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**IMPEDIMENTS TO EFFECTIVE INVESTIGATION AND PROSECUTION OF
CORRUPTION CASES IN KENYA: THE CASE OF THE ETHICS AND ANTI-
CORRUPTION COMMISSION**

BY:

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C50/63502/2010

**A RESEARCH PROJECT, SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN
CRIMINOLOGY AND SOCIAL ORDER, AT THE UNIVERSITY OF NAIROBI**

NOVEMBER, 2014

DECLARATION

This research project is my original work and has never been presented in any other institution for the award of an academic credit.

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This research project has been submitted for examination with my approval as the University supervisor.

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DEDICATION

To my son Steve I am so proud of you and all the joys you have given me! You truly are a blessing and the greatest gift God could have given me. Your love has been the constant source of inspiration in my life.

ACKNOWLEDGEMENTS

I give thanks to the almighty Father God, for the gift of life, courage, willpower, wisdom and determination that have seen me come this far.

I sincerely thank my son Steve Kalya for his love, support and understanding. My gratitude also goes to my sisters Marion, Cecilia and brother Dennis for their support. To my mother, Esther, and father, Daniel Mukunyi, thanks for the role you have played in my life and education.

I would like to sincerely thank my supervisor Dr. Mike Chepkong'a of the University of Nairobi for his insightful comments and for guiding me throughout this project. I also thank all who responded to the questionnaires and interview enabling me to complete this study. I appreciate the assistance and facilitation received from the entire team of the Department of sociology and Social Order during my studies at the University of Nairobi.

Lastly I appreciate the assistance and cooperation received from my friends, colleagues and organizations that made it possible for me to complete this work. To you all, I say a big Thank you.

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ACRONYMS /ABBREVIATIONS

ACAs	Anti-Corruption Authorities
ACECA	Anti-Corruption and Economic Crimes Act, No 3 of 2003
AG	Attorney General
AUCPCC	African Union Convention on Preventing and Combating Corruption
CPI	Corruption Perception Index
CPIB	Corruption Practices Investigation Bureau
DPP	Director of Public Prosecution
EACC	Ethics Anti-Corruption Commission
ECOWAS	Economic Community for West African States
EU	European Union
ICAC	Independent Commission against Corruption
JSC	Judicial Service Commission
KACA	Kenya Anti-Corruption Authority
KACC	Kenya Anti-Corruption Commission
KIF	Kenya Integrity Forum
MoJCA	Ministry of Justice and Constitutional Affairs
NACCSC	National Anti Corruption Campaign Steering Committee
NACP	National Anti Corruption Plan
OGE	Office of Government Ethics
POEA	Public Officer Ethics Act
SADC	Southern Africa Development Community
SIS	Special Investigative Services
TI	Transparency International
UN	United Nations
UNCAC	United Nations Convention Against Corruption

ABSTRACT

The main objective of the study was to assess impediments to effective investigation and prosecution of corruption cases by the Ethics Anti-Corruption Commission. Specifically, the study sought to assess adequacy of the existing legal framework for investigation and prosecution of corruption cases; the level of autonomy influence investigation and prosecution of corruption cases; the efficiency of Ethics Anti-Corruption Commission without prosecutorial powers in investigation and prosecution of corruption cases; and to establish influence of EACC's Human Resource capacity on effective investigation and prosecution of corruption cases.

The study employed a descriptive case study research design. The target population of this study was employees in Ethics and Anti-Corruption Commission. As per the EACC Strategic Plan 2013-2018, the Commission has 238 employees. There are 4 departments at Investigation and Asset Tracing Directorate. Stratified random sampling was used to select the study sample where each of the four departments formed strata. The heads of the four departments were purposively sampled to participate in this study. The total sample size for this study was therefore 79 respondents. Two methods of primary data collection were used; self administered questionnaires for the staff and face-to-face interviews with the heads of departments. Quantitative and qualitative data analysis methods were used. Quantitative data was analyzed using descriptive and inferential statistics such as mean scores, standard deviation, frequencies, and percentages. Quantitative data analysis results were presented in charts and tables. Qualitative data was analyzed using content analysis. Qualitative data analysis results were presented in prose or narrative format.

The findings of this study show that the legal framework, court rulings and slow judicial process have presented serious challenges to effective execution of EACC mandate. The study revealed that it does not have sufficient powers to effectively carry out its mandate and that it is not free from undue influence. Thus limitations in its prosecutorial powers affect effective investigation and prosecution of corruption cases since most of the

corruption suspects are rarely convicted in court. The study also revealed that the institution lacks adequate human resources to investigate corruption.

The study therefore concluded that legal framework is a challenge for EACC to execute its mandate effectively. In this sense, the legal framework is insufficient for EACC to execute its mandate effectively. That EACC does not have adequate independence and autonomy. The limitations in its prosecutorial powers have affected effective investigation and prosecution and the Agency's human resources capacity has affected its effectiveness in investigation and prosecution of corruption cases.

The study therefore recommends that Parliament should ensure there is an effective legal framework for the fight against corruption. The legislature should give EACC the power to prosecute. The EACC should build its human resource capacity by attracting competent skills, training and equipping employees with the necessary tools of work.

CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

The term “corruption” is used as a shorthand reference for a large range of illicit or illegal activities. Although there is no universal or comprehensive definition as to what constitutes corrupt behaviour, the most prominent definitions share a common emphasis upon the abuse of public power or position for personal advantage. The Oxford Unabridged Dictionary (2002) defines corruption as perversion or destruction of integrity in the discharge of public duties by bribery or favour while Merriam Webster’s Collegiate Dictionary (2006) defines corruption as inducement to wrong by improper or unlawful means (as bribery). The succinct definition utilized by the World Bank (1997) is: “the abuse of public office for private gain.”

According to Anti-Corruption and Economic Crimes Act of 2003, corruption means an offence that involves bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust; or an offence involving dishonesty- in connection with any tax, rate levied under any Act; or under any written law relating to the elections of persons to public office (The Anti-Corruption and Economic Crimes Act, 2003:4).

Globally corruption has had an effect on many different bodies and institutions (Klaveren van, 1990). Two of the major bodies affected by corruption are the Government and its Public Institutions. In the long run, no country can afford the social, political or economic costs that corruption entails. It erodes public confidence in political institutions and leads to contempt for the rule of law; it distorts the allocation of resources and undermines competition in the market place; it has a devastating effect on investment, growth and development (Klaveren Van, 1990).

In Europe corruption remains a major challenge to democracy and the rule of law (European Court of Auditors, 2012). According to the widely used Worldwide Governance Indicators and Quality of Government EU Regional Data survey Hungary ranks as one of Central and Eastern Europe’s most corrupt countries (Kaufmann et al., 2011). However Since the late 1990s, however, many European countries have set up

institutions specializing in the prevention and control of corruption. Among many corrupt countries in the world, according to the Corruption Perceptions Index published by Transparency International in 2011, Mexico is ranked 100 from a list of 182 countries (TI, 2011:4) The institutionalization of the political life in Mexico, set up not only the rules of the political game, but also institutionalizes corruption as a tool of negotiation among dissidents, reducing the levels of violence triggered by the revolution (1910-1929) as Aguilar Zinsser indicates: the Mexican political regime managed to use the force selectively and exemplarily.

While corruption is a global phenomenon, the impact is felt more in poor and underdeveloped countries, where resources for development are unduly diverted into private hands, which exacerbates poverty. According to the African Governance Report (AGRI 2005), corruption is perceived as the most serious national problem next to poverty and unemployment.

In Africa the state is usually the major force within the economy and in such circumstances it has been argued that political office becomes the main route to personal wealth (Bayart, 1993). It appears that the democratization of many African states has not removed corrupt forms of neo-patrimony nor significantly widened political participation as state elites have retained effective control of the political process. Corruption in Africa today is also a direct consequence of poorly developed laws, institutions and distorted incentive structures (Camerer, 2009).

Most African states are characterized by high levels of corruption, involving interwoven networks of politicians, bureaucrats, the private sector and security sectors (Githongo, 2005). Coupled with high poverty rates and weak democratic institutions, the effects of corruption are particularly visible in Africa. African governments have responded to both internal and external pressure to deal with corruption through establishment of Anti-Corruption commissions. However the experiences of African Anti-Corruption commissions are varied and they often attract criticism for being ineffective and a waste of resources (Khemani, 2009).

The international community and African countries, in particular, have shown a growing commitment in tackling the problem of corruption in the past decade. A number of international, regional, sub regional and national instruments have been devised to combat the menace. The enactment of the United Nations Convention against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption (AUCPCC), and the Southern Africa Development Community (SADC), the Economic Community for West African States (ECOWAS) and the East African Community protocols are examples of this. Many African countries have also established national anti-corruption institutions in an effort to tackle the problem. In spite of all these efforts and measures, the spread of corruption has been unrelenting and has remained a major obstacle to the attainment of the continent's development goals (Regional Anti-Corruption Programme for Africa (2011 – 2016).

Corruption is undoubtedly the most pressing governance and development challenge that Kenya is confronted with today. It has a debilitating and corrosive effect on progress, stability and development of the continent. It impedes economic growth by discouraging foreign investments, creates distortion in resource allocation and competitive markets, increases the cost of doing business, and reduces the net-value of public spending. It also reduces the quality of services and public infrastructure and the volume of tax revenues, and encourages the misappropriation and misallocation of scarce resources (Regional Anti Corruption Programme for Africa 2011-2016).

In the political realm, it undermines the rule of law, respect for human rights, accountability and transparency and weakens government institutions. This in turn erodes public legitimacy in government and compromises good governance. The social costs of corruption are also deleterious as it deepens income inequality, poverty and adversely affects good moral values in the society.

The Transparency International's Corruption Perception Index in 2013 ranked Kenya at 136 out of 177 countries. In Kenya, corruption is a key constraint to greater growth and prosperity. The EACC is the body mandated to investigate corruption in Kenya. It has four directorates namely Investigations and Asset Tracing, Legal Services and Asset Recovery, Preventive Services, Finance and Administration. This study will focus

Investigations and Asset Tracing Directorate which is responsible for investigation and Legal Services and Asset Recovery who make recommendations to the DPP for the prosecution of persons involved in corruption. The Directorate of Preventive Services who are responsible for Conducting public education, and Finance and Administration were left out in this study as they are not directly involved in Investigation.

1.2 Problem Statement

Corruption is a retrogressive aspect in the world and it is rampant especially to the developing countries. There is overwhelming empirical evidence that corruption undermines development. It distorts resource allocation by diverting it to the personal gain of few individuals and thus leading to skewed distribution of income and wealth” (EACC Strategic Plan, 2013-2018)

In Kenya investigation and prosecution of corruption cases remains a project in questionable progress. Corruption has over the years, become a reality of monumental proportions in Kenya. In the recent past, it has grown bigger in terms of the participating personalities and the amount of money involved (Olola, 2011). The Kenyan government has pursued Anti-Corruption programmes since the mid 1970”s the malpractice has persisted and in some cases intensified, suggesting that the remedial measures and investigation have not been significantly effective. A number of legislations are in place to curb corruption and yet, corruption still remains a challenge to Kenya’s social economic development.

In the past, EACC unsuccessfully sought to have powers to prosecute offenders as a means of hastening investigation. The requirement that all cases it investigates can only be prosecuted by and upon the Sanction of the DPP militates against its independence and hampers the war against corruption. It leads to unnecessary delays in commencement and disposal of cases, inconsistencies in positions taken on the evidence by various players and lack of effective control of cases in the course of the trial.

From the view point of this study, little has been done, by way of research to assess the impediments to effective investigation and prosecution of corruption in Kenya.

Nevertheless concern has been raised by the public over the EACC inability to contain corruption in Kenya. (Mushanga, 2000) It is against this background that this study focused on the effects of legal framework, independence, prosecutorial powers and human resource capacity on effective investigation and prosecution of corruption cases in Kenya.

1.2 Research Questions

- i. Is the legal and policy framework adequate for effective investigation and prosecution of corruption by the Ethics Anti-Corruption Commission?
- ii. Does EACC have adequate autonomy to allow independent investigation and prosecution of corruption cases?
- iii. How do the Ethics Anti-Corruption Commission's limitations in its prosecutorial powers affect effective investigation and prosecution of corruption?
- iv. Does EACC's human resource capacity affect its investigation and prosecution of corruption cases?

1.3 Objectives of the Study

1.3.1 Overall Objective

The overall study objective of the study was to assess impediments to effective investigation and prosecution of corruption cases by the Ethics Anti-Corruption Commission.

1.3.2 Specific Objectives

- i. To assess the adequacy of the existing legal framework for investigation and prosecution of corruption cases.
- ii. To examine how the level of EACC's autonomy influence investigation and prosecution of corruption cases.
- iii. To evaluate the effect of the Ethics and Anti-Corruption Commission's limitations in its prosecutorial powers on investigation and prosecution of corruption cases.

- iv. To establish influence of EACC's Human Resource capacity on effective investigation and prosecution of corruption cases.

1.4 Justification of the Study

Corruption undermines development and exacerbates poverty, especially when public resources that would have been used to finance development for a better life are mismanaged or abused by public officials who are supposed to take care of public interest. Whereas data and research reports on people's perceptions on corruption level exist, no research has been undertaken to assess the impediments of the independent public anti corruption agency EACC in its legal mandated functions of combating corruption in Kenya. The findings of this research may be of value to policy makers that could bring some policy reforms in the institution's functions in performing its roles in fighting public sector corruption at local, regional and national level that may improve the efficiency and effectiveness of government in providing services to the citizens. Secondly, the research may be of importance to academicians for future research replication in other countries that have independent anti corruption agencies.

1.5 Scope and Limitations of the Study

This study aimed at establishing the impediments to effective Investigation and Prosecution of Corruption at EACC. This study sought to examine the extent to which the legal framework allows for independent investigation and prosecution of corruption cases. The study also assessed the level of autonomy and the extent to which it allows for independent investigation and prosecution of corruption. This study also sought to evaluate the efficiency of present arrangement whereby EACC is limited to investigations without prosecutorial powers. The study also assessed the extent to which human resource capacity influence investigation and prosecution of corruption by the Commission. EACC is faced with other challenges, Kenya Integrity Forum-National Anti Corruption Plan Report (2012) cited inadequate Resources as one of the challenges EACC encountered. EACC lacks modern equipment to fast-track the corruption case as well retrieval and safety of case files. The Agency also lacks in regional presence, regional offices have been established in Mombasa, Kisumu, Eldoret and Garissa. The

commission requires extending its services to people at the community level in all counties. The study was limited to the EACC headquarters at integrity centre in Nairobi. The findings may be generalized to other EACC regional offices in the country. This study focused on EACC because it is the statutory body mandated to investigate corruption. The focus of the study on legal framework, independence, prosecutorial powers and human resource capacity was informed by various reports that have cited them as sources of challenges in the fight against corruption in Kenya.

1.6 Definition of Key Terms and Concepts

The following definitions are provided to ensure uniformity and understanding of the terms and concepts throughout the study.

Corruption: Abuse of public office for private gain.

Prosecution: The institution and conducting of legal proceedings against someone who is charged with a crime and thereafter pursue the case through trial on behalf of the government.

Anti corruption commission: specialized entity established by the government for the purpose of combating corruption.

Legal framework: a broad system of rules that governs and regulates decision making, agreements, laws etc

Independence: refers to a kind of autonomy which has been granted by an overseeing authority that itself still retains ultimate authority over that territory.

Investigation: the methodical process of gathering facts and evidence in order to reconstruct an incident objectively and accurately so as to form the basis upon which the evidence of an act or omission can be evaluated.

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction

This chapter reviewed literature on the concept of corruption, Corruption in Kenya, other Independent Anti-corruption Agencies and Evolution of EACC. The literature review focussed on assessing the Anti Corruption Legal Framework, examining the EACC independence, the effect of EACC lack of prosecutorial powers and establishing influence of EACC's Human Resource capacity on effective investigation and prosecution of corruption cases. It also covered the Conceptual and theoretical framework

2.2 Corruption

Corruption is acknowledged to be widespread. Concern about corruption is driven by its widely accepted pernicious effects. It undermines the rule of law, sound governance, and competitive business transactions, distorts social and human values, and raises political and moral concerns. According to Transparency International's 2003 Corruption Perception Index (CPI) rankings for African countries corruption indicators suggest that, with the exception of a few countries such as Botswana, Tunisia, Namibia, Mauritius, and South Africa, African countries ranked 70 or higher.

In developing countries the economic effects of corruption can be devastating. Corruption has far reaching effects upon the distribution of social and economic welfare. Government expenditure favors the secret bribing of government officials (Vishny, 1993; Mauro, 1997 cited in Klein, 2005). Such can lessen the effectiveness of the government as funds are diverted away from the intended projects. The empirical evidence that corruption actually distorts public expenditure and public investment is however not convincing (Lambsdorff, 2004:7). Corruption is further said to generate inequality; a share of the country's wealth is distributed among insiders and corrupt bidders at the expense of other parties such as the common tax payers (Gupta, Davoodi and Alonso Terme, 1998). Moreover the allocation of public procurement contracts through a corrupt

system may lead to inferior public infrastructure and service as pointed by (Rose Ackerman, 1997 cited in Klein, 2005). Some argue that corruption also damages political legitimacy because it makes the government to substitute democratic values for decisions based on individuals' financial capacities (Bueno de Mesquita, 2001).

Since 1990s a number of anti corruption strategies have emerged to reduce corruption in the various countries affected by corruption, though some strategies were already in existence. Such strategies include anti corruption agencies, public inquiries, inspector general systems, legal and quasi legal trials, complaints procedures and public awareness campaigns (Riley, 1998). However, a key issue in assessing the effectiveness and sustainability of such strategies is the commitment of the powerful to act effectively to curb corruption (Klitgaard, 1997; Kpundeh, 1997 cited in Riley, 1998). Klitgaard argues that public officials are most corrupt where they have wide discretion in their actions, little accountability, and considerable monopoly power. This enables them to charge what economist call rents. According to Klitgaard rents can be reduced by decreasing state power, limiting the discretion of officials and by strengthening the control exercised over public officials, including accountancy units in the ministries. He argues that transparency is also an important notion that gives the freedom of opening up previously officialdom and helping to generate freer public discussion through a free questioning press, and an active civil society can also help to reduce corruption (Ibid).

With the perception that corruption is mainly driven by public sector, there have been two assumptions that have been proposed by many scholars and these include: first, public sector corruption can be reduced if the size of the state is reduced. Secondly, moves towards liberal, pluralist politics, involving a freer press, competitive party politics and revival or creation of other independent institutions such as the judiciary and professional associations that can reduce corruption by exposing the corrupt officials. Though some strategies like economic liberalization, deregulation and public sector reforms have been initiated, but corruption in the shipment of narcotic drugs has continued (Riley, 1998).

In a situation where corruption becomes systemic, it can become a sticky problem that none of the players in the game have reasons to change their strategy. This is so even if

they realize that they as a collective stand to lose from the ongoing corruption and even if most agents morally condemn corrupt practices (Karklins, 2005). Agents at the level of corrupt system such as street level tax bureaucrats, policemen, public health physicians, have low incentives to refrain from corrupt practices because even if they as individuals start behaving honestly, nothing will change as long as most of their colleagues do not change their behavior (Rothstein, 2005).

However, corruption can be successfully fought from the above (Root, 1996) as shown from the examples of Singapore and Hong Kong. Strong and determined political leaders can successfully fight corruption if they are determined to do so. But the danger of making such a successful achievement from a normative perspective is that democracy is not the best cure against corruption as in the case of these two successfully countries like Singapore and Hong Kong.

2.3 Anti-corruption Agencies

According to African Capacity Building Foundation (ACBF, 2007), independent anticorruption agencies are usually established in situations where corruption has assumed a systemic character and engulfs most government institutions so that an independent institution is required to fight it, using strategies that are different from the anticorruption methods established by the state. Thus, one of the basic reasons for the establishment of an independent anticorruption agency lies in the inefficiency of state institutions supervisory, law enforcement, and judicial bodies—that should tackle the problem. The idea of establishing independent anticorruption agencies continues to attract attention all over the world.

Responding in the 1990s to the frustration of citizens and the concerns of donors, governments in poor countries variously dusted off existing bribery laws or drafted new ones. They introduced codes of conduct, consented to corruption surveys, and established new institutions to fight fraud and corruption. Above all, governments created anticorruption agencies. Typically they were patterned on Hong Kong's celebrated and highly effective Independent Commission Against Corruption (ICAC), created in 1974 to tackle systemic corruption in the uniformed branches of the public service. This model

was replicated most earnestly in Anglophone sub-Saharan Africa, where ICAC clones sprung into being, from Botswana in southern Africa, to Kenya in eastern Africa, to Nigeria and Sierra Leone in western Africa. Ethiopia, Ghana, South Africa, and Uganda, too, created anticorruption agencies, on a slightly different pattern, and Tanzania and Zambia upgraded earlier established bodies along ICAC lines. Each agency organized itself to implement the now familiar three-pronged strategy: public education, prevention, and investigation and prosecution (ACBF, 2007).

2.3.1 Independence of Anti-corruption Agencies

The basic principle in forming an independent corruption agency is that it ought to be completely independent of the government. The model that is usually cited is Hong Kong's ICAC, established in 1974. The ICAC was established by law—the Independent Commission Against Corruption Ordinance. The law affirmed the independence of the commissioner, who is directly accountable and responsible before the Hong Kong Special Administrative Region chief executive, and reports simultaneously to the legislature. The commissioner is not subject to any supervision except that of the chief executive (ACBF, 2007).

The appointing mechanism for the head of the independent commission is a key indicator of independence. Ideally, the appointing mechanism should ensure consensus support for the appointee through parliament rather than government, with an accountability mechanism outside government (such as a parliamentary select committee on which all major parties are represented). In the case of the ICAC, its independence is reflected in the procedure for appointment and dismissal of the commission's personnel. The commissioner and assistant commissioners are appointed by the chief executive, who determines the organizational structure and terms and conditions of employment of officers of the commission.

Anticorruption agencies that are too much under the control of the executive have been ineffective. For example, Tanzanian legislation provides that all reports be forwarded in confidence to the president, and as a consequence, the Tanzanian anticorruption system has not functioned with a high level of effectiveness. It is by no means certain that

independence will work in every setting. In situations where accountability mechanisms are not in place, such an agency can itself be used corruptly by turning it—and its formidable array of special powers—against political opponents (ACBF, 2007). The power to carry out its functions and resolve problems is necessary but not sufficient for the successful operation of an independent anticorruption agency. It is also important that the independent agency be subject to control in a manner that does not affect its independence. Consequently, legislation must ensure monitoring of the activities of anticorruption agencies. While monitoring systems vary depending on the peculiarities of each country, best practice suggests including the general population in the fight against corruption and winning public support. For example, Hong Kong's ICAC has an advisory committee composed of members of parliament and businessmen. The advisory committee was made up four bodies: Advisory committee on corruption; Commission on revision of activities; Committee to prevent corruption; and Committee on advising citizens (ACBF, 2007).

2.3.2 Anti-Corruption Strategies

The history of the establishment of anticorruption agencies reflects the now widely accepted three-pronged approach to fighting corruption—public education, prevention, and investigation and prosecution. The basic task is the investigation and prosecution of offenders. However, experience has shown that preventive measures and education are also needed. This triple structure is usually reflected in the organizational structure of independent corruption agencies. For example, Hong Kong's ICAC has three basic departments: An operative department, which dealt with the prosecution of corruption-related offenses; a corruption prevention department, which produced studies and analyses of ongoing events in the public and private sectors and prepared recommendations for the agency's future activities; and a public relations department, in charge of anticorruption education and propaganda and procuring public support for the agency's activities (ACBF, 2007).

2.7 Performance of Independent Anti-corruption Agencies

Research ACBF (2007) indicates that to operate successfully, an anticorruption agency must possess the following: Committed political backing at the highest levels of government; adequate resources to undertake its mission; political and operational independence to investigate even the highest levels of government; adequate powers of access to documentation and for the questioning of witnesses; user-friendly laws (including criminalization of “illicit enrichment”); and a leadership seen as being of the highest integrity.

Independent anticorruption agencies have now been in existence long enough for us to take stock of their performance. According to ACBF (2007), the record that emerges appears to be the following. On the positive side: Some have built up competence and have begun to make their mark, progressively raising their sights as they gain experience and public support. Agencies have adopted sound organizational designs and strategies, based on the proven Hong Kong three-pronged approach: public education, prevention, and investigation and prosecution. Laws have been passed that sharpen the criminality of fraud and corruption.

On the negative side: Several agencies have been distracted by legal challenges to their status and powers. Most frequently this has taken the form of challenges to the constitutionality of judges heading executive agencies. These challenges have diverted resources and in the case of Kenya have caused the agency’s closure. Others have complained that completed investigations have lain dormant in prosecutors’ offices or been held up by court delays. Prosecutors reply that files have been poorly prepared, but there is a suspicion that the delays are politically motivated, and in some cases the judiciary has itself been corrupt and blocked its own investigation. Agencies complain that budgets have been deliberately restricted or that staffing has been hamstrung by civil service rules and de-motivating pay scales. To an extent, donor grants have offset weak domestic resourcing, but dependency on aid perpetuates an enclave status in which the agency is seen as an externally imposed creation. Non-state critics have argued that, too frequently, agencies choose to investigate minor offenders rather than pursue the politically well-connected, and that they risk lapsing into tokenism, like other watch-dog agencies. With a few exceptions, agencies have been slow to build alliances with civil

society and progressive elements of the private sector, which might have helped fend off legal challenges, and made public education campaigns more effective. None appears to have adopted an explicit risk management strategy to fighting corruption—identifying high-risk areas in interactions between the public and private sectors, and initiating investigations. Instead, they have been reactive, responding mostly to complaints, predominantly politically safe, to investigate petty corruption. There is little evidence that agencies have had any impact on country scores on Transparency International's Corruption Perception Index, or improved citizen trust levels as measured by domestic surveys of public institutions (ACBF, 2007).

The record is mixed, and it would be unfair to jump to conclusions. It has been observed, for example, that even Hong Kong's ICAC took several years to build trust and confidence (Stevens, 2003). This study will seek, therefore, to establish in more concrete terms the constraints of anticorruption agencies, and establish the conditions that would enable anticorruption agencies to benefit from capacity-building assistance. It is worth pointing out, however, that in countries that have poor governance, ambivalent leadership, and weak public institutions, an anticorruption agency that is sustained principally by donors is unlikely to be successful (ACBF, 2007).

2.4 Overview of Corruption in Kenya

Corruption in Kenya can be traced to the country's history. Corruption emerged in tandem with the systematic distortion of social cultural values that governed the African way of life. Virtues such as the traditional African hospitality of gift or token exchange got perverted and were transformed into outright demands for bribes before services could be rendered. Corruption can also be traced to colonialism: a system of governance that was based on and sustained by authoritarianism, injustice, deceit and outright plunder of the country's natural resources. Independence came without a fundamental restructuring of the colonial state (Berman, and Lonsdale, 1992). This means that corruption was transmitted into the independent state.

In the sixties and seventies overt corruption in Kenya thrived due to the opportunities presented by interventionist policies through which the state sought to manage economic

life through licensing and other forms of regulation. The political and economic reforms of the late 80's and 90's eliminated many of the earlier opportunities around which corruption thrived. Consequently, the incidence of large scale corruption targeted revenue collection, property transfers, and access to state funds through state tendering and procurement (Branch, 1998). Emergence of wanton poor institutional governance, an atmosphere of impunity to the rule of law, low morale and inefficiency –contributed immensely to an environment that enabled corruption to thrive and reach devastating levels. Control of state power meant control of public wealth leading to patronage, looting and bribery.

Today corruption continues to pose one of the greatest challenges facing the Kenya. It continues to undermine good governance and distort public policy, leading to misallocation of resources and contributed to slow economic growth as well as discouraged and frustrated both local and foreign investors (Kanyinga, 2009). The efforts to curb corrupt practices in Kenya's public sector go back to 1956 when the British colonial government passed the Prevention of Corruption Act (KACC, 2009). Unfortunately, that Act was enacted at a time when Kenya was waging a revolution for political independence from the British. Thus the Act merely provided a framework to fight the vice more effectively after the attainment of independence in 1963. Regrettably, after independence, the implementation of the Act was hampered by two competing goals. First, the focus by the government was on nation building and speeding up of economic growth. Second was the contradictory development approaches pursued by the new political leadership. On the one hand, a capitalist model of development was instituted to foster market-based system. On the other hand, a statist approach in which the government retained some income-generating agencies, known as 'parastatals', was faithfully implemented. The immediate goal of such state agencies was to provide citizens with essential services like electricity, rail and air transport, water, telephone, and postal services (Tordoff, 2002). The other goal was to provide public services at lower cost, ensure equity of access, generate revenues, and provide employment.

Despite the merits of the stated goals, studies now show that such state-run agencies served as conduits for corrupt practices (Robinson, 1998; Tordoff, 2002). Furthermore,

the statist approach empowered the government to intervene in the market place by setting up interest rates and the prices of basic commodities. The unintended consequence of such intervention powers was the creation of a fertile ground on which corrupt practices took root in post-independent Kenya. Tordoff (2002), for example, observes that the professional positions in the state agencies were used to promote clientelism, a practice in which favors were extended to selected citizens through employment in return for their loyalty and political support. Moreover, with the weak public accountability, state censorship of the media, and the absence of organized civil society during the first three decades of independence, Kenya's senior government officials began to loot revenues through the state-agencies. Additionally, as the challenges of economic downturn began to take shape, following the oil crises of 1970s, and with increased borrowing and international debt, the economic shocks felt by Kenyans intensified the degree of corruption as individuals in privileged government positions sought to cushion those external shocks.

In the 1980s through the nineties, the country witnessed unprecedented broadening of corrupt practices beyond the confines of state agencies (Byrne, E., Arnold & Nagano, 2010). In fact, the private sector had joined the bandwagon and consequently the vice became systemic affecting the entire country, including villages. However, as the seeds of democratization took root in the latter part of the 1980s, with expanded media freedom, citizens began to publicly deride corrupt practices in the public sector (Jarso, 2010). Some of the complaints were exposed by the print media as well the civil society in public forums. Besides, external voices against the high levels of corruption in the country came from unusual sources such as the International Monetary Fund (IMF) and the World Bank (Galtung, 1998). Those internal and external voices led to the amendment of the Prevention of Corruption Act in 1991 that aimed at institutionalizing the fight against corruption within the political and bureaucratic circles (KACC, 2009). To further ensure its commitment against state level corruption, the IMF adopted a more inclusive policy reform package targeting the developing countries that essentially linked its loans to good governance (Riley, 1998). For example, in 1997 the institution "suspended \$220 million in loans [to Kenya] over concerns about the allocation of power contracts and on the grounds that the government had failed to combat corruption"

(Galtung, 1998, p. 121). That reform policy coincided with the Transparency International figures that showed Kenya as one of the most corrupt nations in Africa (Pope, 1996). That action not only began to suffocate the already weak economy, but earned the Kenyan leadership a negative image both internally and externally.

Despite the efforts by the legislatures to strengthen the 1991 anti-corruption Act, the enforcement of the law under President Daniel Arap Moi was halfhearted at best. However, with the persistence of Kenya's activist legislators, combined with external support, the half-baked 1991 version was modified to create the Kenya Anti-Corruption Authority (KACA).

2.5 Anti-corruption Agencies in Kenya

Besides the Ethics Anti Corruption Commission, the Kenyan government has established a number of institutions and watchdog agencies to fight corruption. These include:

2.5.1 Judiciary

The role and the responsibility of the judiciary is the enforcement of anti-corruption laws through the speedy and fair trial of those charged with corruption and related offences and to order appropriate punishment in accordance with the relevant legal provisions in respect of those found guilty and thus to demonstrate that corruption does not pay. The judiciary in civil cases is to ensure fair and speedy disposal of suits so that the parties are left with no temptation to circumvent the due process of justice as a result of delay in accessing justice.

Under the penal code, the Anti-corruption and Economic Crimes Act of 2003, and several other provision the judiciary has a responsibility of not only trying and determining cases of corruption and related offences but also ordering the forfeiture and recovery of corruptly acquired benefits where a conviction has been entered against any person charged with such offences (section 55 and 56 of the Anti-corruption and Economic Crimes Act) The judiciary establishes the Anti-Corruption courts. There is a legislative proposal to enhance the jurisdiction of Special Magistrates and empower the High Court

to appoint a receiver of property that is suspected to be corruptly acquired as per the Anti-Corruption and Economic Crimes Act, 2003.

2.5.2 The Department of Public Prosecution

The department of public prosecution is a department under the office of the attorney general's office deriving its powers from section 26 of the constitution, and that prosecutes corruption and economic crimes. Regarding corruption and economic crimes, the attorney general has the mandate to: Peruse and direct on files forwarded to him by KACC after investigations, Call upon the director of KACC to investigate corruption related offences and report to him. File criminal charges and prosecute in court Represent the public, applications, judicial views, constitutional references, or appeals arising from, or in relation to corruption and economic crimes cases in the High Court and Court of Appeal. The DPP Prepares and tables anti-corruption and economic crime annual reports annual reports before the parliament. Detailing the steps he has taken with regards to files forwarded to his office by the EACC during the year. Further the Attorney General prosecutes serious fraud cases investigated by the CID and Banking Fraud Investigation Department (BFDI).

2.5.3 National Anti-Corruption Campaign Steering Committee

The national anti-corruption Campaign Steering committee (NACCSC) was established by the president of the republic of Kenya, through a gazette notice No. 4121 of 28th may, 2004. The committee comprises of 28 members drawn from the private sector, civil society, faith based organizations and the government. The key role of the committee is to cause fundamental changes in people's attitudes towards corruption through public awareness and education campaigns.

The National Anti-Corruption Campaign Steering Committee is a programme in the Ministry of Justice and Constitutional Affairs that spearheads the campaign against corruption. It stands out as one of the very active anti-corruption agencies in Kenya that works closely with the Kenya Anti-corruption Commission by establishing formal and informal linkages with EACC for reporting. It is essentially a civil society – led public

awareness body that endeavours to reach the anti-corruption crusade into the street, to the common man. It draws its members from among the various stakeholders including religious organizations, civil society, think tanks and other interested parties.

The functions of the National Anti-Corruption Campaign Committee includes: To establish a framework for a nationwide campaign against corruption; effect fundamental changes in the attitudes of Kenyans towards corruption; identify strategic stakeholders and develop a mechanism for their efforts, co-operation and involvement in effecting change in popular perceptions about corruption. National Anti-Corruption Campaign Committee is also involved in mobilizing stakeholders across all sectors and the general public to evolve a strong anti-corruption culture and participate in the fight against corruption; provide a framework for raising public awareness and advocacy by key stakeholders in public and private institutions and the general society; develop and conduct programmes creating a strong anti-corruption culture and strengthening the fight against corruption; develop indices for regular monitoring and evaluation of the anti-corruption campaign and report the progress made in the fight against corruption, attitude change and in-building a mature anti-corruption culture; identify and facilitate mobilization of resources to achieve the goals and objective of the campaigns; and carry out such other functions as may be deemed necessary or incidental to the success of the campaign.

2.5.4 The National Treasury

The National Treasury, like all other ministries is a constitutional office, provided for under section 16[1] and section 24 of the constitution of Kenya. The mandate of this ministry in the fight against corruption entails the following; remuneration of the members of staff of anti-corruption bodies e.g. members of the Kenya Anti-Corruption Advisory Board and KACC; MTEF and budgetary monitoring; national budget co-ordination and control to approve, in consultation with the Minister for Justice and Constitutional Affairs, the annual KACC budget.

The Kenya National Audit Office [KENAO] works under the Public Audit Act [of 2003]. It reports to Parliament through the Minister for finance and the Act provides for financial

independence to the office. It is in charge of auditing all government departments and state corporations, with a view to determine whether the citizens are getting value for their money. It is required to determine remuneration and terms of conditions of service.

The Efficiency Monitoring Unit (EMU) was established in 1991 to monitor the implementation of policies, programmes and government projects. Its major function is to ensure transparency and accountability in the public sector. EMU undertakes investigations of reported irregularities or inefficiencies in Government Ministries, departments, state corporations and local authorities. It monitors and study with a view to advising the government on problems being encountered in the implementation of policies, programmes and projects and suggesting remedial measures based on analysis. Study a selected number of implemented projects and draw practical experiences for use by designers and planners of similar projects.

EMU reviews systems and procedures for public organisations with a view to improving existing management systems for effectiveness and efficiency. Review and suggest improvements in the existing methods of monitoring and implementation of development programmes and projects. Assess the extent to which completed development projects are operational as planned and adequacy of their maintenance provisions.

EMU monitors with a view to reviewing current procedures and practices for collecting Government revenue and suggest more efficient ways of maximizing collection. It also monitors the working environment end conditions in the public service; participates in various task forces and committees dealing with policies and undertake any other assignments as may be directed from time to time. EMU is also involved in monitoring declaration of income, assets and liabilities by government officers in accordance with the Public Officer Ethics Act, 2003. The EMU reports serve five purposes: prosecutions; disciplinary actions; dispute resolution; recovery and surcharge.

2.5.5 Office of the Attorney General

The office of the attorney general has embarked on several actions in the fight against corruption. It has been in the process to expand the jurisdiction of special magistrates and

enable them to deal with corruption and economic crimes. They also want to empower the high court to appoint the receiver of property suspected to have been obtained through corruption. It will also permit the KACC to take over investigations involving corruption commenced by police. It established an autonomous Public Procurement Oversight Authority that will be responsible for the regulation of procurement in the public sector. Third, it provides for the privatization of public assets and operations including state corporations, by requiring the formulation and implementation of a privatization commission.

The office of the AG introduces legislation for witness and whistle blowers protection. It also provides for regulation, disclosure, expenditure limits and state subsidies financing of political parties. The office of the AG introduces legislation to address money laundering and proceeds of crime; increase number of judges, magistrates and professional legal staff and update schemes of service; modernize company law and computerize company registry and records management. It also undertakes diagnostic needs assessment and complete filing annual returns.

2.6 Corruption Scandals in Kenya

There have been several corruption cases in Kenya that warranted keen attention of different anti-corruption bodies. Between 1986 and 1991 the construction of the Turkwel Hydroelectric Power Station was riddled with claims of corruption. The dam was eventually built at three times the estimated cost, twice the allocated amount and producing energy significantly below capacity. The longest-running scandal is the Goldenberg scandal, where the Kenyan government subsidized exports of gold, paying exporters in Kenyan Shillings (Sh) 35% over their foreign currency earnings. In this case, the gold was smuggled from Congo. The Goldenberg scandal cost Kenya the equivalent of more than 10% of the country's annual GDP.

A Sh360 million helicopter servicing contract in South Africa, was another big scandal, Military officers had argued that the contract was too extravagant and servicing the helicopters could be done locally. Kenya Air Force (KAF) went ahead to spend Shi 08 million as a down payment for servicing the helicopters, at Denel Aviation, a South

African firm (Gatheru, 2005). A Navy project was given to Euro marine, the tender was awarded in a process that has been criticized as irregular. The tender was worth Sh4.1 billion. Military analysts say a similar vessel could have been built for Shi .8 billion. In 2003, military was split over plans to buy new Czech fighter jets-the plan to buy the jet fighters would have cost taxpayers Sh12.3 billion.

Kamsons Motors tendered for the supply of Mahindra Jeeps to the Police Department in the mid1990s for close to Shs 1 million (US\$13,000) each, at a time when showrooms would have charged customers a sixth of the price. Moreover, the vehicles were being bought for a government department and were therefore imported duty-free. None of the more than 1,000 units that were imported over several years are in service today. Another scandal involved a deal to build a CID forensic laboratory. On 7 June 2004 an amount of \$4.7 million was wired back. The payment was a refund against the money paid for the Criminal Investigations Department forensic laboratory. Another euro 5.2 million was paid back in respect of the E-cop project, which involved computerization of the police force and the installation of spy cameras in Nairobi by Info talent Systems Private Limited. The Prisons department lost \$3 million after contracting Hallmark International, for the supply of 30 boilers. Only half of the boilers were delivered - from India and not the United States as had been agreed (Collier and Lal, 2011).

In 2005 plans to buy a sophisticated £20 million passport equipment system from France as government wanted to replace its passport printing system, created conditions for corruption scandal. The transaction was originally quoted at 6 million euros from Francois Charles Oberthur of Paris (a supplier of Visa and Master Cards) but was awarded to a British firm, the Anglo- Leasing and Finance Company Limited, at 30 million euros, who would have sub-contracted the same French firm to do the work. Despite the lack of competitive tendering Anglo Leasing was paid a “commitment fee” of more than £600,000.

In June 2008, the Grand Regency Scandal broke, wherein the Central Bank of Kenya is alleged to have secretly sold a luxury hotel in Nairobi to an unidentified group of Libyan investors for more than 4 billion Kenyan Shillings below the appraised market value. In

January 2009, a scandal became public over the sale of imported maize (Collier and Lal, 2011). The 2009 Triton Oil Scandal regarding the unauthorized releasing of oil by Kenya Pipeline Company (KPC) without informing financiers became public in January 2009. In October 2012, allegations surfaced that top Foreign Affairs ministry officials ignored land offered by Japan that could have saved the country loss of Sh1.1 billion. In October 2010, the Department of Defence uncovered a bribery scandal involving senior Kenya Defence Force Officers in the corrupt Sh1.6 billion purchase of armored personnel carriers from South African company OTT Technologies. 2.4 Evolution of EACC

Amendment of the Prevention of Corruption Act (Cap 65, LOK) in early 1997 led to the creation of the Kenya Anti-Corruption Authority (KACA) in 1997, December 2000 spelt the death of the KACA as it was held that the statutory provisions establishing it were in conflict with the constitution, after a brief span of life, the agency's power to prosecute was challenged under Section 26 of the country's constitution that empowers only the Attorney General to do so. Consequently, the agency ceased its operations (KACA, 2009). The Anti-Corruption Police Unit was created by an executive order in August 2001 and was operational till September 2001 when Kenya Anti-Corruption Commission (KACC) was created. KACC was a public body established under the Anti-Corruption and Economic Crimes Act NO 3 of 2003. Parliament disbanded KACC in August 2011 in line with the requirements in the new constitution. The Ethics and Anti-Corruption Commission (EACC) Bill was passed into law on 27th August 2011. It took effect on 5th September 2011 following the assent by the President.

2.6.1 EACC's Legal Framework

Anti-corruption initiatives and establishment of related institutions in Kenya can be traced back to The Prevention of Corruption Act (Cap.65 of 1956). The Act was primarily to be enforced by the Police Department. Despite its existence, corruption grew over the years. Efforts were made to establish an Anti-corruption squad within the Criminal Investigation Department of the Kenya Police, but the squad was disbanded before it could have any significant impact. The Act was amended in 1987 to provide for the

establishment of the Kenya Anti-corruption Authority (KACA) to fight corruption, taking this function away from the police

According to Amukowa (2013), The Economic Crimes Court was also established under the Prevention of Corruption Act Cap.65 of 1956 and subsequent amendments. It exercised unlimited jurisdiction in respect of crimes under the Act itself. The Act vested power in KACA's officers to conduct investigations, obtain information necessary for presentation before the court, effect arrest for offences under the Act, and intercept private information upon an ex parte application to the court. However, in December 2000 (High Court of Kenya 2003), the High Court in the case of Gachiengo vs. Republic (2000) ruled that the existence of KACA undermined the powers conferred on both the Attorney General and the Commissioner of Police by the Constitution of the Republic of Kenya. Consequently, KACA was disbanded.

The Anti-corruption and Economic Crimes Act 2003: The object of the Anti-Corruption and Economic Crimes Act 2003 was to provide for the prevention, investigation and punishment of corruption, economic crimes and related offences and incidental matters. The Act embodied a broad conception of corruption viz. bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, and breach of trust or an offence involving dishonesty in connection with any tax, rate or impost levied under any Act (Republic of Kenya 2003, Section 45). The Ethics and Anti-Corruption Commission Act 2011

Pursuant to Article 79 of the Constitution of Kenya 2010, the Ethics and Anti-Corruption Commission (EACC) was established by the Ethics and Anti-Corruption Commission Act No.22 of 2011 (Republic of Kenya 2011). The Act mandates the Commission to, inter alia , develop and promote standards and best practices in integrity and anti- corruption; oversee the enforcement of codes of ethics prescribed for public officers; monitor the enforcement of codes of conducts of members of professional bodies established under any law; advise, on its own initiative, any person on any matter within its functions; raise public awareness on ethical issues, educate the public on the dangers of corruption, and enlist and foster public support in combating corruption ; work with other State and

public offices in the development and promotion of standards and best practices in integrity and anti-corruption measures, and receive complaints on the breach of the code of ethics by a public officer (Amukowa, 2013).

The ACECA established the Anti-corruption Commission to investigate corruption and economic crimes and to institute civil proceedings for the recovery of public property. The Anti Corruption and Economic Crime Act of 2003(ACECA) the Public Officer Ethics Act (POEA) and public service integrity programme provides the foundation and environment for developing , implementing and sustaining a sound and effective integrity system across the public sector and eradicating corruption. They provide a frame work for public institution to put in place policies, systems and plans as necessary conditions for the fight against corruption and corrupt practices. All public institution is required to formulate and implement an anti-corruption prevention policy to address issues of corruption and inform the strategies to put in place.

The ACECA 2003 has been found to be weak, for example it lacks many of the significant features and obligations imposed on state parties under the United Nations Convention against Corruption (UNCAC).It does not for instance make sufficient provision for internal cooperation ant technical assistance in the prevention of and fight against corruption. Further the Act does not have adequate provisions to criminalize corruption in the private sector. The ACECA lacks a legal mechanism for ostracising convicts or beneficiaries of corruption, the convicts and beneficiaries should be ostracised from certain places or benefits enjoyed by law abiding people. For Example in the United States a new law passed in 2004 imposes sanctions and travel

Some of the other legal challenges that EACC has continued to face are definition of corruption by the Act, Poor conception of the meaning of corruption and Limited EACC's Mandate with Regard to Law Enforcement. According to Anti-Corruption and Economic Crimes Act, 2003 corruption means an offence that involves bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust; or an offence involving dishonesty- in connection with any tax, rate or impost levied under any Act; or under any written law relating to the elections of persons to public office; (The

Anti-Corruption and Economic Crimes Act, 2003:4). What emerges from the attempts to define corruption as reviewed above is that there seems to be no knowledge of what really corruption is. In fact as it emerges from the Anti-Corruption and Economic Crimes Act, 2003, in Kenya, Corruption is synonymous with bribery, embezzlement or any such action as contained in the Act. This implies that anticorruption initiatives are being directed towards something unknown. This paper henceforth notes that lack of conceptual clarity, could perhaps be one cause for the supposed failed attempts to fight corruption

The Anti-Corruption and Economic Crimes Act, 2003 (the Anti-Corruption Act) defines corruption as an offence with respect to a benefit that is an inducement or reward for, or otherwise on account of, an agent - doing or not doing something in relation to the affairs or business of the agent's principal; or showing or not showing favour or disfavour to anything, including to any person or proposal, in relation to the affairs or business of the agent's principal, bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust; or an offence involving dishonesty- in connection with any tax, rate or impost levied under any Act; or under any written law relating to the elections of persons to public office; (The Anti-Corruption and Economic Crimes Act, 2003). The Anti-Corruption Act does not adequately address many of the offences created under UNCAC, e.g. bribery of foreign public officials and officials of public international organizations, illicit enrichment, laundering of the proceeds of crime, trading in influence and obstruction of justice. This way, the Commission does not provide for the holistic criminalization of corruption.

The definition of corruption by the Act does not distinguish between corruption and economic crime. The latter is defined as an offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue. It appears from this that not all acts of corruption involve economic crime. Equally, economic crimes need not always to involve or amount to corruption, as for the most part, the consequences of corruption and economic crime are identical. These pitfalls in the definition of corruption undermined KACC's initiatives in the enforcement of law as provided in its mandate.

The Anti-Corruption Act does not have provisions to criminalize corruption in the private sector (Muthomi, 2006). The Act only commits public officers an implication that corruption does not occur in the private sector. This means that those people who engaged in corrupt activities within the private sector cannot be disciplined by KACC. It remains not said how KACC would address a case in which for example a human resource officer in a private sector demanded a bribe or favours to award a tender or employment to undeserving individuals.

The Anti-Corruption and Economic Crimes Act, 2003 lacks many of the significant features and obligations imposed on State Parties under UNCAC. It does not, for instance, make sufficient provision for international cooperation and technical assistance in the prevention of and fight against corruption, yet Kenya is a signatory to UNCAC. Section 12 (2) of the Anti-Corruption Act state that the Commission, in the performance of its functions, may work in cooperation with any foreign government or international regional organization (The Anti-Corruption and Economic Crimes Act, 2003). This provision by the Act was only a minimal provision on international co-operation, the Act did not provide for the mode and scope of International cooperation. Further, since the Act did not address trans-boundary aspects of corruption, it can legitimately be argued that the cooperation envisioned under the Act only related to matters touching on corruption or economic crimes committed in Kenya. In fact, section 67 of the Act which stated that conduct by a citizen of Kenya that takes place outside Kenya constitutes an offence under this Act if the conduct would constitute an offence under this Act if it took place in Kenya (The Anti-Corruption and Economic Crimes Act, 2003).

The implication of the above observation is that the Act only criminalized extra-territorial offences committed by Kenyan citizens. In the absence of a local law domesticating the provisions of UNCAC, it is legitimate to argue that Kenya had no legal sanctions against transnational aspects of corruption. Consequently, KACC had no mandate on the offences being committed under these circumstances. It is therefore evident that KACC and its initiatives were limited to the people of Kenya.

Besides the ACECA (2003) The other key legislation enacted by Government with a view to addressing issues of Ethics and Corruption in the Public Service is the Public Officer Ethics Act(2003).This ACT advances the Ethics of public officers by providing for a code of conduct and ethics for public officers and requiring financial declaration from public officers .The POEA ACT created offences that were nonexistent before, most were generally considered as misconduct that only attracted minor or no penalties or mere administrative action. For instance there was no law criminalizing conflict of interest among public officers. POEA requires public officers to observe political neutrality in performance of their duties. The ACT makes it obligatory for public officer to take reasonable care on property entrusted to him, failing to do which may be held personally liable for the losses. Although the ACT has good legal and institutional framework for ensuring integrity and ethical conduct in the public service, the ACT has some inherent weaknesses that may water down its effectiveness (Kenya Anti-Corruption Commission 2010).

The POEA lacks many of the significant features and obligations imposed on state parties under the United Nations Convention against Corruption. The ACT does not provide for minimum sentences, this would give room to courts to award sentences depending on the merit and circumstances of each case. There is need to broaden the scope of income, assets and liabilities in respect of each public officer in order to go beyond the income of the officer and that of his or her spouse and children to cover friends, partners, members of the extended family, proxies, nominee companies or accounts generally associated in business or otherwise (Ludeki Chweya et al., 2005). The penalty described in the ACT for non-disclosure is not punitive enough, that is a fine not exceeding one million or one year or imprisonment for a term not exceeding one year or both. Obviously an officer engaged in corruption worth billions of shillings would not mind paying such a fine. The ACT does not define some terms e.g. Harambee. Section 13 POEA prohibits public officers from using his office or place of work as venue for soliciting Harambee. It is imperative that the term be defined in a manner that does not offend the public interest. Another significant term used frequently but which is not defined in the ACT is “benefit” (Republic of Kenya, 2003).

The absence of the National Anti-Corruption policy has continued to affect the broad operational direction and focus of the commission. The commission is working in a legal environment that remains weak and unsupportive in certain aspects. For instance the lack of legal framework for whistleblowers protection, freedom of information and restoration of recovered assets among other laws are needed (Republic of Kenya, 2003).

2.6.2 EACC's Independence

According to Professor Udombana, “the first and, perhaps, the greatest challenge to the fight against corruption in Africa is how to secure the independence of institutions charged with the implementation of the various anti-corruption laws Independence refers to the ability of EACC to carry out its mission without interference. However, it does not mean the absence of reporting to external control. Rather, it refers to its degree of independence to freely investigate corruption wherever it suspects that it may occur without the punishment being cancelled or modified because of the interests of powerful individuals or groups (Johnston, 1999). In order to function efficiently, the Commission should have a broad mandate without restrictions on its investigation of suspected corruption. However, at the same time, it should also be held accountable for its actions, investigations, and general comportment as a government agency. In this regard, an independent anti-corruption institution needs to integrate a system of checks and balances in order to maintain transparency and accountability.

The Commonwealth Framework expressly makes the requirement of independence a prerequisite to the effectiveness of anti-corruption institutions. It provides that, “Independent anti-corruption agencies can be effective if they are genuinely free from being influenced by the executive branch of government. The UNCAC contains the most comprehensive provisions on the requirement of independence (Amukowa, 2013).

UNCAC provides: Each State Party shall grant [preventive anti-corruption body or bodies] the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized

staff, as well as the training that such staff may require to carry out their functions, should be provided.

AUCPCC contains provisions similarly reinforcing the need to have independent anti-corruption institutions. In the first place, Article 5(3) mandates State Parties to undertake to “establish, maintain and strengthen independent national anti-corruption authorities or agencies”. Article 20 further provides the national authorities or agencies shall be allowed the necessary independence and autonomy to be able to carry out their duties effectively. The government should undertake to adopt necessary measures to ensure that national authorities or agencies are specialized in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.

Other relevant international instruments have similar provisions. The ECOWAS Protocol in Article provides for the establishment and consolidation of “specialized anti-corruption agencies with the requisite independence and capacity that will ensure that their staff receives adequate training and financial resources for the accomplishment of their tasks.” In the same vein, Article 4(g) of the SADC Protocol provides for the adoption of measures which will create, maintain and strengthen “institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption.”

Other international instruments dealing with sister offences, such as money laundering and the illegal exploitation of natural resources, further highlight how important it is to tackle corruption within the public sector as this may hold the key to successfully dealing with the offences they are concerned with. For example, the UNCATOC provides as follows in Article Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions. In recognizing the importance of independence, Article the Great Lakes Protocol also provides that each Member State must undertake to “establish independent specialized bodies responsible for combating

the illegal exploitation of natural resources and to strengthen the capacity of such bodies to enable them to discharge their responsibility effectively.”

In view of the magnitude of the problem of corruption in Africa, experience has shown that the requirement of independence cannot be overemphasized. Independence is manifested by the guarantee of a secure tenure for the head of the anti-corruption institution and by the maintenance of a qualified and well-trained workforce. Independence also depends on the degree to which the budgetary allocation of the body is insulated from political interference and ability to ensure the provision of resources required for the body to carry out its day to day functions effectively. Finally, independence entails clarity in the definition of the role and scope of activities of the body (Economic Commission for Africa 2010). The independence of an anti-corruption commission is fundamental to its success. Independence from the government can allow the commission to resist the influence of individuals or groups with specific agendas (political or otherwise) that may clash with the goals of government transparency and accountability. Some states have constitutional provisions that guarantee an anti-corruption commission’s independence. Others have implemented institutional safeguards to counter the possibility of undue influence and the potential for imbalances of power (such as providing for the appointment of commission members by more than one branch of government). Other states have designed creative oversight mechanisms to ensure the unbiased functioning of corruption commissions. These include specific reporting requirements as well as monitoring by multiple parties. Hong Kong is one instance illustrating the independence of an anticorruption Commission. The independence of Hong Kong’s Independent Commission against Corruption’s (ICAC) is legally mandated and is protected by institutional safeguards. Legislation and the Hong Kong Constitution guarantee this independence. In addition, while the Commission reports directly to Hong Kong’s Chief Executive, four independent committees monitor the activities of the ICAC. These committees include representatives from civil society and an Independent ICAC Complaints Committee, which reviews all complaints against the Commission itself. Australia/New South Wales, Latvia, and South Korea have also implemented institutional mechanisms to ensure the independence of their states’ anti-corruption commissions. Australia/New South Wales’ Independent Commission Against Corruption is accountable

to multi-party Parliamentary Joint Committees that monitor and oversee the commission's activities and guarantee that it does not abuse its autonomy. In Latvia and South Korea, different branches of government share the selection and appointment of anti-corruption commission staff. In Latvia, the Parliament appoints the head of the anti-corruption commission after a recommendation by the Executive Cabinet. The President of South Korea appoints the chairman and standing members of the commission, and Parliament and the Chief Justice recommend three members each.

Like Hong Kong and Australia/New South Wales, other states also enhance the reach of their anti-corruption commissions, as well as their independence from undue influence, by requiring that they report to multiple government authorities. Indonesia's Commission for the Eradication of Corruption, for instance, is required to submit reports to the President, the National Assembly and the State Auditor. Lithuania's Special Investigative Service is required to submit annual reports to both the President and Parliament.

In addition, the independence of an ACA may be evaluated based on the following considerations (OECD 2008) Institutional placement- A permanent agency, unit, or commission that exists separately and outside of government agencies has greater independence than an ACA established as a unit or department within an institutional structure of a selected ministry, (e.g., Ministry of the Interior, Finance, or Justice). Appointment and removal of the head of the ACA- The selection process of the head of the ACA should be transparent and based on consensus among different high-level decision-makers, such as the president and parliament. If the head of the institution is nominated by the president and subsequently approved by the parliament, then the president is not authorized to appoint the head, while the parliament is not authorized to nominate. This creates a system of checks and balances given that there is a separation of the authority to nominate and appoint. The head of an ACA should also be protected by law against dismissal.

EACC Act 2011 provides that the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority. The Act also provides for Impartiality and independence of members: Every member and employee of the

Commission shall impartially and independently perform the functions of a member in good faith and without fear, favour or prejudice, and without influence from, the Government, any public officer, any political party, candidate participating in an election; or any other person or authority.

EACC Anti corruption initiatives could also be hindered by the fact that key persons who are named and under investigation are still in government. Some serve as Cabinet Secretaries and top positions in the civil service. This state of affairs exposes this initiatives and efforts at investigating corruption to sabotage and resistance from within. Further the legitimacy of these initiatives is undermined by a growing perception that it is selective justice targeted at the officials of particular political parties. When leaders involved in corruption are still in charge of their dockets, even as investigations continue it is likely to be politically manipulated. The outcry against prosecution by tribes if their “sons” and “daughters” become victims in the war against corruption has increased with ethnicisation of politics. The political environment in the country may not be optimally favourable for independent investigating and prosecution of corruption. Wrangles within the government threaten to undermine corruption investigation.

2.6.3 EACC’s Prosecutorial Powers

In most states Anti-corruption commissions primarily serve an investigative role. The investigatory powers of an anti-corruption commission vary greatly from state to state, particularly with regard to their scope. For example, a commission’s powers often include the examination of the assets of public officials or the processes for procurement by government bodies, and may extend into the private sector. This investigatory power may also be subject to .the approval of another government entity, and effective investigation can require safeguards to protect individuals who report abuses. As a result, most commissions have a process for assessing whether or not to initiate an investigation (Legal Memorandum, 2013)

Singapore and Hong Kong, for instance, have anti-corruption commissions with broad powers. Singapore’s Corrupt Practices Investigation Bureau (CPIB) has broad discretionary powers and investigatory authority. The powers of the CPIB include the

right to seize the assets of civil servants accused of corruption and the authority to establish the terms and conditions of punishment. Similar to Singapore, in Hong Kong the Independent Commission against Corruption (ICAC) is a commission with broad powers, with the authority to investigate and pursue corruption in both the public and private sectors.

In contrast, the authority of Lithuania's Special Investigative Service (SIS) is more limited in scope. The SIS may only investigate potential corruption among state officials and civil servants, but, unlike the Hong Kong ICAC, it may not explore misconduct in the private sector. Similar to the limited scope of Lithuania's SIS. India's Central Vigilance Commission is directed to conduct most of its investigatory functions through the Delhi Special Police Establishment (Kibwana, Wanjala, & Owiti, 1996).

Some states' anti-corruption commissions also assume responsibility for the prosecution of cases of corruption. The authority of an anti-corruption commission to prosecute cases of corruption can be important if a state does not have a judicial system with adequate capacity to prosecute corruption cases. Tanzania and Botswana are two states that grant their anti-corruption commissions with the power to prosecute cases of corruption. In Tanzania, the Prevention of Corruption Bureau (PCB) is specifically granted power to prosecute cases with the approval of the Director for Public Prosecution. Botswana's Constitution requires the Attorney General to oversee all criminal prosecutions. However, due to a heavy workload, the responsibility to prosecute cases of corruption has shifted to the Directorate on Corruption and Economic Crimes (DCEC).. In most states, prosecution of corruption cases remains primarily the responsibility of the judiciary and is not transferred to the anti-corruption commission. For instance, Singapore's Corrupt Practices Investigation Bureau (CPIB) cannot independently prosecute a suspect. It can only investigate decides whether or not to prosecute the case. The Hong Kong ICAC likewise cannot prosecute cases and merely presents evidence to the state's Secretary of Justice, who will then make a decision regarding prosecution (Kibwana, Wanjala, & Owiti, 1996).

The United States Office of Government Ethics (OGE) submits any evidence of misconduct to the state's Department of Justice for further investigation and prosecution. India's Central Vigilance Commission enjoys some judicial authority, but does not have complete prosecutorial ability. In particular, for purposes of conducting any inquiry that has been referred to the Commission, the Commission has all of the powers of a civil court trying a suit under the Code of Civil Procedure, and every proceeding before the Commission is deemed a judicial proceeding within the meaning of the Indian Penal Code.

In conducting an inquiry, the Commission's judicial powers extend to summoning and enforcing attendance of any person in India and examining him or her under oath, requiring discovery and the production of documents, receiving evidence and affidavits, and requisitioning public records from any court or office. Beyond its pre-trial judicial powers, however, the Central Vigilance Commission does not have the ability to directly prosecute corrupt acts. Rather, the Central Vigilance Commission is authorized only to review the progress of investigations that have been referred to the Delhi Special Police Establishment or other "competent authorities" for prosecution.

In England the office of the Director of Public Prosecution was created in England in 1879 and was then characterised as a s 'compromise between those who wanted to retain England's unsystematic approach to prosecution and those who wanted prosecution in general to be structured and controlled as was believed to happen in most of Europe. Historically in Commonwealth Africa the office of the DPP occupied pre eminent status. Pre and post independence constitutions in some of these countries referred expressly to the Director of Public Prosecutions in that office as the exclusive control over prosecutions and providing for removal only in specified circumstances and after due inquiry by a special tribunal.

In Nigeria the independence constitution provided that in the exercise of the constitutional powers, the Director of Public Prosecution shall not be subject to the control of any other person or authority. According to Deji Adenkule (1982) the superintendence of the AG is to be desired as it encompasses responsibilities for the

overall policies of the prosecuting authorities, including prosecution in general, responsibility for the overall effective and efficient administration: a right for the AG to be consulted and informed about difficult, sensitive and high profile cases, but not in practice, responsibility for every individual prosecution decision or for the day to day running.

The current institutional framework is such that EACC carries out investigations, forwards the files to the State law office (Kenya Anti-Corruption Commission, 2010). In a number of instances, the Attorney General returns the file citing lack of evidence or calling for further investigation. This process is not only frustrating but extremely weakens the position of the commission as however much it is convinced it has evidence it cannot proceed to prosecute anyone once the DPP declines to do so. Kenya's Anti-Corruption Commission, is authorized to investigate acts of corruption or violations of the codes of conduct, as well as any other matters that fall under Chapter Six of Kenya's constitution. Chapter Six of Kenya's constitution provides for the responsibilities and behalf of such officials

In Kenya Following the promulgation of the new Constitution in August 2010, an independent office of Director of Public Prosecutions was established. The office derives its mandate from Article 157 of the Constitution. Under the Constitution, the Director of Public Prosecutions is mandated to exercise prosecutorial powers by instituting and undertaking criminal proceedings against any person. These proceedings may be instituted before any court other than a court martial; Taking over and continuing any criminal proceedings instituted or undertaken by another person or authority; and Discontinuing at any stage before judgment is delivered any criminal proceedings. The DPP is also mandated to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and to ensure due regard to the public interest, the interest of the administration of justice and the prevention and avoidance of abuse of legal process (Mushanga & Mwene, 2011).

Prior to the establishment of the Anti Corruption Commission, the only institution for fighting corruption was the judiciary at the behest of the Attorney General in his capacity

as the Director of public Prosecution. Other functions of the DPP include advising the police on possible prosecutions, undertaking public prosecution of cases forwarded by all investigation agencies including the: Police, Kenya Anti-corruption Commission, Criminal Investigations Department, Banking Fraud Investigations Units, and cases taken over from private prosecutors , represent the State in all criminal cases, criminal applications and appeals and advise Government Ministries, Departments and State Corporations on matters pertaining to the application of criminal law (Kenya Anti-Corruption Commission 2010). EACC does not have prosecutorial powers and can only recommend to the Director of Public Prosecutions the prosecution of any acts of corruption or violation of codes of ethics. While there are a number of variable that could play a role in explaining the conviction rate, the absence of a specialized in-house prosecution unit and lack of inter agency cooperation and coordination between commission and office of the Director of Public Prosecution (UN-Habitat, 2012).

EACC does not have prosecutorial powers and the requirement that all cases it investigates can only be prosecuted by and upon the Sanction of the DPP militates against its independence and hampers the war against corruption. It leads to unnecessary delays in commencement and disposal of cases, inconsistencies in positions taken on the evidence by various players and lack of effective control of cases in the course of the trial. Lack of prosecutorial powers makes Kenya's Anti Graft Agency vulnerable to interference and manipulation. Having prosecutors and investigators working in partnership under one body ensures the specialization and streamlining of functions required to efficiently handle anti corruption cases from beginning to end .It further allows effective relationship and indeed a rapport to develop between investigators and prosecutors. Prosecutorial function would give EACC greater legal authority and remove the DPP as a potential road block between EACC and corrupt politicians (UN-Habitat, 2012).

According to Mushanga & Mwene (2011), prosecuting authorities play a crucial role in the administration of justice. The decision to prosecute or not involves the exercise of discretion, and it is in the interest of justice that prosecuting authorities exercise the discretion freely, impartially and independently of any influence or interference.

Prosecutions offer a complete variable by which to judge an anti-corruption campaign's success compared to best practice and international Standards, thus affecting the commission's performance. The current institutional framework is such that EACC carries out investigations, forwards the files to the State law office. In a number of instances, the Attorney General returns the file citing lack of evidence or calling for further investigation. This process is not only frustrating but extremely weakens the position of the commission as however much it is convinced it has evidence it cannot proceed to prosecute anyone once the AG declines to do so (Republic of Kenya, 2003).

The fact that the Anti-Corruption Act limits EACC to investigations without prosecutorial powers is a major shortcoming of the Act. It is noted that EACC "lacks the teeth" to bite corrupt officials. This is because DPP can decide not to prosecute individuals even after investigations by EACC. Conflicts between KACC and the office of the AG had been witnessed. KACC's success seemed to be dictated by the AG's office as it decides on which cases to be prosecuted. The provisions of section 12 of the Anti-Corruption Act fall below the requirement set out in Article 38 of UNCAC. Under Article 38, each State Party is obliged to take such measures as may be necessary to encourage cooperation between its public officials and authorities on the one hand and its authorities responsible for investigating and prosecuting criminal offences under the Convention. There are no known measures in Kenya, legal, policy or administrative, obliging public authorities and officials to assist and cooperate with EACC.

2.6.4 EACC's Human Resource Capacity

Human resources can be defined as the individuals who constitute the workforce of an organization. The term is also used to describe the persons within an organization who are responsible for implementing policies and strategies. Human capital is sometimes used synonymously with human resources, although human capital typically refers to a more narrow view (i.e., the knowledge the individuals embody and can contribute to an organization), other terms sometimes used include manpower, talent, labour, or simply employees.

As EACC continues to expand its services country wide, it faces acute shortage of Human Resource. Kenya Integrity Forum-National Anti Corruption Plan Report cited inadequate Human Resources Capacity as one of the challenges encountered by EACC. This factor has to do with economic stability and poverty, which can undermine the effectiveness of ACAs. An example of the impact of unfavourable economic conditions on an ACA is the Argentine experience. While the institution began with very good prospects for success, the deep economic crisis in the country caused shortfalls in funding, which resulted in underpaid staff and diminished morale (Meagher 2004). This situation made it difficult for the Argentine ACA to continue to be effective. The effectiveness of the ACAs of African countries such as Tanzania and Uganda has also been affected by poverty and economic shocks that have contributed to the lack of necessary funding for those ACAs to perform their day- to-day operations (Meagher, 2004). In the case of ACAs, complete financial independence is not possible given that in general, the budget for these entities is set by the parliament and in many cases, the government.

In this regard, ACAs need to have a management team in place to lead day-to-day operations and a technical team to carry out specialized aspects of operations. If there is insufficient leadership, then the institution's results and ability to implement ideas will be compromised, which will ultimately impact the effectiveness of the ACA. Most ACAs integrate different anti-corruption functions. Such an integration of functions must be well coordinated in order for ACAs to operate effectively. For instance, the Prevention and Education Department should work closely with the Investigation Department to create techniques to reduce corruption (Republic of Kenya, 2003).

The commission has over the years been faced with the challenge of inadequate capacity in terms of human resource. According to the Kenya Anti-Corruption Commission Annual Report -2009/2010, the ratio of the commission staff establishment to the population and corruption levels is still low. According to report of Kenya Anti-Corruption Commission (2010) the EACC in its operation predominantly lacks modern equipment to fast-track the corruption case as well retrieval and safety of case files this is highly contributed by human capacity that is influence into the office. This subjects the

commission to be managed by personnel with inadequate specialized skill (Kenya Anti-Corruption Commission 2010). EACC lacks in regional presence due to inadequate Human Resource. Despite the fact that regional offices have been established in Mombasa, Kisumu, Eldoret and Garissa the commission requires to extend and devolve its services to people at the community level in many other counties. This could be achieved through establishment of more regional offices, community outreach and public engagements. These will involve corruption reporting, provision of advisory services, awareness creation and enlisting public support at grassroots level. The ratio of the commission staffs establishment to the population and corruption levels is still low compared to best practices international standards, thus affecting the commission performance (Republic of Kenya, 2003).

Shortage of forensic fraud experts has slowed down the Kenya Anti-Corruption Commission in investigating cases where corruption is suspected, giving those who plunder public funds comfort that they can continue doing so with minimal chance of the authority bringing evidence that can hold in a court of law against them.(Standard Newspaper 26/05/2006). The scarcity of sleuths is a big drawback for the authority in its efforts to successfully prosecute corruption cases and, by extension, send strong warnings to those contemplating similar vices that the long arm of the law would eventually catch up with them.

KACC also cited its thin geographical spread in the country as a challenge in reaching Kenyans and enabling them to report corruption cases. KACC has offices in Nairobi and Mombasa and plans to open another in Kisumu in the next four months. Lack of fraud examiners has been a major challenge for anti-corruption investigators and the financial sector at a time when white collar crime is increasingly more sophisticated. Kenya has 49 qualified forensic fraud investigators but KACC, which admits to lacking capacity in this area, says it cannot let out how many it works with for fear of disclosing operational intelligence (Kenya Anti-Corruption Commission, 2010). The 49 forensic experts are retained by several sectors like banking, insurance, pension, criminal justice department among other sectors meaning they are too few to swiftly go round the many demands, including from KACC.

Human resource capacity constraints are the most serious issue facing the Commission at this stage. Investigation and Asset Tracing Department is under-staffed and lacks the necessary skills to perform at optimal levels, staffs do not have the necessary knowledge to successfully investigate and prosecute corruption offenses. To deal with the lack of capacity, the Department outsources some investigators from the police service either on attachment or secondment. In addition, the Investigation Department's staff lacks specialized knowledge on corruption detection and prevention, and they lack the technical capacity to investigate technology related cases. The Commission's staffs earn higher salaries compared to other government employees.

2.7 Theoretical Framework

Three theories related to this study are reviewed in this section. Their relevance to the study is also discussed.

2.7.1 Public Choice Theory

This is a theory developed by Geoffrey Brennan and James Buchanan (1985) who argue that the rules that regulate the activities of individuals within a society matter and are a major determinant of how individuals and organizations behave. The theory regards corruption as post-constitutional opportunism designed to generate benefits for individuals or groups at the expense of the rest of society. According to public choice theory, the scope and extent of corruption in a country is determined by that country's institutional arrangements and not necessarily by the character of its Civil Servants and Politicians.

Public choice theorists argue that the behaviour of bureaucrats and the entrepreneurs who bribe them can be analyzed effectively only within the context of existing rules. Thus, without a clear understanding of a country's laws and institutions, any effort to analyze or understand corruption within that society would be futile. Any program that is designed without taking into consideration the impact of existing rules on the behaviour of individuals (including bureaucrats, entrepreneurs, voters, and politicians) within the society would be ineffective. Rules define how individuals can interact with each other,

provide a means for the settlement of conflict, and generally place constraints on individual behaviour, as well as that of the group and collectivity. Effective rules allow individuals to pursue their private ends in such a way that they do not infringe on the ability of others to do the same. In this vein, corruption can be seen as a problem of constitutional maintenance that can be handled appropriately only through legal reform. Present Anti Corruption programs in Africa suffer from several problems. First, they are being carried out within inefficient and nonviable rules. Second, it involves efforts to manipulate outcomes within existing rules through policing. Third, the counteracting agencies charged with policing and enforcement of the laws and the bureaucrats who work in those agencies are not properly constrained by the laws. Finally, many bureaucrats are themselves corrupt and cannot be counted on to provide the leadership needed to run effective cleanup programs. Thus, effective corruption cleanup needs to begin with rules reform to make certain that the outcomes generated within the rules are those desired by society.

2.7.2 The Broken Windows Theory

The broken windows theory is a criminological theory that explains the signaling effect of urban disorder and vandalism as contributors to crime and anti-social behavior. The theory states that maintaining and monitoring urban environments in a well-ordered condition may stop further vandalism and escalation into more serious crime. The broken window theory was first articulated by Wilson & Kelling (1982) and developed further by Kelling & Coles (1998). The broken windows theory assumes that minor disorder, if not taken seriously and attacked, will decrease fear of crime, informal social control, and increase crime. Social incivilities and physical incivilities (vacant buildings, empty lots, junk and trash, graffiti, and abandoned cars) contribute to the deterioration of communities.

Corruption may be considered from the perspective of a “broken windows” theory. The payment of a bribe to a government official is a sign that government does not care about the public welfare and that disorderly conduct will go unchecked in society. Corruption is

a broken window that signals the breakdown of community controls necessary for the maintenance of social order.

The broken windows theory is relevant for corruption; it is simply a metaphor for the notion that government diligence on petty corruption signals a commitment to address more serious public welfare concerns. There are numerous studies that confirm the connection between corruption and social trust. The broken windows theory is useful in considering the social costs of all types of corruption. In terms of trust in public institutions, it is a mistake to assume that petty corruption is less serious than grand corruption

Broken windows theory posits that a society committed to combating corruption is also one associated with pursuing other public goods. The battle against corruption sends a powerful signal about a Government's commitment to promote the general welfare. There is strong empirical data supporting a positive correlation between anti-corruption and other public goods

The legal environment for combating international corruption has been improving in recent years. Anti-corruption laws have been enacted and enforced in many countries. Unfortunately, despite the many public benefits associated with combating corruption, developing countries lag far behind developed countries. Broken windows offers suggestions to alter the legal landscape of anti-corruption laws, a broken windows approach would redefine and reframe corruption as distrust and disorder. Second, a broken windows approach would augment the battle against corruption with a greater emphasis on petty bribery and third, a broken windows theory would place greater emphasis on a partnership between the public and private sectors to combat corruption.

2.7.3 Rational Choice Theory

Rational choice theory, “examines the choice to break rules from the perspective of individual incentives and calculations. The theory explains corruption as a problem of

political economy. It includes a principle - agent model, according to which each player acts in the interest of his/her own (Alemann 2005: 29).

A rational choice- perspective understands corruption as the outcome of an overarching “stateness,” subsequent monopolies, discretion, and a lack of accountability. Robert Klitgaard has summed up this assumption in the well - known formula: **Corruption = Monopoly + Discretion- Accountability** ($C=M+D - A$) (Klitgaard 1988: 75). In such a situation a supposed win win situation emerges, from which both the bribed and the bribing actor benefit. The aggrieved third party is then the community, whose recourses are being, dissipated (Alemann 2005: 29). This rational choice- conception of corruption assumes that an actor ultimately decides according to the cost - benefit relationship, which hinges first and foremost on economic factors. Klitgaard (1998:4) correspondingly asserts, Corruption is a crime of calculation, not of passion.

This rational choice assumption regarding the causes of corruption is valid everywhere, because whether in the public or the private sector, corruption will occur when an organization or a person has a monopoly on power over resources and this is combined with discretion and a lack of accountability (Klitgaard, 1998:4). In current anticorruption practices—which aim to eliminate the above - mentioned corruption - promoting incentive structures—the anti - corruption strategy deduced from Klitgaard’s formula, that is, the reduction of public influence on the economy plays a central role (Ackermann, 1975, 1996; Kaufmann, 1997: 128).

Rational choice theory may, provide insights into decisions to act corruptly. If rational choice theory can be applied to corruption, it might help to explain why weaknesses in any given institution contributes to corruption, and it might help to point out which institutions need to be strengthened in order to combat corruption

2.8 Conceptual Framework

A conceptual framework provides a relationship between the dependent variable and independent variables. It is the system of concepts, assumptions, expectations, beliefs,

and theories that supports and informs research and therefore a key part of research design (Robson, 2002). Miles and Huberman (1994) defined a conceptual framework as a visual or written product, one that explains, either graphically or in narrative form, the main things to be studied, the key factors, concepts, or variables and the presumed relationships among them.

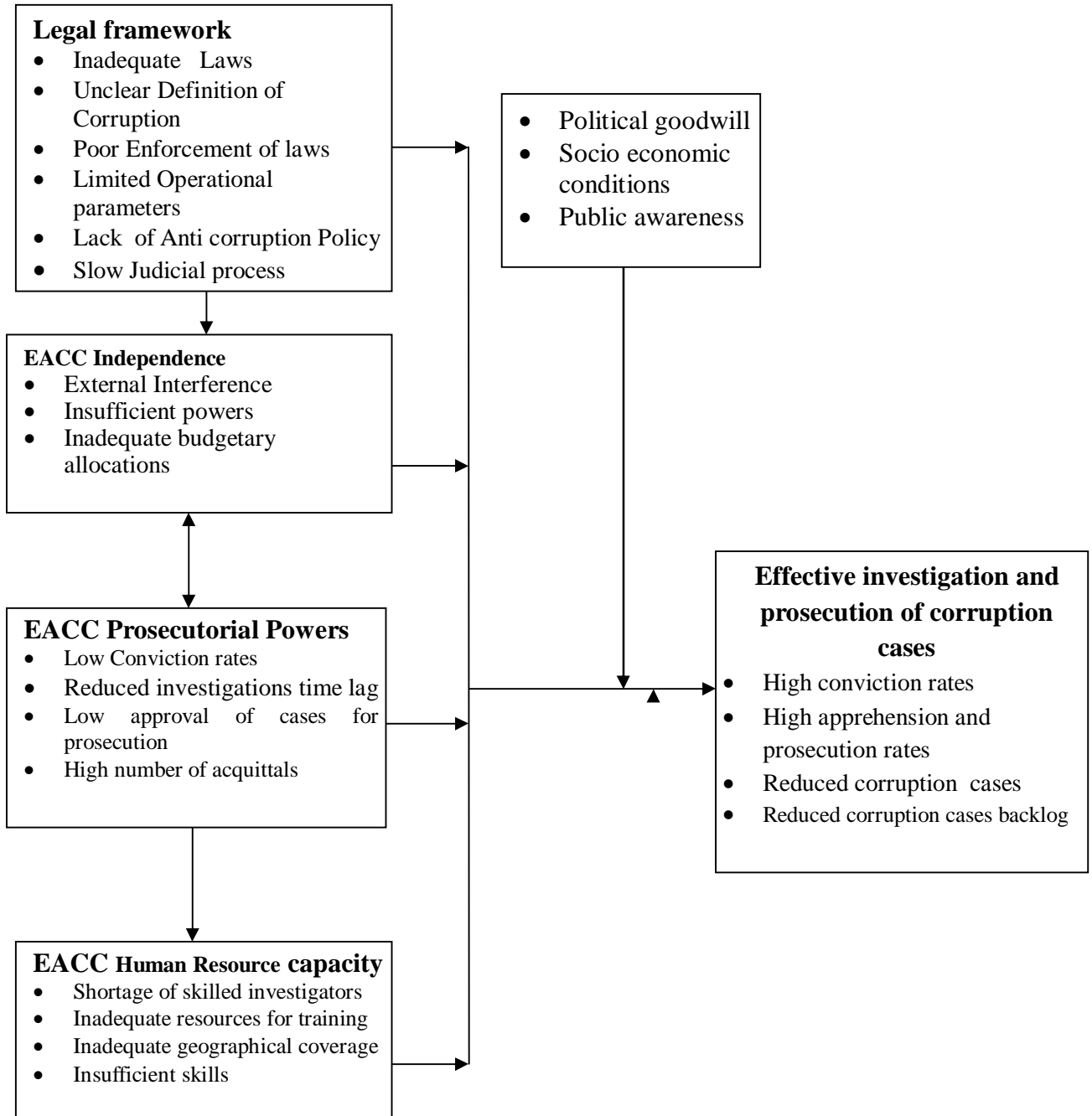
In this study, four independent variables namely legal framework, independence, limitation of prosecutorial powers and human resource capacity were conceptualized to influence the independent variable which is effective investigation and prosecution of corruption cases by EACC. Legal framework was measured by six indicators namely inadequate laws, unclear definition of corruption, poor enforcement of laws, limited operational parameters, lack of Anti corruption policy, and slow judicial process. EACC independence was measured by three indicators namely external interference, insufficient powers and inadequate budgetary allocations. Indicators used to denote EACC prosecutorial powers were low conviction rates, reduced investigations time lag, low approval of cases for prosecution and high number of acquittals. EACC human resource capacity was measured by four indicators which included shortage of skilled investigators, inadequate resources for training, inadequate geographical coverage and insufficient skills. Effective investigation and prosecution of corruption cases was denoted by high conviction rates, high apprehension and prosecution rates, reduced corruption cases, and reduced corruption cases backlog. Figure 2.1 presents the diagrammatical representation of this conceptualization.

Figure 2.1: Conceptual framework

Independent Variables
Variables

Moderating Variables

Dependent



CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

The chapter describes the study site and the research procedures. This includes the site description research design, population of the study, sampling procedures, data collection methods and data analysis and presentation and ethical considerations.

3.2 Site Description

The Ethics and Anti-Corruption Commission (EACC) is a public body established by EACC ACT NO 22 of 2011 which was passed into law on 27th August 2011. Amendment of the Prevention of Corruption Act (Cap 65, LOK) in early 1997 led to the creation of the Kenya Anti-Corruption Authority (KACA) in 1997, December 2000 spelt the death of the KACA as it was held that the statutory provisions establishing it were in conflict with the constitution. The Anti-Corruption Police Unit was created by an executive order in August 2001 and was operational till September 2001 when Kenya Anti-Corruption Commission (KACC) was created. KACC was a public body established under the Anti-Corruption and Economic Crimes Act NO 3 of 2003. Parliament disbanded KACC in August 2011 in line with the requirements in the new constitution. The Ethics and Anti-Corruption Commission (EACC) Bill was passed into law on 27th August 2011. It took effect on 5th September 2011 following the assent by the President.

The mandate of the commission is to combat corruption and economic crimes in Kenya through law enforcement, educating the public and enlighten against corruption and providing preventive services through promotion, development of good practises to seal opportunities that facilitate corruption. The functions of the commission are specified in section 7 of the Anti-corruption and Economic Crimes Act. The functions of the commission are investigation, advice, examination, education and asset recovery on corruption crimes. The Ethics and Anti-Corruption Commission Act provides Institutional structure for the establishment of a professional secretariat to the EACC to be headed by a secretary who shall be the chief executive officer and accounting officer of the

Commission. The Act provides that the commissioners shall be responsible for policy formulation, strategic direction and linkages with the commission, and oversight to the secretariat. The commission has organized its functions into four directorates based on its mandate. The four directorates are Investigation and Asset Tracing, Legal Services and Asset Recovery, Preventive Services and Finance and Administration.

3.3 Research Design

The study employed a descriptive case study research design, since it was aimed at establishing impediments to effective investigation and prosecution of corruption cases in Kenya. Phil (1996) observed that descriptive research studies are designed to obtain information concerning the current situation and other phenomena and wherever possible to draw valid conclusion from the facts discussed. According to Zinkmund (2009), descriptive case studies are best placed to investigate in depth a phenomenon that requires an exhaustive approach. Impediments to effective investigation and prosecution of corruption cases in Kenya needed such an approach and this research design was therefore considered appropriate for the study.

3.4 Unit of Analysis and Observation

According to Singleton, Straits and Straits (1999), a unit of analysis is an object of study or item under study that is to be described or analyzed. Babbie (2005) further explained that a unit of analysis is what or who can be studied. The unit of analysis in this study was the EACC as an organization. Mugenda and Mugenda (2003) described unit of observation as subject, object, item or entity from which we measure the characters of, or obtain the data required in the study. Thus, the unit of observation were EACC investigators from the four departments, namely: operations, Forensic Investigation, Intelligence Production, Legal Services and Asset Recovery.

3.5 Target Population

Target population according to Trochim (2006) refers to the entire group of individuals or objects to which a researcher is interested in generalizing the conclusions. The target population of this study were 79 employees of the Ethics and Anti-Corruption

Commission, from the Investigations and Asset Tracing Directorate as they are responsible for investigation and Legal Services and Asset Recovery who make recommendations to the DPP for the prosecution of persons involved in corruption. The Directorate of Preventive Services who are responsible for Conducting public education, and Finance and Administration were left out in this study as they are not directly involved in Investigation.

3.6 Sampling Procedure

Sampling means selecting a given number of subjects from a defined population as representative of that population (Orodho, 2002). There are 4 departments at Investigation and Asset Tracing Directorate. Stratified random sampling was used to select the study sample where the four directorates formed the strata. This was necessary because the technique gave employees in all departments a chance of being selected in the sample to participate in the study. Questionnaires were allocated per department. The probability of selection of each respondent was proportional to their population; departments with larger populations had a proportionally greater chance of being included in the sample. Simple random sampling was used to pick staff within the department to fill the questionnaires. Sample size determination was done using a formula recommended by Cooper and Schindler (2003).

$$n = \frac{N}{1 + N(e)^2}$$

Where: n= Sample size, N= Population size e= Level of Precision.

At 95% level of confidence and P=5

$$n = 92 / 1 + 92 (0.05)^2$$

$$n = 75$$

Table 3. 1: Sample Population

Department	Population size	Sample size
Operations	29	24
Forensic Investigation	14	11
Intelligence Production	29	24
Legal Services and Asset Recovery	20	16
Heads of departments	4	4
TOTAL	96	79

Source: Survey data, 2013

The heads of the four departments were purposively sampled to participate in this study. This is because by virtue of the positions they hold, they have insightful information that is of interest to this study. The total sample size for this study was therefore 79 respondents.

3.7 Research Instruments

The data for this research was collected using a structured questionnaire and an interview guide. The questionnaire had closed ended questions for the staff while an interview guide was used to collect information from heads of departments. The main advantage of close ended questions is that they are easier to analyse since they are in an immediate usable form. They are also easy to administer because each item is followed by an alternative answer and therefore is economical and time saving. According to Sproul (1998), a self-administered questionnaire is the only way to elicit self-report on people's opinion, attitudes, beliefs and values.

3.8 Sources of Data

The study used both primary and secondary data. Primary data was collected from the sampled respondents. Kothari (2011) described primary data as consisting of that data collected afresh and for the first time. Secondary data was collected from existing literature such as books, journals, magazines and newspapers including internet websites that either directly relates to the subject.

3.9 Data Collection Tools

Two data collection tools were used. A semi-structured questionnaire and an interview guide. Two methods of primary data collection were used. This includes self administered questionnaires for the investigators and face-to-face interviews with the heads of departments. Drop-and-pick later method was used to administer the questionnaires to the investigators by the researcher. This gave them ample time to respond to the questionnaire given their busy schedule. Face-to-face interviews were booked in advance with the heads of Departments. This ensured high response rate and convenience both to the respondents and the researcher. Documentary review method was used to collect secondary data from articles, journals, books, newspapers, internet and magazines.

3.10 Validity of Instruments

According to Joppe (2009), validity determines whether the research truly measures that which was intended to be measured or how truthful the research results are. Researchers generally determine validity by asking a series of questions, and will often look for the answers in the research of others. Weiner and Braun (1998) describe the validity in quantitative research as the initial concept, notion, question or hypothesis that determines which data is to be gathered and how it is to be gathered. The validity of research instruments was established by the use of expert opinions and literature searches to examine what other related studies have used.

3.11 Reliability of Instruments

Reliability is a measure of the degree to which a research instrument yields consistent results or data after repeated trials. Kothari (2009) refers reliability as the consistency of measurement; the more reliable an instrument is, the more consistent the measure. Reliability is influenced by random error. As random error increases, reliability decreases. Random error is the deviation from a true measurement due to factors that have not effectively been addressed by the researcher (Mugenda & Mugenda, 2003). The researcher pre-tested the questionnaires to establish whether there are ambiguous questions and correct them to increase the reliability of the data collected. A sample of 10

respondents was arbitrarily selected to participate in the pre-test. These respondents did not participate in the main study to avoid biasness.

3.12 Data Analysis

Quantitative and qualitative data analysis methods were used. Quantitative data was analyzed using descriptive and inferential statistics such as mean scores, standard deviation, frequencies, and percentages. A computer package (IBM SPSS Statistics 20) was used to aid in processing quantitative data. Quantitative data analysis results were presented in charts and tables.

Qualitative data was analyzed using content analysis. The responses from interviews were categorized based on the themes and patterns cutting across different interviewees responses. This information was used to make conclusions. Qualitative data analysis results were presented in prose or narrative format.

3.13 Ethical Considerations

A number of ethical considerations were taken into account in this study. A research approval was sought. The researcher personally administered the questionnaires to the respondents. Informed consent to participate in the study was obtained from the respondents by explaining the purpose of the study being assured that the information given was to be treated as confidential. The respondents were requested not to indicate their names anywhere in the questionnaire for anonymity. Their confidential information was only accessed by the researcher and the supervisor.

3.14 Constraints in Data Collection

Due to the bureaucratic procedures in Government institutions, the researcher encountered some constraints during the study as some of the information sought was confidential and some of the targeted respondents were reluctant to divulge such information. However, the researcher overcame this by assuring the respondents utmost confidentiality.

CHAPTER FOUR: DATA ANALYSIS, INTERPRETATION AND PRESENTATION

4.1 Introduction

This chapter presents the results of data analysis and presentation of the findings. Data was collected from staff and management of Ethics and Anti-Corruption Commission of Kenya at the Integrity Centre Nairobi.

4.2 Questionnaire Response Rate

The researcher administered 75 questionnaires to the respondents and conducted 4 interviews with the heads of departments. As summarized in table 4.1, 62 of the targeted 75 questionnaires were completed. This translates into a response rate of 82.7% which was considered appropriate for making conclusions. Babbie (2005) observed that a response rate of above 70% is very good and sufficient for analysis.

Table 4. 1: Questionnaire Response Rate

Department	Sample Size	Response	%
Operations	52	49	94.2
Forensic Investigation	9	6	66.7
Intelligence Production	10	5	50
Legal Services and Asset Recovery	4	2	50
Total	75	62	82.7

Source: Survey data, 2013

4.3 Demographic Characteristics of the Respondents

This section presents demographic information of the respondents in regard to age distribution, gender, duration worked in the organization, highest level of education, department and the position of the respondents.

4.3.1 Age Distribution of Respondents

Table 4.2 summarizes the age distribution of the respondents. The data shows that a large proportion (35.5%) of EACC staffs were 36-40 years of age while staffs in the age bracket of 41-45 years were 22.6%. EACC staffs aged below 25 years were 19.4% while

those who are aged 26-30 years were 14.5%. Only 4.8% and 3.2% were aged 31-35 years and 46 years and above respectively. These results show that EACC workforce comprises of youthful and middle aged employees.

Age	Frequency	Percent
Below 25 years	12	19.4
26-30 years	9	14.5
31-35 years	3	4.8
"36-40 years"	22	35.5
"41-45 years"	14	22.6
"46 years and above"	2	3.2
Total	62	100.0

Source: Survey data, 2013

4.3.2 Gender of Respondents

Respondents were asked to indicate their gender. Majority of the respondents were male (75.4%) as compared to female (24.6%). The results show there is gender disparity in EACC workforce whereby male employees are three times more than female employees.

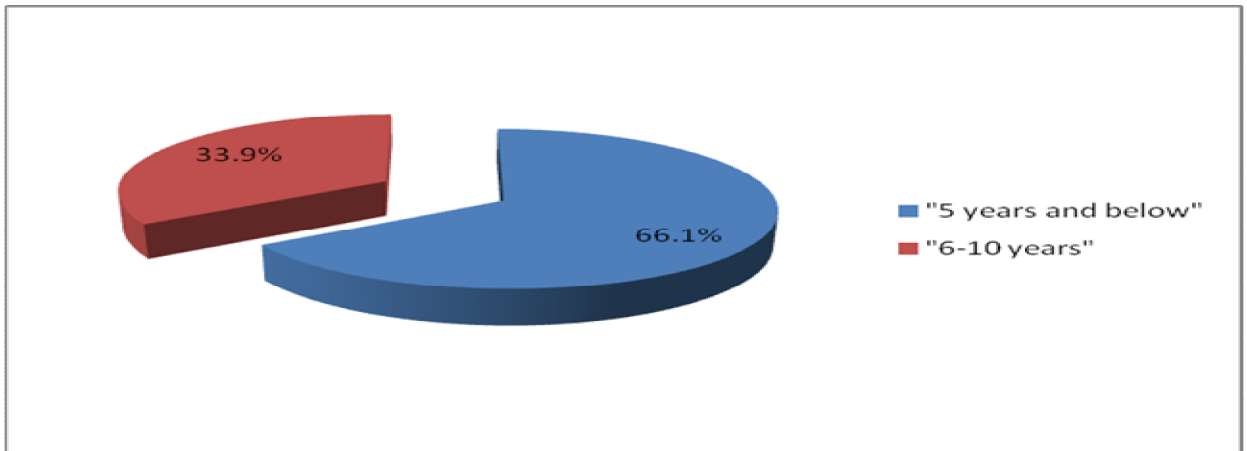
Table 4. 2: Gender of Respondents

Gender	Frequency	Percent
Male	46	75.4
Female	15	24.6
Total	61	100.0

Source: Survey data, 2013

As presented in figure 4.1, majority of EACC had worked in the organization for 5 years and below while 33.9% of the respondents had worked at EACC for 6-10 years. The results show that a large proportion of employees joined EACC not more than 5 years ago while a significant proportion has been in the organization for more than 6 years. The organization has therefore sought new talent as well as retaining previously existing workforce.

Figure 4. 1: Duration Worked in the Organization



Source: Survey data, 2013

4.3.3 Respondents Level of Education

Respondents were asked to indicate their highest level of education. Half of the respondents (50%) had undergraduate degree while 22.6% were diploma holders. Respondents with a masters degree were 19.4% while only 8.1% of the respondents indicated KCSE as their highest education level. The results have shown that EACC has qualified employees working at the organization. Table 4.3 summarizes these results.

Table 4. 3: Highest Level of Education

Level of education	Frequency	Percent
KCSE	5	8.1
Diploma	14	22.6
Undergraduate	31	50.0
Masters	12	19.4
Total	62	100.0

Source: Survey data, 2013

4.3.4 Respondents Distribution by Department

Table 4.4 presents data on the departments that respondents worked. Majority of the respondents (79%) worked in the operations department while 9.7% worked in the forensic investigation department. Only 8.1% of the respondents worked in intelligence

production department while 3.2% worked in legal services and asset recovery. The results show that operations department has the highest number of employees at EACC.

Table 4. 4: Respondents Department

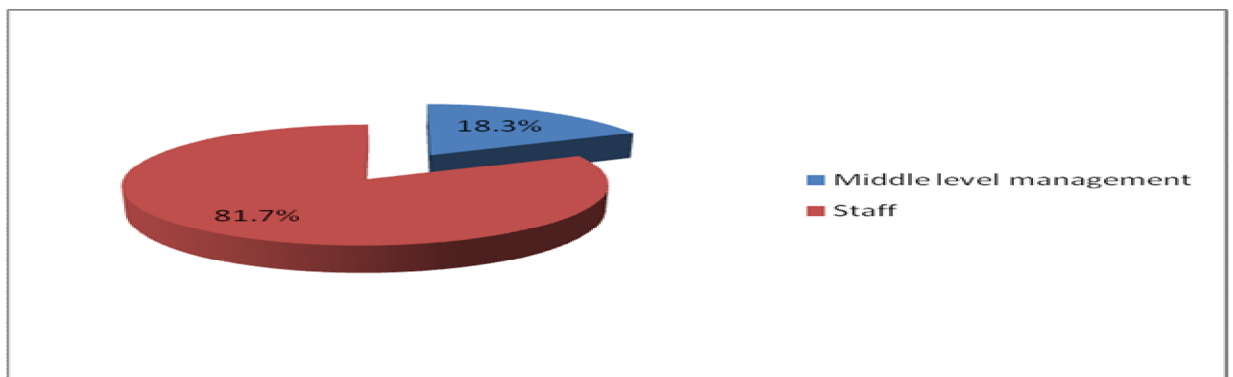
Department	Frequency	Percent
Operations	49	79.0
Forensic Investigation	6	9.7
Intelligence Production	5	8.1
Legal Services and Asset Recovery	2	3.2
Total	62	100.0

Source: Survey data, 2013

4.3.5 Respondents Distribution by Position

Respondents were asked to indicate their position at EACC. The data presented in figure 4.2 indicate that majority of the respondents (81.7%) were staffs while 18.3% were employees in middle level management. The results show that focus was on EACC staffs to provide information for the study.

Figure 4. 2: Position of the Respondents



Source: Survey data, 2013

4.4 Level of Efficiency in Investigation of Corruption and Economic Crimes

The respondents were asked to indicate their opinion on the level of efficiency in regard to investigation of corruption and economic crimes in Kenya. A large proportion of respondents (46.8%) were of the opinion that level of efficiency in regard to investigation of corruption and economic crimes in Kenya was high while 43.5% felt it was moderate.

Only 9.7% of the respondents were of the opinion that the level of efficiency in regard to investigation of corruption and economic crimes in Kenya was low. Table 4.5 summarizes these results.

Table 4. 5: Level of Efficiency in Investigation of Corruption and Economic Crimes

Level of Efficiency	Frequency	Percent
High	29	46.8
Moderate	27	43.5
Low	6	9.7
Total	62	100.0

Source: Survey data, 2013

4.5 Anti Corruption Legal Framework

Respondents used a Likert scale of 1-5 where 1 was strongly disagree, 2 was disagree, 3 was neutral, 4 was agree and 5 was strongly agree. Respondents were asked to rate their agreement with a number of statements in regard to Anti Corruption Legal framework and its effects on investigation and prosecution of corruption cases. Mean scores were used to rank statements based on various responses of the respondents. For each of the statements, a mean standard score was calculated using responses scores to show where it falls in the Likert scale.

Respondents agreed with the statement that adverse court decisions and stopping some investigations affect EACC operations (n=62, M=4.68). The respondents also agreed with the statement that slow judicial process affects EACC performance in the fight against corruption (n=62, M=4.29). Respondents were neutral on a number of statements including that lack of minimum sentence in ACECA affects EACC in containing corruption; there is coordination between various ant-corruption and governance agencies; ACECA does not have provisions to criminalize corruption in the private sector; there is effective enforcement of anti corruption laws; there is lack of whistleblower protection and restoration of recovered assets; Anti Corruption and Economic Crime Act of 2003 has inherent weaknesses; existing legal framework sufficient for EACC to execute its mandate effectively; lack of National Anti Corruption Policy affects operational direction of EACC; no measures obliging public authorities to

assist and cooperate with EACC; EACC has no legal sanctions against transnational aspects of corruption and the existing legal environment is weak and unsupportive. The respondents however disagreed with the statement that ACECA does not distinguish between corruption and economic crimes (n=62, M=2.39). The results show that court rulings and slow judicial process have presented serious challenges to effective mandate execution by the EACC. Table 4.6 summarizes these results.

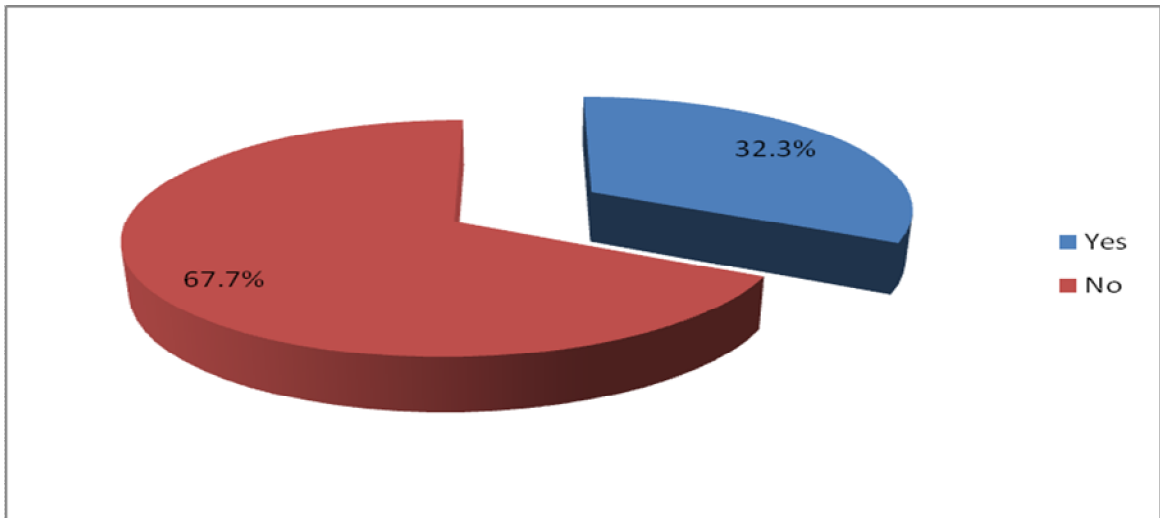
Table 4. 6: Anti Corruption Legal Framework

Statement	N	Mean
Adverse court decisions and stopping some investigations affect EACC operations	62	4.68
Slow judicial process affects EACC performance in the fight against corruption	62	4.29
Lack of minimum sentence in ACECA affects EACC in containing corruption	62	3.89
There is coordination between various ant-corruption and governance agencies	62	3.74
ACECA does not have provisions to criminalize corruption in the private sector	62	3.68
There is effective enforcement of anti corruption laws	62	3.65
There is lack of whistleblower protection and restoration of recovered assets	62	3.52
Anti Corruption and Economic Crime Act of 2003 has inherent weaknesses	62	3.52
Existing legal framework sufficient for EACC to execute its mandate effectively	60	3.43
Lack of National Anti Corruption Policy affects operational direction of EACC	62	3.31
No measures obliging public authorities to assist and cooperate with EACC	62	3.16
EACC has no legal sanctions against transnational aspects of corruption	62	3.15
The existing legal environment is weak and unsupportive	62	3.05
ACECA does not distinguish between corruption and economic crimes	62	2.39

Source: Survey data, 2014

The respondents were asked to indicate whether or not the legal framework has been sufficient for EACC to execute its mandate effectively. Majority of the respondents indicated no (67.7%) as compared to 32.3% who indicated yes. Figure 4.3 presents data results on legal framework sufficiency for EACC.

Figure 4. 3: Legal Framework Sufficiency for EACC



Source: Survey data, 2013

Respondents who indicated no were further asked to indicate why they thought the legal framework has been insufficient for EACC to execute its mandate effectively. Many of them cited that owing to the judicial process limitations, there is need to have an EACC police and more special courts to take cases on corruption.

Key informants argued that EACC lacks an elaborate legal framework to fight corruption. They pointed out that the Anti-Corruption and Economics Crimes Act only prescribes penalties for public officers and not private sector. They further cited the amendments of Sec 26-30 which has watered down powers of EACC. The Key informants observed that Section 39 of the ACECA does not deal with all the offences and therefore the penal code have to be used which becomes more difficult to prosecute.

4.6 EACC Independence

Respondents used a Likert scale of 1-5 where 1 was strongly disagree, 2 was disagree, 3 was neutral, 4 was agree and 5 was strongly agree. The respondents were asked rate their level of agreement with a number of statements in regard to EACC independence. Mean scores were used to rank statements based on various responses of the respondents. For each of the statements, a mean standard score was calculated using responses scores to show where it falls in the Likert scale.

As presented in table 4.7, respondents disagreed with the statements that EACC has sufficient powers to effectively carry out its mandate (n=62, M=2.94) and EACC is free from any undue influence (n=56, M=2.29). However, respondents were neutral on the statements that safeguards are in place for the appointment and removal of EACC head; independence clear in definition of role and scope of activities of EACC; and safeguards are in place for appointment of qualified staff of integrity. The respondents were also neutral on the statements that public officials in the government under investigation affect EACC work; EACC is answerable to government officials erodes its autonomy; Economic and Crimes Act provides EACC with adequate independence; and EACC has a predictable and stable budget. Respondents were neutral on the statements that independence is manifested in security of tenure for the EACC head; EACC insulated from political interference through adequate budgetary allocations and Government is supportive of EACC to maintain adequate independence. The results show that EACC does not have sufficient powers to effectively carry out its mandate and EACC is not free from undue influence. Table 4.7 summarizes these results.

Table 4. 7: EACC Independence

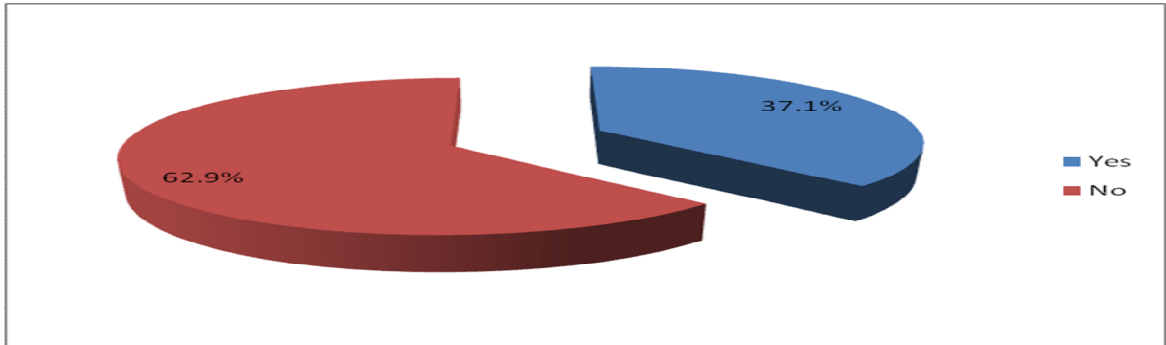
Statement	N	Mean
Safeguards are in place for the appointment and removal of EACC head	62	3.79
Independence clear in definition of role and scope of activities of EACC	60	3.52
Safeguards are in place for appointment of qualified staff of integrity	62	3.50
Public officials in the government under investigation affect EACC work	62	3.50
EACC is answerable to government officials erodes its autonomy	62	3.31
Economic and Crimes Act provides EACC with adequate independence	62	3.31
EACC has a predictable and stable budget	62	3.26
Independence is manifested in security of tenure for the EACC head	62	3.15
EACC insulated from political interference through adequate budgetary allocations	62	3.05
Government is supportive of EACC to maintain adequate independence	62	3.00
EACC has sufficient powers to effectively carry out its mandate	62	2.94
EACC is free from any undue influence	56	2.29
Valid N (listwise)	54	

Source: Survey data, 2013

Respondents were asked to indicate whether or not EACC has adequate independence and autonomy to operate effectively. Majority of the respondents indicated no (62.9%) as

compared to 37.1% who indicated yes. The results show that EACC does not have adequate independence and autonomy. Figure 4.4 summarizes these findings.

Figure 4. 4: EACC has Adequate Independence and Autonomy



Source: Survey data, 2013

Asked to explain their answer, many respondents pointed out that the appointments at EACC are made by the head of state before they are vetted. This, they indicated may erode the much needed independence and autonomy.

On the independence of EACC, the key informants revealed that there are many conspiracies on corruption that touch on influential personalities. These personalities use their influence to affect EACC's work in fighting corruption. This sometimes causes breach of trust especially between the public and the Commission. The key informants cited external interference especially from county governments which frustrate investigations.

4.7 Limitations in Prosecutorial Powers

Respondents used a Likert scale of 1-5 where 1 was strongly disagree, 2 was disagree, 3 was neutral, 4 was agree and 5 was strongly agree. Respondents were requested rate their level of agreement with statements in regard to limitations in prosecutorial powers and their effect on effective investigation and prosecution of corruption cases by EACC. Mean scores were used to rank statements based on various responses of the respondents. For each of the statements, a mean standard score was calculated using responses scores to show where it falls in the Likert scale.

The results show that respondents disagreed with the statements that most of the cases recommended to DPP for prosecution are closed and returned for further investigation (n=62, M=2.48) and most suspected corrupt people are convicted in court (n=62, M=2.48). The respondents were however neutral on the statements that most cases forwarded to DPP are approved for prosecution; recommendation of prosecution by EACC to DPP reduces its effectiveness in combating corruption crimes; the level of prosecution of corruption cases recommended to DPP is high; and outcome of most cases recommended for prosecution is acquittal. The results show the limitations in prosecutorial powers affect effective investigation and prosecution of corruption cases by EACC because most suspected corrupt people are not convicted in court. Table 4.8 presents these results.

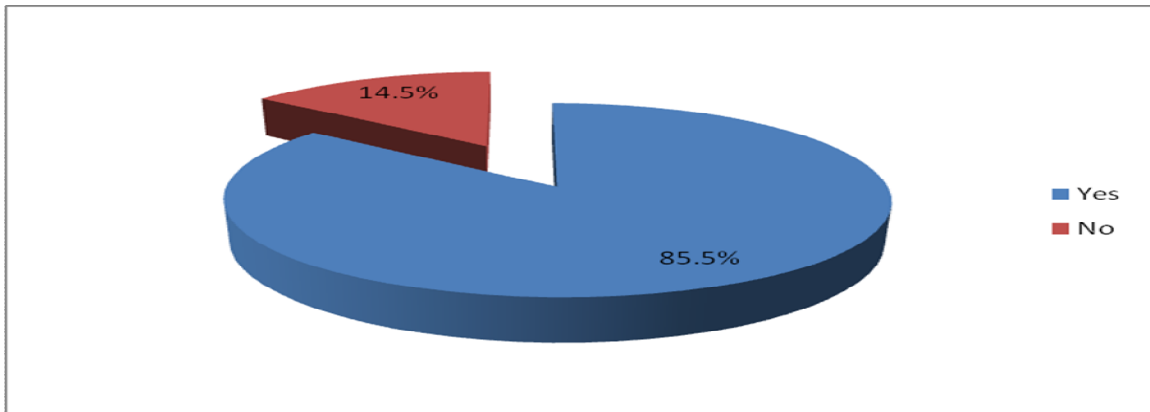
Table 4. 8: Limitations in Prosecutorial Powers

Statement	N	Mean
Most cases forwarded to DPP are approved for prosecution	62	3.50
Recommendation of prosecution by EACC to DPP reduces its effectiveness in combating corruption crimes	62	3.26
The level of prosecution of corruption cases recommended to DPP is high	62	3.21
Outcome of most cases recommended for prosecution is acquittal	62	3.16
Most of the cases recommended to DPP for prosecution are closed and returned for further investigation	62	2.48
Most suspected corrupt people are convicted in court	62	2.48
Valid N (listwise)	62	

Source: Survey data, 2013

Figure 4.5 presents results in regard to EACC limitation to investigations without prosecutorial powers and its effect on EACC effectiveness. Asked whether or not EACC limitation to investigations without prosecutorial powers affected its effectiveness, majority of the respondents indicated yes (85.5%) as compared to 14.5% who indicated no.

Figure 4. 5: EACC Limitation to Investigations without Prosecutorial Powers



Source: Survey data, 2013

Respondents who indicated that EACC limitation to investigations without prosecutorial powers affected its effectiveness were asked to explain their answer. Many of them cited that this situation reduces the morale of the staff as it sometimes appears as if their work is a waste of time.

The key informants observed that the EACC investigates but cannot make decisions to prosecute. This is left to the Director of Public Prosecution. This has limited the work of the Commission and has made it seem as if it does not have “teeth to bite corruption” or the ability to act on corruption cases. The key informants indicated that some information on corruption cases cannot be communicated to another party hence the need to vest powers on EACC to prosecute corruption cases.

4.8 Human Resources Capacity

Respondents used a Likert scale of 1-5 where 1 was strongly disagree, 2 was disagree, 3 was neutral, 4 was agree and 5 was strongly agree. The respondents were asked to rate their agreement with statements in regard human resources capacity constraints at EACC and its effect on investigation and prosecution of corruption cases. Mean scores were used to rank statements based on various responses of the respondents. For each of the statements, a mean standard score was calculated using responses scores to show where it falls in the Likert scale.

The respondents disagreed with the statements that shortage of forensic experts has slowed EACC in investigating cases (n=62, M=2.77), EACC lacks in regional presence due to inadequate specialized skill (n=62, M=2.71), and EACC has appropriate human resource capacity to cover devolved system (n=62, M=2.61). The respondents also disagreed with the statements that EACC investigators are not adequately trained to handle technological gadgets in their work (n=62, M=2.53); there is adequate financial resources dedicated to training specialists in investigation (n=62, M=2.39); and EACC has adequate human resource to investigate corruption (n=62, M=2.06). However, respondents neither agreed nor disagreed with the statements that EACC staffs have adequate capacity for investigation and prosecution of corruption cases, EACC has adequate specialized skills with staff trained in specialized areas, EACC staff establishment is low and thus affects its performance, EACC has shortage of forensic investigators, EACC ratio of staff establishment to population and corruption levels low, and EACC has expanded its services country wide. The results show that there is no adequate financial resources dedicated to training specialists in investigation and EACC has no adequate human resource to investigate corruption. These results are summarized in table 4.9.

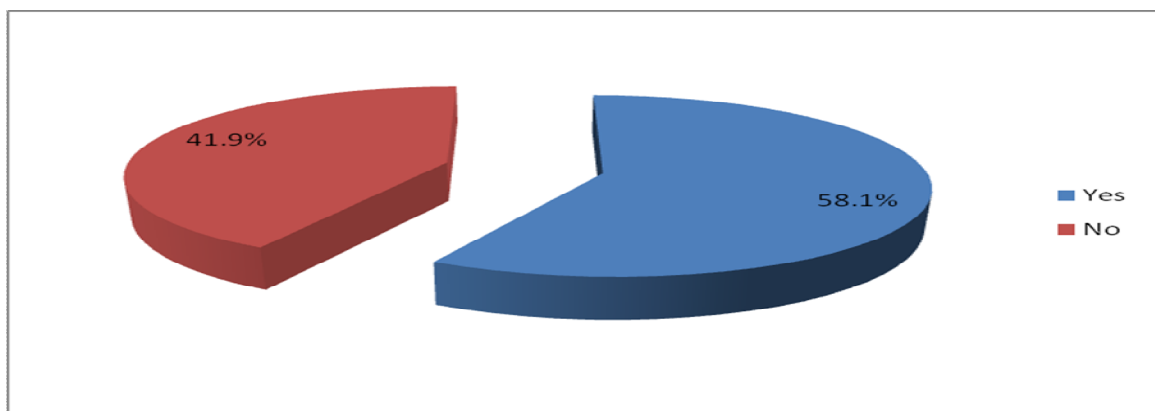
Table 4. 9: Human Resources Capacity

Statement	N	Mean
EACC staffs have adequate capacity for investigation and prosecution of corruption cases	62	3.74
EACC has adequate specialized skills with staff trained in specialized areas	62	3.66
EACC staff establishment is low and thus affects its performance	62	3.63
EACC has shortage of forensic investigators	62	3.48
EACC ratio of staff establishment to population and corruption levels low	62	3.27
EACC has expanded its services country wide	62	3.02
Shortage of forensic experts has slowed EACC in investigating cases	62	2.77
EACC lacks in regional presence due to inadequate specialized skill	62	2.71
EACC has appropriate human resource capacity to cover devolved system	62	2.61
EACC investigators not adequately trained to handle technological gadgets in their work	62	2.53
Adequate financial resources dedicated to training specialists in investigation	62	2.39
EACC has adequate human resource to investigate corruption	62	2.06

Source: Survey data, 2013

Respondents were asked whether or not EACC human resources capacity affected its effectiveness in investigation and prosecution of corruption cases. Figure 4.6 shows that majority of the respondents indicated yes (58.1%) as compared to 41.9% who indicated no. The results show that EACC human resources capacity has affected its effectiveness in investigation and prosecution of corruption cases.

Figure 4. 6: EACC Human Resources Capacity



Source: Survey data, 2013

Respondents were asked to recommend what should be done to make EACC effective in its work. Among the most cited recommendations were the needs for EACC police that can arrest and prosecute, hasten the process of prosecution of those with corruption charges. The respondents also indicated the need for public officers charged with corruption to step down during investigation process.

The EACC has faced human resource challenges according to the key informants. This is mainly because the EACC budget has been constant. The uncertainty in the Commission causes high staff turn-over which is not healthy for its work. The Commission has not been able to match staff remuneration with other employers seeking similar talents hence staff always get greener pastures and leave the Commission. In terms of training, officers of the Commission require adequate skills in computer or ICT crimes, asset tracing and recovery, and advanced fraud investigations.

CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This concluding chapter provides a summary of the research findings, conclusions, and recommendations. The general objective of the study was to assess impediments to effective investigation and prosecution of corruption cases by the Ethics Anti-Corruption Commission. Specifically, the study sought to assess adequacy of the existing legal framework for investigation and prosecution of corruption cases; to examine how the level of autonomy influence investigation and prosecution of corruption cases; to evaluate the efficiency of Ethics Anti-Corruption Commission without prosecutorial powers in investigation and prosecution of corruption cases; and to establish influence of EACC's Human Resource capacity on effective investigation and prosecution of corruption cases.

5.2 Summary of Findings

This section provides a summary of the major findings of the study. The summary is presented in line with the objectives of the study.

5.2.1 Adequacy of the Existing Legal Framework for EACC

The findings of this study show that court rulings and slow judicial process have presented serious challenges to effective mandate execution by the EACC. This is because adverse court decisions and stopping some investigations affect EACC operations (n=62, M=4.68). In addition, slow judicial process affects EACC performance in the fight against corruption (n=62, M=4.29). As to whether or not the legal framework has been sufficient for EACC to execute its mandate effectively, majority of the respondents indicated no (67.7%) as compared to 32.3% who indicated yes.

5.2.2 Level of EACC's Autonomy and Independence

The study revealed that EACC does not have sufficient powers to effectively carry out its mandate and that EACC is not free from undue influence. This was confirmed by

respondents' disagreement with the statements that EACC has sufficient powers to effectively carry out its' mandate (n=62, M=2.94) and EACC is free from any undue influence (n=56, M=2.29). As to whether or not EACC has adequate independence and autonomy to operate effectively, majority of the respondents indicated no (62.9%) as compared to 37.1% who indicated yes hence confirming that EACC does not have adequate independence and autonomy.

5.2.3 Limitations of EACC without Prosecutorial Powers

This study established that the limitations in prosecutorial powers affect effective investigation and prosecution of corruption cases by EACC because most suspected corrupt people are not convicted in court. These findings were supported by respondents who disagreed with the statement that most suspected corrupt people are convicted in court (n=62, M=2.48). On whether or not EACC limitation to investigations without prosecutorial powers affected its effectiveness, majority of the respondents indicated yes (85.5%) as compared to 14.5% who indicated no.

5.2.4 Human Resource Capacity and Effective Investigation

The findings of the study revealed that there is no adequate financial resources dedicated to training specialists in investigation and EACC has no adequate human resource to investigate corruption. The respondents disagreed with the statements that EACC has appropriate human resource capacity to cover devolved system (n=62, M=2.61); there is adequate financial resources dedicated to training specialists in investigation (n=62, M=2.39); and EACC has adequate human resource to investigate corruption (n=62, M=2.06). As to whether or not EACC human resources capacity has affected its effectiveness in investigation and prosecution of corruption cases, majority of the respondents indicated yes (58.1%) as compared to 41.9% who indicated no. Therefore, results show that EACC human resources capacity has affected its effectiveness in investigation and prosecution of corruption cases.

5.3 Conclusions

This study concluded that legal framework is a challenge for EACC to execute its mandate effectively. Adverse court rulings and slow judicial process have presented serious challenges to effective mandate execution by the EACC. In this sense, the legal framework has been insufficient for EACC to execute its mandate effectively.

This study concluded that EACC does not have adequate independence and autonomy. This due to lack of sufficient powers to effectively carry out its mandate and it is not free from undue influence. This makes EACC less independent and lack autonomy in its operations which have influenced its performance in investigation and prosecution of corruption cases.

The limitations in prosecutorial powers have affected effective investigation and prosecution of corruption cases by EACC. Owing to EACC's limitation to investigations without prosecutorial powers, most suspected corrupt people are not convicted in court. This has affected EACC performance.

The study concluded that EACC's human resources capacity has affected its effectiveness in investigation and prosecution of corruption cases. There is no adequate financial resources dedicated to training specialists in investigation and EACC has no adequate human resource to investigate corruption.

5.4 Recommendations

Based on the findings and conclusions of the study, the following recommendations were made:

1. The Kenyan Parliament should ensure there is an effective legal framework for the fight against corruption. This should entail a detailed operational framework of the EACC to enhance its performance.
2. Kenyan Parliament should also ensure that EACC is independent and autonomous by clearly delinking it from political influence. In addition, Parliament should allocate adequate resources to the EACC for it to execute its

mandate effectively and independently without undue influence from other quarters.

3. The legislature should give EACC the power to prosecute. Limitation of EACC to investigations has resulted to poor performance of the Commission.
4. The EACC should build its human resource capacity by attracting competent skills, training and equipping employees with the necessary tools of work. This has not been possible owing to limited budget for EACC and lack of allocation for training experts in investigations.

5.5 Areas for Further Research

Due to the limitations of the current study, there is need for additional research to:

1. Determine the performance of EACC as it is currently constituted and compare it with an Anti-Corruption Agency with prosecutorial powers.
2. Establish the level of internal and external challenges of EACC that affect its performance.
3. Evaluate the operational policies of EACC and their implementation to establish where its problems are. The lessons learnt can be useful for improvement in future.
4. Assess the best performance measurement framework for EACC with a view to monitor and evaluate progress.

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APPENDICES

Appendix I: Research Questionnaire

The information provided will only be used for the purpose of this study. Kindly tick or mark as appropriate answers in the blank spaces provided. Kindly do not indicate personal details anywhere in this questionnaire.

Section I: General Information

1. What is your gender?
Male () Female ()
2. What is your age bracket?
Below 25 years ()
26 – 30 years ()
31 – 35 years ()
36 – 40 years ()
41 – 45 years ()
46 years and above ()
3. How long have you worked in this organization?
5 yrs and below []
6- 10 years []
11-15 years []
16- 20 years []
21 years and over []
4. What is your highest level of education?
KCSE []
Diploma []
Undergraduate []
Masters []
PhD []
5. Which department do you work in?
Operations []
Forensic Investigation []

Intelligence Production []

Legal Services and Asset Recovery []

6. What is your position in EACC?

Top Management []

Middle level management []

Staff []

Subordinate staff []

7. In your own view, what is the level of efficiency in investigation of corruption and economic crimes in Kenya?

Very high []

High []

Moderate []

Low []

Low very []

Section II: Anti Corruption Legal Framework

8. Using a Likert scale of 1-5, with **5** being ‘**strongly agree**’, **4** being ‘**agree**’, **3** being ‘**neither agree nor disagree**’, **2** being ‘**disagree**’ and **1** being ‘**strongly disagree**’, kindly rate your agreement with the following statements in regard to Anti Corruption Legal framework and its effects on investigation and prosecution of corruption cases.

Statements	1	2	3	4	5
Existing legal framework sufficient for EACC to execute its mandate effectively					
There is coordination between various ant-corruption and governance agencies					
There is effective enforcement of anti corruption laws					
Anti Corruption and Economic Crime Act of 2003 has inherent weaknesses					
Lack of minimum sentence in ACECA affects EACC in containing corruption					
ACECA does not distinguish between corruption and economic crimes					
ACECA does not have provisions to criminalize corruption in the private sector					
EACC has no legal sanctions against transnational aspects of corruption					
No measures obliging public authorities to assist and cooperate with EACC					
Lack of National Anti Corruption Policy affects operational direction of EACC					

The existing legal environment is weak and unsupportive					
There is lack of whistleblower protection and restoration of recovered assets					
Slow judicial process affects EACC performance in the fight against corruption					
Adverse court decisions and stopping some investigations affect EACC operations					

9. Has the legal framework been sufficient for EACC to execute its mandate effectively?

Yes [] No []

If yes, explain your answer

.....
.....
.....

If no, why do you think the legal framework been insufficient for EACC to execute its mandate effectively?

.....
.....
.....

Section III: EACC Independence

10. Using a Likert scale of 1-5, with **5** being ‘strongly agree’, **4** being ‘agree’, **3** being ‘neither agree nor disagree’, **2** being ‘disagree’ and **1** being ‘strongly disagree’, kindly rate your agreement with the following statements in regard to EACC independence.

Statements	1	2	3	4	5
Economic and Crimes Act provides EACC with adequate independence					
EACC is free from any undue influence					
Safeguards are in place for the appointment and removal of EACC head					
Safeguards are in place for appointment of qualified staff of integrity					
EACC has sufficient powers to effectively carry out its mandate					
EACC has a predictable and stable budget					
Government is supportive of EACC to maintain adequate independence					

EACC is answerable to government officials erodes its autonomy					
Independence is manifested in security of tenure for the EACC head					
EACC insulated from political interference through adequate budgetary allocations					
Independence clear in definition of role and scope of activities of EACC					
Public officials in the government under investigation affect EACC work					

11. Does EACC have adequate independence and autonomy to operate effectively?

Yes [] No []

If yes, explain your answer

.....
.....
.....

If no, explain why you think it lacks independence and autonomy

.....
.....
.....

Section IV: Limitations in Prosecutorial Powers

12. Using a Likert scale of 1-5, with 5 being ‘strongly agree’, 4 being ‘agree’, 3 being ‘neither agree nor disagree’, 2 being ‘disagree’ and 1 being ‘strongly disagree’, kindly rate your agreement with the following statements in regard to limitations in prosecutorial powers affect effective investigation and prosecution of corruption cases by EACC.

Statements	1	2	3	4	5
Recommendation of prosecution by EACC to DPP reduces its effectiveness in combating corruption crimes					
Most cases forwarded to DPP are approved for prosecution					
Most suspected corrupt people are convicted in court					
Outcome of most cases recommended for prosecution is acquittal					
Most of the cases recommended to DPP for prosecution are closed and returned for further investigation					

The level of prosecution of corruption cases recommended to DPP is high					
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13. Has EACC limitation to investigations without prosecutorial powers affected its effectiveness?

Yes [] No []

If yes, explain

.....

If no, explain why

.....

Section V: Human Resources Capacity

14. Using a Likert scale of 1-5, with 5 being ‘strongly agree’, 4 being ‘agree’, 3 being ‘neither agree nor disagree’, 2 being ‘disagree’ and 1 being ‘strongly disagree’, kindly rate your agreement with the following statements in regard to how Human Resource Capacity constraints at EACC affects investigation and prosecution of corruption cases.

Statements	1	2	3	4	5
EACC has adequate human resource to investigate corruption					
EACC staff establishment is low and thus affects its performance					
EACC has shortage of forensic investigators					
EACC investigators not adequately trained to handle technological gadgets in their work					
Adequate financial resources dedicated to training specialists in investigation					
EACC has expanded its services country wide					
EACC has appropriate human resource capacity to cover devolved system					
EACC ratio of staff establishment to population and corruption levels low					
Shortage of forensic experts has slowed EACC in investigating cases					
EACC lacks in regional presence due to inadequate specialized skill					
EACC staffs have adequate capacity for investigation and prosecution of corruption cases					

EACC has adequate specialized skills with staff trained in specialized areas						
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15. Has EACC human resources capacity affected its effectiveness in investigation and prosecution of corruption cases?

Yes [] No []

If yes, explain how

.....

If no, explain why

.....

16. What would you recommend should be done to make EACC effective in its work?

.....

Appendix II: Interview Guide

Introduce the interview and ask questions guided by the following questions:

1. What are some of the inherent weaknesses in the Anti Corruption and Economic Crime Act of 2003 that water down its effectiveness?
2. In your opinion does ACECA make sufficient provision for international cooperation and technical assistance in the prevention of and fight against corruption? If yes, how? If no, why?
3. What legal, institutional and operational reforms could be under taken to improve efficiency of EACC in investigating and prosecuting corruption?
4. How do adverse court decisions declaring certain provisions of ACECA unconstitutional and stopping some investigations affects operation of EACC?
5. How do challenges in the legal framework affect investigation and prosecution of corruption cases?
6. To what extent is EACC independent?
7. How does lack of political good will impede investigation and prosecution of corruption cases?
8. What is the influence of Politics and political goodwill on efficiency of EACC in investigation and prosecution of corruption cases?
9. Does EACC have operational independence and freedom from political interference? If yes, explain how? If no, why do you think so?
10. Does external interference influence investigation and prosecution of corruption? If yes, how? If no, why?
11. How does lack of Prosecutorial Powers affect Investigation and Prosecution of Corruption Cases by EACC?
12. In your opinion should investigatory and prosecutorial powers vested in one body? If yes, explain how? If no, why do you think so?
13. Does lack of prosecutorial powers by EACC render it vulnerable to external interference and manipulation? If yes, how? If no, why?
14. How does staff shortage affect EACC?
15. What are some of the specialized areas which EACC staff lack skills in?

16. How does EACC management influence effective prosecution of Corruption cases in Kenya?