service under the auspices of the Public Service Integrity Programme (PSIP) of the Directorate of Personnel Management, Office of the President in conjunction with the KACC;
- Conducted various sensitization seminars on corruption and economic crimes to mid-level public officers in many Government Departments, e.g. the Kenya Police at Kiganjo and the Anti-Stock theft Unit at Gilgil;
- Developed a formal curriculum – targeting the incorporation of anti-corruption content in the curricula of primary schools, secondary schools, teacher training colleges, tertiary institutions and universities;
- Development and dissemination to the public through the print and electronic media, of useful and simplified anti-corruption material such as The Anti-Corruption and Economic Crimes Act 2003, The Public Officer Ethics Act 2003, and Frequently Asked Questions about the war on corruption in Kenya. These materials are intended to help the public to understand the meaning of corruption, the evils of corruption, why it is necessary to avoid engaging in corruption and where to report cases of corruption and suspected corruption;
- Launched the KACC website in March 2006 to ease public communication with the Commission and to provide easy and accurate information to the public; and also launched a 100% anonymous web-based Whistle-blower system hosted by the KACC, which will compliment planned legislative moves to protect whistle blowers along with witnesses;
- Launched a medium term National Anti-Corruption Plan incorporating all organized sectors of Kenya's society as pillars upon which the Plan is based, including the Media, the Judiciary, the KACC, the religious sector, Members of Parliament, the Private sector, civil society and development partners.

C: Investigation and Prosecution

10. Recognizing the need to address both past and present corruption the government has continued to enhance the investigative capacity of the Kenya Anti-Corruption Commission (KACC) and the Office of the Attorney General. Among the initiatives implemented to enhance capacity in this area include:

- Enactment in late 2003 of *The Anti-Corruption and Economic Crimes Act* and the subsequent establishment in 2004 of the Kenya Anti-Corruption Commission (KACC) through the appointment of a Director and Assistant-Directors, and subsequently with a full staff establishment;
- Restructuring of the Department of Public Prosecutions into 3 sections, namely: the anti-corruption, economic crimes, serious fraud and asset forfeiture section; the counter-terrorism, money laundering, narcotics and organized crime prosecution section; and the general prosecutions and appeals section. In 2006 a Special Anti-Corruption Prosecution Section in the State Law Office was established to deal with prosecutions arising from investigations into the Goldenberg Commission, the Presidential Commission on Illegal and Irregular Allocation of Public Lands and the investigation of the security projects. 216 cases have been investigated leading to prosecution since 2003 and out of these, there have been 19 convictions.
- Launching in 2003 of two important commissions, namely: (i) the Goldenberg Commission of Inquiry; (ii) and the Presidential Commission on Illegal and

Irregular Allocation of Public Land (Ndung'u Commission). Reports of the two commissions were released in early 2006 and implementation of the recommendations⁴ in these reports is in progress. Already 10 suspects implicated in the Goldenberg affairs are being prosecuted in court, charged with various offences.

- The government moved quickly to institute a special audit of the eighteen Anglo leasing-type of security projects. The audit by the KENAO was completed in the latter half of 2005 and implementation of most of its recommendations has been carried out while implementation of others is still in progress. Investigations of some of the aspects of these security contracts by the KACC is almost complete, while the international aspects of the investigations are ongoing;
- Launching and implementing sector wide reforms under the Governance, Justice, Law and Order Sectors (GJLOS), aimed at scaling up the fight against corruption, improving transparency and accountability in public sector, improving access to justice and empowering the poor and marginalized;
- Establishing specialized courts and increasing the number of magistrates. These two actions have led to more expeditious dispensation of justice than was the case previously and reduced the opportunities for corruption by shortening the turn-around period of cases by Judges. In addition, special magistrate's courts dedicated to the trial of corruption cases have been established in all provinces, including Nairobi;
- Establishing High Court stations in Kitale, Malindi and Embu, High Court Sub-registries in Garissa, Kericho and Busia and establishing a Court of Appeal Circuit in Eldoret to increase access to justice.
- Prosecution of senior government officials implicated in Goldenberg and Anglo Leasing scandals and other scandals. Those that have been charged include: 8 Permanent Secretaries; 18 Chief Executive Officers of parastatals; a Member of Parliament; 2 former Governors of Central Bank, former Director of Intelligence; a former Cabinet Minister and several senior government officials.

D: Restitution / Civil Recovery

11. With a view to enhancing public integrity; ensuring that corrupt individuals are punished; and protecting state funds while seeking return to the state those funds and related payments corruptly acquired, the government has undertaken the following:

- Cleaning up of the judiciary following a report by the Integrity and Anti-Corruption Committee of the Judiciary. The report unearthed numerous acts of corruption perpetrated by judicial officials. Eighty two (82) Magistrates, seventeen (17) Judges of the High Court and six (6) Judges of the Court of Appeal – the highest court in

⁴ Key recommendations of the Goldenberg Commission include: (i) Prosecution of those implicated in the scandal; (ii) Enactment of a Proceeds of Crime Act; (iii) Enactment of a Witness Protection Bill; (iv) KRA to file regular reports on the income tax cases and appeals, explaining what transpired; and (v) CBK like other Government institutions should be subject to audit by the Controller and Auditor General as matter of course., while on the Ndung'u report, the recommendations include: (i) establishment of a Land Titles Tribunal; (ii) establishment of an Advisory Task Force on land matters; (iii) redress of past wrongs over illegal/irregular allocation of public land; and recovery of public land illegally or irregularly acquired, e.g. excised forest lands, etc.

Kenya – were implicated in alleged corruption, unethical conduct and judicial misbehavior. Seventy six (76) magistrates were retired in the public interest, while twelve (12) Judges of the High Court and four (4) Judges of Appeal opted to retire. The remaining thirteen (13) magistrates and Judges were suspended pending hearing of their cases by disciplinary tribunals. This action by the government is by far the most far-reaching purge of the Judiciary in the history of the Commonwealth. The hearings of the cases of the judges who have challenged their suspensions are expected to be concluded by mid 2007;

To fill up some of the positions left after the purge, the Judiciary has continued to recruit since 2003. Currently, there are 8 judges in the Court of Appeal, 43 judges in the High Court and 282 magistrates of which 32 have been recruited since 2003 to replace the 76 who were retired in public interest. Following the opening up of more courts in rural areas to enhance access to justice, the Judiciary is currently recruiting more magistrates. The judiciary has also instituted a self-rejuvenating mechanism through a peer review on integrity and handling of complaints, which is expected to improve its systems and performance;

- Tracing, recovery, and restitution of assets suspected to be illegally acquired: The KACC is pursuing asset recovery on three main fronts; implementation of the recommendations of the Goldenberg and the Ndung'u Commissions and asset recovery as provided for under *The Anti-Corruption and Economic Crimes Act, 2003*. In the financial Year 2005-2006, the KACC filed and prosecuted 78 applications before court seeking to preserve money and property suspected to be the proceeds of corruption or economic crime; investigated cases with a value estimated at Ksh 8.5 Billion; issued more than 450 Demand Notices in respect of illegally or irregularly alienated public land; and prosecuted 43 civil cases for recovery of illegally alienated, lost or damaged property; and
- Resignation of cabinet ministers: The former ministers for the Ministry of Finance, Ministry of Energy and Ministry of Education resigned to pave way for investigations into the Goldenberg and Anglo Leasing cases. After following due processes in the courts of Law in Kenya, the former of Minister of Education was exonerated and subsequently reappointed into his position in November 2006 and also the KACC investigation⁵ found no basis for the prosecution of former Minister of Energy. He was subsequently reappointed into his position in November 2006.

⁵ Details of the KACC investigations will be included in the December, 2006 quarterly report to Parliament.

III: CHALLENGES EXPERIENCED IN THE FIGHT AGAINST CORRUPTION AND IN STRENGTHENING GOVERNANCE

12. While significant progress has been registered towards improvement of governance and the fight against corruption in the recent past, many challenges remain. These challenges, both legislative and institutional, form the basis for the implementation of further reform measures under the one-year Governance Action Plan (GAP) and the medium term National Anti-Corruption Plan. Among the specific challenges experienced while implementing various programs include:

A: Corruption Prevention

13. Preventive initiatives remain the most effective instruments for a sustained and effective fight against corruption and the realization of a zero-tolerance to corruption. Preventive interventions have therefore been emphasized over the last three years. These efforts have faced many challenges. Among the challenges experienced include:

- Weak coordination in approach to the fight against corruption, including educational campaign and awareness;⁶
- Weaknesses in processes, systems and procedures within public entities that expose them to rent-seeking opportunities and corruption-facilitative activities;
- Capacity constraints, including limited manpower, financial and physical resources and technological capabilities of the institutions in the front-line of the war against corruption;
- Inadequate appreciation and empowerment of the citizenry to actively participate in the war against corruption; and
- High and unrealistic public expectation without due regard to the complexity of investigations into corruption and economic crime and the due process of law. These unmet high expectations have created apathy among citizens thereby discouraging broad-based citizen participation and support for corruption prevention measures.

⁶ It has been difficult to coordinate efforts among the other bodies involved in the fight against corruption. These bodies include; the Cabinet Committee on Corruption (2003) to advise the President on anti-corruption initiatives; the Efficiency Monitoring Unit (1991) which oversees the general performance of public bodies and has investigated into the accounts of various public bodies; the Government Properties Investigation Committee (2003) to look into the acquisition and disposal of Government properties such as land, office buildings and residential houses with a view to reposition; the Pending Bills Validation and Verification Committee (2003) that is looking into huge claims by road contractors to the Treasury; the Ethics and Integrity Sub-Committee (2005) to investigate cases of alleged corruption in the Judiciary and to advise on measures to enhance integrity and discipline judicial staff; the Public Service Integrity Program (2002, 2003) which promotes corruption prevention plans, corruption prevention committees, corruption risk assessment and codes of conduct across the public services; the State Corporations Advisory Committee (2004) to oversee proper management of public corporations and to take disciplinary action; the Public Complaints Unit (2003) to review, on a confidential basis, complaints from the public about corruption or abuse of office; and the National Anti-Corruption Campaign Steering Committee (2004), comprising representatives from the Government, statutory commissions, public institutions, the private sector, civil society, national media associations, women's interest groups, and religious organizations, with responsibility inter alia for developing national frameworks and awareness campaigns.

B: Investigations

14. Over the last three years, despite progress made in the corruption investigation front, challenges, especially capacity-related and institutional coordination, remain a major obstacle to effective investigation and reduction of corruption. Specific challenges experienced in the recent past, include:

- Inadequacy in the legal framework especially for cross-border investigations and restitutions of corruptly acquired assets;
- Lack of effective coordination among agencies responsible for investigation and prosecution; and
- Capacity constraints in the form of limited skilled manpower, under-developed technological capability to tackle modern and sophisticated corruption and economic crime cases.

C: Prosecution/Restitution

15. Government's effort towards the fight against corruption has particularly experienced challenges in the area of prosecution and restitution. These challenges, though few, have adversely affected the realization of zero-tolerance to corruption. Among the reasons for these challenges include:

- New untested legislation that has exhibited some weaknesses in the areas of: (i) Constitutional challenges to the powers of the Commission to compel suspects to provide it with information required for investigation; (ii) challenges to the appointment of a Receiver by the Commission over property suspected to be the proceeds of corruption; and (iii) challenges to the Commission against powers to investigate and deal with Penal Code offences. These weaknesses are being addressed when they arise through amendments;
- Lack of adequate capacity and effective coordination among institutions in the front-line of the war against corruption, including the office of the Attorney General, the Judiciary and the KACC;
- Delays by suspects and their lawyers who have doggedly fought the work of the KACC through the court process;⁷
- Politicisation of the war against corruption with political leaders supporting suspects from their ethnic communities against the anti-corruption agencies and dismissing the anti-corruption efforts as a witch hunt against their supporters; and
- In the past, until very recently, recourse to constitutional reference was used to delay indefinitely prosecution of corruption cases. In February 2006 the Chief Justice published new Constitution of Kenya (Supervisory Jurisdiction and Protection of the Fundamental Rights and Freedom of the individual) High Court Practice and Procedure rules, which did away with automatic stay of proceedings in criminal cases upon a Constitutional reference. These new new rules have accorded

⁷ For example, a recent review of the Laws, Institutions and Judicial Processes for dealing with Corruption in Kenya by the National Council for Law Reporting (October 2006) found that corruption cases typically have more adjournments than other type of cases (mostly by the defense but almost as often by the prosecution and by the courts).

the Attorney general the opportunity to restart prosecution of cases, which had stalled by Constitutional reference..

IV: STRATEGY FOR THE WAY FORWARD

16. Going forward, the government remains fully committed to zero-tolerance to corruption. Although much has been achieved in the last three and half years, more remains to be done. Accomplishing the task ahead, however, requires that the outstanding legislative and institutional challenges constraining the anti-corruption efforts be addressed expeditiously. It is in this regard that the government, in consultation with key stakeholders developed a National Anti-Corruption Plan to provide a medium-term focus to the war against corruption. The Plan brings together, in a systematic way, all national initiatives for implementation by all the agencies that form the pillars of the Plan.

17. Reflecting its full commitment to the implementation of the Plan, the government has developed a Governance Action Plan⁸ for the period from July 2006 through end-2007), which sets out time-bound specific prioritized anti-corruption interventions/initiatives in the broad areas of: (i) prevention; (ii) investigation and recovery of corruptly acquired assets; and (iii) strengthening the prosecutorial capacity. While implementing these proposed anti-corruption measures, top priority will be given to administrative and preventive initiatives whose implementations are expected to result in measurable improvement in the fight against corruption in the short-term. The areas of focus during this period include:

A: Preventive Initiatives

18. The government will implement a number of anti-corruption preventive interventions in the areas of further legislative reforms, public sector reforms, transparency, freedom of information and educational campaign and stakeholder participation as follows:

i. Further Legislative Advances

Several laws will be amended under The *Statute law (Miscellaneous Amendments) Bill 2006* and *The Witness Protection Bill 2006*, which is before Parliament. Among other amendments proposed include:

- *The Constitutional Officers (Remuneration) Act, (Cap 423)* to implement a new salary structure for constitutional office holders;
- *The Anti-Corruption and Economic Crimes Act, 2003*, to disallow applications for Stay of proceedings in cases involving economic crimes and corruption, and to enable the KACC to seize assets of the suspects;

⁸ For detailed discussion of specific initiatives proposed to further deepen the war against corruption in Kenya, see the final Draft Governance Action Plan – July 2006 – June 2007 which has now been extended to December 2007.

- Harmonize the penalties for offences that can be prosecuted under both *The Anti-Corruption and Economic Crimes Act, 2003* and *The Penal Code*;
- Amend *the Public Officer Ethics Act, 2003*, to regulate and enhance public access to the officers' declaration of Assets and Liabilities;
- Other intended bills to be tabled to parliament include (i) the Proceeds of Economic and Anti-Money laundering Bill to Parliament; and (ii) the Political Parties Funding Bill.

ii. Transparency, Public Access to Information and Public Education

Proposed measures to be implemented by December 2007 to improve transparency, public access to information and enhance public education include:

- The proposed *Freedom of Information Bill 2006, with provisions for whistleblower protection*, when enacted will empower members of the public to have free access to information held by Government. The right of the media to access and disseminate information will further enhance transparency and accountability. The draft Media Bill will be finalized and submitted to Parliament to enhance self regulation;
- The government will collaborate with non-state partners (including industry representatives and civil society) in a World Bank-coordinated study on Kenya's media industry aimed at assessing how best to improve the enabling environment for efficient, high quality media product and service development and provision;
- To strengthen the independence of the statistical system, the government will also establish in the course of the 2006/07 a National Bureau of Statistics to replace the Central Bureau of Statistics, through *The Statistics Act, 2006*. The Bureau will collect, compile, analyze, and publish statistical information, and will be guided by explicit provisions for public access and dissemination;
- A related aspect of these transparency initiatives is the on-going heavy investments in e-government and continued investment in public education and awareness-raising;
- Launch a comprehensive wireless-based public information hubs in the districts and constituencies;
- Complete the KACC verification of declarations of assets by Ministers and Assistant Ministers under the Ministerial Code of Conduct made in 2006 and take appropriate action on the verification recommendations to enhance accountability. KACC to submit its report to the appointing authority;
- Make declarations of assets made by public officials accessible to the public upon application and upon payment of a fee; and
- Establish and make operational the Public Complaints Unit for referral of acts of malpractices.

iii. Results Measurement and Performance Management.

Government is deepening the focus on results as an integral part of good governance, and is making progress in rolling out the RBM System in the public sector. Further steps related to the RBM's implementation include developing systems for performance management and integrated performance appraisal, performance audits and monitoring and evaluation. Other actions include introducing service charters and scorecards for Government ministries, departments and public bodies (including for parastatals) to be published on the web.

iv. Deepening Public Financial Management Reforms

In line with its public financial management reforms stipulated in the PFM Strategy to be implemented starting 2006/07, the government will seek to deepen and enhance the capacity for public financial oversight and to improve efficiency and accountability in the use of public funds. Among the initiatives to be implemented include:

- Preparing and publishing external audit reports of the Controller and Auditor General in a timely fashion in accordance with *The Public Audit Act 2003*;
- Adopting a risk based internal audit approach, including establishment of the ministerial audit committees expected to provide oversight. Empowering the Ministerial Audit Office and providing them a mandate for ensuring implementation of audit recommendations. And, develop audit's post-implementation reviews by the National Audit Office, communicate the results to the Public Accounts Committee, and publish them.
- Enhance transparency and broader stakeholder participation, including members of parliament and public in the preparation of 2007/08 budget cycle;
- Conducting expenditure-tracking surveys in at least one ministry to inform budget implementation and improve its effectiveness in achieving development goals;
- Strengthen management and audit capacity for efficient and effective use of devolved funds under the Local Authority Transfer Fund and the Constituency Development Fund, Constituency Roads Fund and Bursary Fund, among others;
- Accelerate the implementation of integrated financial management and information system (IFMIS) and make it operational in four spending ministries (including education, health) for the management of the 2007/08 budget;
- Develop and enforce objective criteria for granting tax exemptions and waivers to regulate the exercise of discretionary powers and improve transparency and accountability in the tax exemption regime. This will be complemented by publication of tax expenditure budgets from FY2007/08 onward;
- Re-establish and institutionalize fiscal reporting within the ministry of Finance, including posting on the web of Quarterly Budget Reviews.

Establish sole responsibility for collecting expenditure returns in the Budget Supplies Department within the Ministry of Finance;

- Strengthen and broaden oversight of cash, including addressing current challenges in the Treasury Funding Account arrangements;
- Complete review of the financial position of key parastatals and initiate a process to start addressing contingent liabilities, including through: (i) automation of the data collection of the operations of the public enterprises and (ii) presenting a summary of the operations of public enterprises in the annex to the 2007/08 budget; and.
- Submit to the Cabinet a strengthened legal framework for public financial management.

vi. Deepening Procurement Reforms

The main objective of the proposed procurement reforms is to strengthen the institutional capacity of the public procurement in order to enhance accountability and effectiveness by reducing rent-seeking opportunities and corruption. Among the initiatives proposed for implementation over the next one year, include:

- Establishing and making fully operational the Public Procurement Oversight Authority ensuring its independence and objectivity, and fully rolling out of the new procurement regulations and guidelines;
- Posting on the ministries' websites all information on contracts, including names of contractors, decisions of Procurement Appeals Board, bidders and tender outcomes, and contractors' performance;
- Introduce a transparent Vetting System to pre-qualify companies interested in bidding for contracts to address conflict of interest and to enable exposure of fraudulent companies; and
- Blacklist companies found to have been involved in cases of corruption in accordance with the new procurement law, and make this information publicly available.

vii. Further Scaling down the Role of Government

In line with the government's private-led development policy, further participation of the private sector in the economy will be enhanced over the next one year through privatization, restructuring of the public sector and removal of administrative barriers to trade. Among the initiatives to be implemented over the next one year to enhance efficiency in the economy and encourage private sector participation include:

- A privatization commission is expected to be established and made operational by the end of March 2007. The privatization commission will pave way for a transparent and accountable process of privatization, thereby making it difficult to disguise corruption in the privatization transactions.
- Restructuring/privatization of Telkom Kenya, while the National Bank of Kenya will be restructured in tandem with privatization;

- Sale of part of government shares in Mumias Sugar Company and the Kenya Reinsurance Company, and KenGen;
- Enhancement of the private sector participation in port operations, including container port operations in Mombasa;
- Liberalization of the telecommunication sector, including sale of a second fixed-line license for domestic telecom operations and additional licenses for international telecom gateways; and
- Include in the finance bill for 2007/08 the elimination of business licences found tot to serve a useful, and establish a Business Regulatory Reform Unit in the Ministry of Finance and an electronic consolidated regulatory registry for all valid licenses.
- Progressing the public private partnership including initiating a process to put in place a legal and institutional framework to operationalise public private partnership, allowing the private sector to participate in the provision of water, energy, roads and transport services and limit the potential risks from contingent liabilities that may arise in such operations. To this end, concessioning and commercialization of major utilities and infrastructure providers is earmarked, including the Kenya Railways Corporation (KRC), the Kenya Ports Authority (KPA) and others;
- Submission to Cabinet of a market-oriented financial sector reform strategy. by March 2007; and
- A diagnostic audit of National Social Security Fund (NSSF) will be undertaken to form the basis for restructuring and reforms of its governance.

viii. Broad-based Stakeholders Participation

The government recognizes that the war against corruption requires the mobilization of a broad range of stakeholders, including civil society, the media, the private sector, faith-based organizations and professional bodies. Going forward, this broad-based participation and consultations with stakeholders will focus on workable initiatives oriented toward demonstrable results.

B: Building Investigative Capacity

19. The government plans to implement, over the next one year, a number of initiatives aimed at enhancing the investigative capacity for corruption. These include, among others:

- Further strengthening of the investigative capacity of KACC through specialized training and securing temporary services of specialized agencies on a need-basis;

- Strengthening the Implementation Coordinating Committee (ICC)⁹ as a consultative forum geared towards creating synergy and effective coordination of the efforts of key agencies involved in the implementation of anti-corruption measures. The ICC has gone a long way towards bringing down ‘Chinese Walls’ in law enforcement related to corruption and economic crime, and has laid a solid foundation for deeper cooperation in the future between agencies in the frontline of the war on corruption;
- Enhance the implementation by KACC of the provisions related to compensation and recovery of improper/corrupt benefits under part VI of *The Anti-Corruption and Economic Crimes Act*
- Review and publish amendments to *The Anti-Corruption and Economic Crimes Act* and develop modalities to address legislative and administrative constraints to investigation and restitution of assets outside Kenya’s jurisdiction;
- Finalize consultations on an implementation plan to address the issues raised in the Ndung’u Commission Report;
- Continue with the investigation of the Anglo Leasing and security related contracts; and
- Implement the Goldenberg Commission of Inquiry Report.

C: Prosecution/Restitution

20. Over the next one year, the government will implement a number of initiatives aimed at enhancing the capacity for prosecution and disposal of corruption and economic crime cases in order to measurably improve the fight against corruption. Some of the proposed interventions to be implemented include:

i. Enhancing Capacity to Prosecute

Despite improvements in the investigation of corruption cases, the current capacity to prosecute is still inadequate. This has affected efforts to effectively prosecute past and on-going cases on corruption. A number of training programs have been launched to strengthen the capacity of the State Law Office (SLO) and the Director of Public Prosecutions (DPP) in the Attorney General’s Office. The government is in the process of recruiting additional lawyers, (130), including specialized and competent prosecutors with proven integrity. Of these, 65 will serve the State Law Office, 42 to the Department of Public Prosecutions to make a total of 104 and 23 to the Civil Litigation Department. Other initiatives include addressing legal challenges arising from corruption prosecutions (see paragraph 15) by, among others: publishing judgment and court statements; and establishing open hearings.

ii. Faster Disposal of Cases

⁹ The ICC reports to the Cabinet Standing Committee on Anti-Corruption. Its membership is drawn from: the Ministry of Justice and Constitutional Affairs; the Attorney general; the Director of KACC and the Director of Criminal Investigation Department.

In 2005, there were 503,948 new cases filed together with those pending at the beginning of that year, bringing the total number to 1,074,602 cases. Of these, the courts were only able to deal with 541,167 cases, rolling over 535,840 to 2006. As part of the effort to address this challenge, the following initiatives will be implemented:

- The number of judges of the High Court will be increased to 70 from 50 and those of the Court of Appeal from 11 to 15 (The Statute Law (Miscellaneous Amendments) Bill 2006);
- To enable the use of open court rooms when hearing cases and discourage conducting the trial of cases in chambers, in this financial year (2006-07), courts will be constructed in the following towns:- Busia, Naivasha, Kehancha, Nyeri, Kwale, Kerugoya, Kisumu, Mariakani, Sotik, Siaya, Butere and Mutomo (Kitui District). In Nairobi the former Income Tax House is being converted into a court house and construction completion is expected in the next 2 years. On completion, this utility will have 57 new court rooms and attendant facilities;
- To further improve access to justice, the Judiciary is also establishing mobile/visiting courts in sparsely populated areas so as to reduce the cost of transport for the litigants and encourage resolution of disputes in a formal way.
- To address possibilities of "judge - shopping" and address the mischief of having a multiplicity of suits on the same issue being filed in different court registries in Kenya (as occurred recently in the Charterhouse Bank case), the Chief Justice is preparing an administrative circular directing all Deputy Registrars to ensure that the provisions of Sections 15 and 16 of the Civil Procedure Act concerning the place of filing suits is complied with, and to inform any Judge seized of a matter where this does not happen.
- To further facilitate faster disposal of cases, judges will be trained, and the court system modernized and automated for better case management and improved court administration;
- As part of a broader transparency initiative, introduce recording of court proceedings, beginning with 20 courts using the Hansard system which has been deployed worldwide (and in Kenya) to record information in parliamentary debates.. The National Council of Law Reporting (NCLR) will assist with the archiving and storage of proceedings, and make it publicly available on its website;
- The proposed amendments to the Civil Procedure Rules will simplify the court processes and include alternative methods of dispute resolution to shorten the time taken to dispose of cases and reduce the backlog and provision of legal aid schemes; and
- Sensitize and hold workshops for judges and magistrates on anti-corruption legislation.

iii. Governance Improvement in Priority Sectors

Over the next one year, the government will implement measures aimed at addressing critical gaps in governance, specifically in health, education and infrastructure;

- Health: Service delivery will be addressed through the adoption of a risk-based management approach to internal audit; monitoring full implementation of the recommendations by KACC into the operations of the Kenya Medical Supplies Agency (KEMSA); and improved management of the Global Fund Program. Weaknesses in the area of procurement, financial management and governance identified by the World Bank's Detailed Implementation Review will be addressed as follows:
 - i. Procurement: finalization of the sector specific procurement manuals, independent procurement actions, scaling up the capacity and involvement of KEMSA in procurement and public notification of contract awards;
 - ii. DARE: undertake a comprehensive update of progress on action plan from forensic audit; recruit auditors; and investigate and where necessary prosecute those found guilty;
 - iii. Financial management: remittance of funds directly to health facilities using commercial banks, instituting effective internal and external audit functions using a risk-based framework, disclosure of information on financing and support to community monitoring over expenditure; and
 - iv. NACC: implementing a fraud risk management policy, prosecuting those found to have engaged in fraudulent activities, including NGOs and NACC staff, monitoring performance contracts, instituting functional internal audit unit reporting to the Audit Committee of the Board, strengthening the monitoring and evaluation system and ensuring a greater clarity on applicable procurement rules and disclosure of information, including on grants awarded.
- Education: The Government's free primary education programme will continue to be strengthened, specifically through securing and scaling up gains in governance in the Ministry of Education. Areas of focus include community involvement through decentralized financing and procurement; resource allocation; consultation and social accountability and teacher management; and
- Infrastructure: Government will establish three autonomous road authorities to streamline ownership, management, accountability and financing of all road network activities in the country. Parliament will first enact enabling legislation. In the meantime, analysis of costs and preparation of road construction and maintenance standards is underway.

V: CONCLUSION

21. The government fully recognizes that accelerating and deepening the reform agenda in the areas of governance and anti-corruption is critical for consolidating the on-going broad-based economic recovery and reducing poverty. The implementation of these measures is therefore expected to improve governance, transparency,

accountability and efficiency in the management of public affairs, and make the public sector more effective in the delivery of services. Their implementation will also deepen the facilitation of private sector participation in the economy by encouraging investments, job creation and development of business initiatives to reduce poverty. Further, these reforms are being implemented to lay a firm foundation for the attainment of government's vision 2030 recently launched and to make Kenya a prosperous Nation for the current and future generation.