



Free for all?

Misuse of funds at the Electoral Commission of Kenya

A blurred background image showing a person's hands counting money on a table. The person is wearing a dark jacket and has their hands clasped over a stack of banknotes. The scene is dimly lit, with a strong light source from the left creating a bright glow.

Free for all?

***Misuse of Public Funds at the
Electoral Commission of Kenya***

Abbreviations and acronyms

ACECA	Anti-Corruption and Economic Crimes Act
AiA	Appropriations-in-Aid
CAG	Controller and Auditor General
CDF	Constituency Development Fund
DEC	District Elections Coordinator
DPM	Directorate of Personnel Management
ECK	Electoral Commission of Kenya
FY	Financial Year
ID	National Identity Card
IPPG	Inter-Parties Parliamentary Group
KANU	Kenya African National Union
KES	Kenya Shilling
LATF	Local Authority Transfer Fund
LPO	Local Purchase Order
LSO	Local Service Order
PAC	Public Accounts Committee
PIC	Public Investments Committee
POEA	Public Officers Ethics Act
PPDA	Public Procurement and Disposal Act
PREM	Poverty Reduction and Economic Management Network
PS	Permanent Secretary
SO	Standing Orders
UK	United Kingdom
US\$	United States Dollar

Contents

About this report	1
Foreword	2
1. Introduction	3
Background and Structure of the Electoral Commission of Kenya	4
PART I: BACKGROUND	
2. Managing Kenya's Public Finances	8
2.1 Government Financial Regulations and Procedures	8
2.1.1 The Accounting Officer	
2.1.2 On Managing Spending	
Auditing Accounts	10
Imprests	11
Managing Losses and Write-Offs	12
Management of Government Contracts Procurements and Tenders	12
Management of Stores and Supplies	12
2.2 The Auditor General's Work	13
2.3 Role of Parliament in Relation to the CAG's Functions	14
PART II: FINANCIAL MISMANAGEMENT AT THE ECK	
3. Questionable Expenditure from 1991 to 2007	19
3.1 The Excesses of the Commissioners	
3.1.1 Unwarranted Sitting and Subsistence Allowances	18
3.1.2 Double Dealing: Irregular Payment of Accommodation and Subsistence Expenses	19
3.1.3 Wasteful Expenditure: Unnecessary Hire of Cars for Commissioners	20
3.2 Embezzlement or Allowances for Services Rendered ?	20
3.3 Doubtful Hire and Repair of Vehicles	23
3.3.1 Doubtful Hire of Vehicles	23
3.3.2 Dubious Transactions in the Repairs of Vehicles	23
3.4 Irregular Procurement of Spares, Fuel and Stores	24
3.4.1 Irregular Purchase of Motor Vehicle Spare Parts	24
3.4.2 Purchase of Fuel or Purchase of Air?	25
3.4.3 Polling Booths and Other Stores	27
3.5 Outstanding Imprests	28
3.6 Gross Over-Expenditure: Making Confetti of Public Funds	28
3.7 Unsupported Expenditure	30
3.8 Other Questionable Transactions	30
Overview of CAG audit Queries - 1991/92 - 2006/07	32
4 Challenges Facing the ECK	33
5 Recommendations on the Way Forward	39
List of Tables	
Table 3.1: Summary of Questionable ECK Expenditures 1991-2007	17
Table 3.2: Sample of Allowances paid for Part-time ECK Staff	22
Table 3.3: Questionable Expenditure on Repair of Vehicles	25
Table 3.5: Overdue Outstanding ECK Imprests	29

About this report

This report provides an overview of the misuse of public funds at the now-defunct ECK between 1992 and 2007. The main thrust of this report is that public funds are NOT FREE FOR ALL and should be transparently managed to cost-effectively deliver services to Kenyans. This report focuses on issues of accountability and probity in the use of public funds by an important institution.

The core argument of this report - that the ECK grossly mismanaged resources and that urgent reforms are required in setting up a new electoral body - is based on recurring improprieties as reported in the Controller and Auditor General's (CAG) reports during this period. By profiling and identifying the causes of financial mismanagement at the ECK over 15 years, this report aims to provide lessons on economic and political governance at such an agency. We leave proposals of electoral reform to our colleagues in civil society whose core mandate this is, and hope this report will support their important deliberations.

Preparations for the formation of a new electoral management body are taking place amidst widespread demands that the institution be truly independent, and that its officials be credible. By revealing the rot that was financial management at the ECK, this report underscores the importance of good fiscal governance as a prerequisite for the new electoral body to deliver its mandate. If critical areas such as use of public resources by this key institution do not stand up to scrutiny, Kenyans cannot expect it to deliver free and fair elections.

Free for All? is the first in AfriCOG's Budget Accountability Project series. The series monitors and profiles transparency and accountability in the use of public funds as reported by the Comptroller and Auditor General.

Foreword

The December 2007 elections brought into question Kenya's electoral process and the role and performance of the Electoral Commission of Kenya (ECK). One year later, after post-election violence that left over 1300 people dead and thousands displaced, the ECK has been disbanded amidst widespread demands that the new Commission be independent, and that its commissioners be credible. This follows the report of the Independent Review Commission that recommends radical reform of the ECK, or the creation of a new electoral management body "with a new name, image and ethos committed to administrative excellence in the service of electoral integrity, composed of a lean, policy-making and supervisory board, selected in a transparent and inclusive process, interacting with a properly-structured professional secretariat,".

While public debate on the matter has centred on the ECK's independence and its ability to deliver accurate results from free and fair elections, the radical reforms recommended in the Kriegler Report also highlight the need for overall administrative reforms and a culture of excellence. In order for the ECK or indeed, any other electoral body to effectively execute its mandate to deliver free and fair elections, the requisite administrative and governance structures must be in place to minimise opportunities for corruption and abuse of power. Further, the electoral body must carry out its mandate as cost-effectively as possible, and properly account for public funds.

AfriCOG's strategic approach focuses on the structural, constitutional and institutional weaknesses that perpetuate corruption and bad governance. Through this report, AfriCOG aims to contribute to the debate on institutional reform with objective information on financial management at the ECK as reported in the Controller & Auditor General's Reports between 1992 and 2007.

Kenya's electoral process is particularly vulnerable to abuse as political power amounts to control of public resources. Political competition is thus reduced to a zero-sum game where the winner takes all. This scenario, where vast, even instant, wealth comes with political victory, predisposes Kenya to widespread electoral malpractices in the form of vote-buying, intimidation of voters and opponents, incitement to violence, and outright rigging. With this in mind and the reconstitution of the electoral commission underway, it is imperative that we plan for critical structural reforms to avoid the corruption, gross inefficiencies and mistakes of the past and provide opportunities for a sound electoral body that can cost-effectively deliver free and fair elections to Kenyans.

This study was undertaken at a time the ECK was under great public scrutiny following the failed 2007 presidential elections. Despite the challenges faced in gaining an audience with ECK officials who could have shed more light on the issues raised in the CAG reports, this report hopes to enrich debate on the establishment of the new electoral commission by profiling and identifying the causes of financial mismanagement at the ECK over the past 15 years.

Gladwell Otieno
Executive Director
AfriCOG

Introduction

The Electoral Commission of Kenya (ECK) is the national agency responsible for the management of electoral matters. As in many emerging democracies, electoral politics in Kenya has been controversial, not least because the country's ethnicised heritage has continued to undermine the development of the nation state. Drawing on the colonial model which monopolised politics and (consequently) development resource management, electoral success is regarded as the near-exclusive means by which to acquire control of development. The colonial regime's favoured 'White Highlands' and its environs acquired a fundamental development head start on the rest of the country. In turn, the independence government's development blue print, Sessional Paper No 10 of 1965 on African Socialism and its Application to Planning in (Sessional Paper 10/1965) declared development to be 'about people, not places' in justifying its focus of 'scarce government resources on those parts of the country with the greatest absorptive capacity, after which the resulting benefits would be shared with others.' This cynical policy is a primary source of post-independence inequalities in Kenya which have fuelled the desire of those in power to remain there while those outside strive desperately to supplant them.

It is imperative that the management of electoral politics be as objective as possible for the sake of nationwide development. The establishment of an electoral management framework such as the ECK should itself be an objective exercise for an agency that is inherently capable of driving a national rather than partisan agenda. In turn, such an agency should be adequately resourced for its mission, reducing scope for manipulation. Such an agency's accountable and transparent management of resources is critical to its delivery of national objectives.

The debacle that was Kenya's December 2007 presidential elections has thrown the spotlight on the composition and performance of the ECK. The Commission's broader management performance is well-expressed in the Kriegler and Waki Reports, which in instances cite resource constraints to explain management failure, but also cite gross internal inefficiencies¹. This report

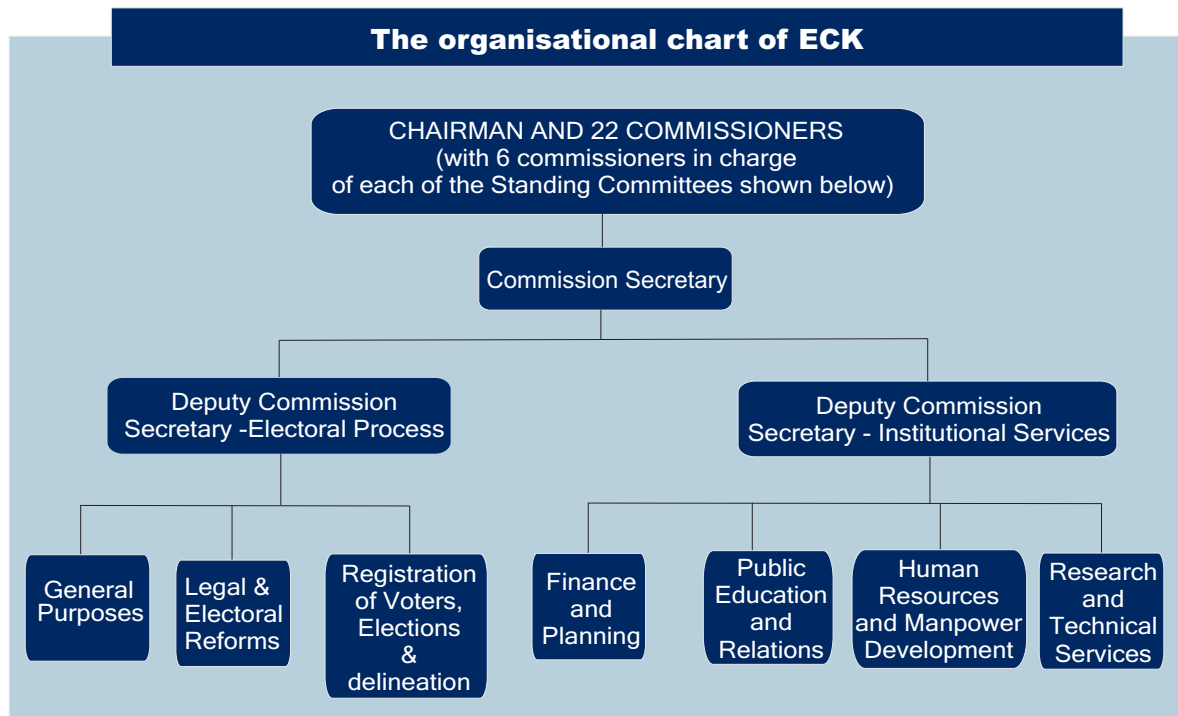
¹ The Independent Review Commission on the General Elections (IREC) and the Commission of Inquiry on the Post-Election Violence (CIPEV) were formed in June 2008 as some of the outcomes of the Kofi Annan-led mediation effort. IREC and CIPEV, respectively popularly known as the Kriegler and Waki Commissions, submitted their reports to H.E. President Kibaki and Kofi Annan in September and October 2008. The reports are available at <http://www.communication.go.ke/media.asp>

reviews financial management at the ECK from 1992 to 2007, based on Kenya's constitutionally-mandated annual audits of public resources undertaken by the Controller and Auditor General (CAG).

At independence in 1963, Kenya inherited an exemplary set of constitutional, legal and institutional frameworks for the management of the country. This was certainly the case in comparison for example, to the arguably weaker heritages of Francophone and Lusophone Africa, which had largely been administered from the respective European capitals. However, it has taken many years for Kenya to customise these frameworks for its post-colonial context. This failure is, however, entirely consistent with the management of a country that adopted an inequality-deepening development blue-print, Sessional Paper 10/1965, which prioritised public investment into the more developed parts of the country at the continuing expense of those previously overlooked by colonialists. Notwithstanding a persisting reluctance to rationalise Kenya's Constitution for internal consistency, since the late 1990s various local and development partner-driven public management reforms have been undertaken. These have led to the emergence of extensive, modern administrative frameworks.

Background and Structure of the Electoral Commission of Kenya

While the independence constitution had created an Electoral Commission of Kenya (ECK), this institution was largely ignored during the first decade of independence due to various



constitutional changes that resulted in abrupt administrative restructuring². Such changes included the 1965 creation of the Republic and subsequent 'promotion' of the independence Prime Minister to President, and the 1966 change of the bi-cameral parliament to the uni-cameral National Assembly. This low-profile of the ECK persisted into the early 1990s, with the Commission's functions being performed either directly by Parliament (e.g. altering electoral boundaries) or by the Supervisor of Elections in the Office of the President in liaison with the Attorney General.

However, amidst agitations for a review of the constitution ahead of the 1992 general elections, and Kenya's return to a multi-party political system, Parliament abolished the office of Supervisor of Elections, vesting all electoral functions on the ECK.

Headed by the late Retired Justice Zaccheus Chesoni, an undischarged bankrupt who should therefore have been ineligible for public office, the ECK had no secretariat and depended on officers seconded from various Government departments. The Clerk to the National Assembly was its Accounting Officer and effectively its chief executive.

Amidst even more persistent demands for wide-scale constitutional reforms towards the 1997 general elections, the KANU government relented to partial fundamental reforms under an Inter-Parties Parliamentary Group (IPPG) pact. This, among other things, provided that opposition parties nominate 10 electoral commissioners to join the 12 who had been appointed by the outgoing ruling party.

The 1998 establishment of a secretariat under Section 41 of the Constitution and the National Assemblies and Presidential Elections Act (Cap 7 of the Laws of Kenya) improved the ECK's independence.

Headed by a Commission Secretary with two deputies, the ECK has 22 Commissioners while its management is based on seven Standing Committees, each manned by six Commissioners. Among the Standing Committees are General Purposes; Legal and Electoral Reforms; Registration of Voters and Elections and Delineation of Electoral Boundaries; Finance and

Special role of the Finance and Planning Committee

While all committees in the ECK directly or indirectly influence budgetary activities, the Finance and Planning Committee is critical because of the following functions:

- Budgeting of all activities;
- Developing a planning scheme that incorporates the programme of all Standing Committees;
- Monitoring all expenditure;
- Supervising the procurement and distribution of all agency resources;
- Supervising the procurement and deployment of transport support for all agency activities and operations; and
- Undertaking cost-effectiveness studies on the conduct of elections, revision of voters' registers, distribution of election materials and transport.

² For details see <http://www.eck.or.ke/index.php/About-Us/Historical-Background-to-ECK.html>

Planning; Public Education and Relations; Human Resources and Manpower Development; and Research and Technical Services.

At the district level, ECK offices are headed by District Elections Coordinators assisted by Elections Officers and a small group of basic support staff. These district teams conduct voter education and registration, and coordinate district level preparations for balloting. However, the district teams are often assisted in these activities by large numbers of temporary staff contracted from the civil service and from non-Government sources.

The Commission Secretary presides over the Administrative Services function and is the ECK's Accounting Officer³. Other departments include Human Resources; Elections and Field Services; Elections Training; Legal Services; Information Technology Services; Public Relations; Research and Development; Electoral Boundaries/Cartography; Secretarial Services; General Office/Transport Services; and Security Services. The Finance Division and Procurement and Supplies Department are central to the audit focus of this report.

The Procurement and Supplies Department is expected to ensure that authorised requirements are met by supplying goods and services that are of the right quality and quantity, at the right time and price, with delivery at the right place; and from the right source. It is further expected to enforce supplies management rules, regulations and procedures.

On the other hand, the Finance Division should:

- Ensure that sound financial principles are applied while maintaining high accounting standards;
- Provide advice to the ECK on government accounting matters and proper conduct of financial business at the Commission;
- Interpret finance and accounting policy procedures and regulations;
- Liaise regularly with Treasury on accounting matters and accounting arrangements;
- Ensure expenditure is within the ambits of the Commission's vote;
- Clear below-line accounts; and
- Prepare monthly bank reconciliation statements, production of monthly ledgers and finally the production of annual accounts at the end of the year.

Established under Section 41 of the Constitution of Kenya, the ECK is subject to government/Treasury regulations on management of public finances. The ECK's slightly divergent procurement rules and regulations highlight the divergence between the provisions of

³ Details from <http://www.eck.or.ke/index.php/How-the-Commission-Operates/The-Secretariat.html>



Government Financial Regulations and Procedures (Financial Regulations) and the recently enacted Public Procurement and Disposal Act (2005). For example, while Treasury's Financial Regulations leave no room for idiosyncrasy, mandating different procurement levels to related procedures, the ECK has a “preferred procurement procedure” (of open tendering)⁴. Indeed, ECK's procurement is in line with the provisions of the Public Procurement and Disposal Act (2005) which in Part VI permits alternative approaches allowing for restricted and direct procurement. These alternatives translate respectively into selective tendering and single-sourcing, which the ECK presumably employs due to the wide distribution of its district election offices. These often cannot be readily served by a central supplier, more so in the heat of electoral activities such as voter registration and balloting.

⁴ See <http://www.eck.or.ke/index.php/ECK-Tendering-and-Procurements/ECK-Tendering-and-Procurements.html>

2

PART I: BACKGROUND

Managing Kenya's Public Finances

This section summarises the legal and institutional frameworks for the managing Kenya's public finances and provides an overview of the functions of the CAG. It provides necessary background information and highlights the circumstances under which government officers could be adjudged to have mismanaged public resources. The details confirm that Kenya has a fairly extensive framework for the management of public finances.

This section also provides a brief history of the management of elections in Kenya since independence, highlighting issues that help to light on the ECK's financial management performance.

2.1 Government Financial Regulations and Procedures

The management framework for Kenya's public finances is encapsulated in the twenty-odd chapters of Government Financial Regulations and Procedures (Financial Regulations).⁵ Besides the Constitution's attention to the management of public finances, other laws support the provisions of the Financial Regulations in delivering a more comprehensive management framework. These include, notably, the Exchequer and Audit Act, Public Audit Act, Public Procurement and Disposal Act, Public Officers Ethics Act, amongst others.

In summary, public financing fits as follows into the following government framework: the government develops a five-year national development plan from which ministries and departments develop annual work plans and annual budget proposals.⁶ Ministry budget proposals are collated by Treasury into the national budget, which the Finance minister presents to Parliament during the Budget Speech every June. The Budget Speech is made up of a Finance Bill, which contains revenue generation proposals, and an Appropriations Bill which contains

⁵ Ministry of Finance (1989), 'Government Financial Regulations and Procedures.' Nairobi: Government Printer.

⁶ This quite complex process is managed under the Medium Term Expenditure Framework budgeting approach details of which can be obtained in Oyugi, L.N. (2005), 'The Budget Process and Economic Governance in Kenya.' NEPRU Working Paper No. 98

expenditure proposals, which are debated until September. When passed, with or without adjustments to the proposals, these bills become that financial year's Finance Act which enables the minister to collect taxes for revenue generation, and the Appropriations Act, which enables the minister to draw money to finance government spending. The Permanent Secretary (PS) in the Ministry of Finance pays all revenues into the Consolidated Fund and draws all expenditure money from the same Fund.⁷ The PS Treasury hands over withdrawals to the respective ministries or departmental accounting officers.

2.1.1 The Accounting Officer

The key office in the management of public finances is that of the Accounting Officer - usually a PS or departmental head appointed through a letter from the PS Treasury.⁸ Paragraph 1.24 of the Financial Regulations requires that an Accounting Officer:

“(E)xercise in detail all the financial controls necessary before expenditure takes place and have a duty of paying, receiving and accounting for all moneys administered by his ministry/department.”⁹

On accepting this “direct and aggregate original responsibility”, Paragraph 5.1.2 of the Financial Regulations requires the Officer to sign the Appropriations Act, any other acts and the Annual Financial Statements of his ministry/department.

Financial Regulations (Para 1.30) emphasise that Treasury is a superintendent rather than administrator of public resources. Thus, while it lays the rules and regulations governing financial resource management:

“the responsibility and accountability for the funds rests with the Accounting Officer... who is required to control and direct expenditure ... and to render accounts to the CAG.”

Duties of an Accounting Officer

- Prepare accurate and realistic estimates of all spending (recurrent, development and any others) within prescribed ceilings (emphasis added);
- Secure the balance of funds and the proper conduct of financial business;
- Ensure funds are only applied for the purposes identified by Parliament, and according to given rules and regulations;
- Ensure that all payments are made with necessary authority and remain within the budget allocated by Parliament;
- Promptly collect and account for all Appropriations-in-Aid (AiA) and other revenues;¹⁰
- manage their agency ensuring that policies are implemented efficiently without wastage of public resources;
- Ensure adequate arrangements for the safe custody of all public property, and proper systems for the acquisition and disposal of the same;
- Ensure maintenance of proper accounting systems that enable the production of periodic statements of accounts; and,
- Strategise for improved management into the future.

7 As Indicated in the box on the right, a small share of revenues (Appropriations-in-Aid) does not enter the Consolidated Fund. Further, Government spending is also financed by external sources, such as development partners.

8 Effectively, an Accounting Officer is any organisation's executive head, such as its managing director or general manager, who accounts to its management board.

9 Financial Regulations contains 24 chapters. 'Paragraph 1.24' refers to paragraph 24 of Chapter 1

10 All Government revenues must be paid into the Consolidated Fund before being released by Parliament for spending. The only exception to this rule involves AiA which the Accounting Officer may use to supplement regular budget resources

The Accounting Officer may delegate responsibilities to other officers; but this does not absolve him from ultimate responsibility (Para 5.1.2). The appointing letter therefore strongly advises the Accounting Officer to seek Treasury guidance whenever necessary, as dereliction of duties could for instance, lead the CAG to recommend the disallowance of expenditure already incurred - the 'Doctrine of Personal Responsibility' - causing such an Officer to have to defray such expenses if Parliament so decides.

Indeed, while the appointment letter underscores the minister's supremacy in ordering implementation of activities in the ministry, it advises the Accounting Officer to “object where necessary” to “wasteful and/or extravagant expenditure” and to:

“any course of action which he regards as inconsistent with the duty, and to place on record his disagreement with any decision which he may find difficulty in defending as a measure of prudent administration before the PAC.”

Finally, the letter warns the Accounting Officer to object in writing to any unacceptable directive involving his personal liability, and only make payments against written instructions from the minister, promptly informing Treasury and the CAG of the situation.

2.1.2 On Managing Spending

Auditing Accounts

Chapter 1 of Financial Regulations summarises the principles governing the management of public finances. Paragraph 1.13 (b) reiterates the CAG's duty to ascertain that all budgetary appropriations made by Parliament and disbursed (to Accounting Officers) have been used for purposes agreed to by Parliament in conformity with the rules and regulations governing such spending. To enable the CAG to do this, Paragraph 11.2 of the Financial Regulations requires Accounting Officers to submit their annual accounts and other financial statements within four months of the June 30th, the end of the financial year (FY), while Paragraph 11.3 requires a statement on assets and liabilities. In turn, the CAG must complete his audit within seven months of the end of the FY, unless Parliament provides an extension (Para 7.7). While the Constitution gives the Finance minister seven days in which to submit the audit to Parliament, Financial Regulations gives him/her 14 days (Para 11.4.2).

The Accounting Officer may delegate responsibilities to other officers; but this does not absolve him from ultimate responsibility

The Government, and indeed, Financial Regulations, recognise that Accounting Officers need not be versed in accounts. Consequently, government departments have a battery of accounting staff at district, provincial and national levels. With respect to the CAG's work, Treasury deploys

internal auditors to ministries and departments whose mission is to “assist (the Accounting Officer) in monitoring compliance... with financial regulations, instructions and accounting procedures” (Para 13.2). Internal auditors' examination reports to the Accounting Officer, copied to the CAG, are required to be “unbiased, dispassionate and factual analyses of operations (with appropriate action-oriented recommendations for corrective action” (Para 13.3). While the auditing processes are quite similar to the CAG's, internal auditors have less invasive powers.

Chapter 11 of Financial Regulations also provides details on the nature of elaborations that must be carried in the CAG's report. Footnotes must appropriately explain each individual irregularity of varied values: for example, while the ceiling for discrepancies between Approved Estimates and Actual Expenditure is KES 50,000, that for “nugatory payments, compensation and ex-gratia payments” is KES 5,000 (Para 11.7.2).

Imprests

Paragraph 5.6 of Financial Regulations addresses the matter of imprests. These are cash advances or 'floats' issued to officers to make timely, specific payments in the course of their duty, which cannot be conveniently paid through the departmental cash office. In determining how much to advance an officer, Financial Regulations provide that this should be set “at the lowest possible rate compatible with requirements”. Financial Regulations also emphasise that imprests must be spent only on the specific purpose for which they are issued.

In determining how much to advance an officer, Financial Regulations provide that imprest should be set “at the lowest possible rate compatible with requirements”

Of the three types of imprests, *temporary imprests* usually cover travel, accommodation and incidental expenses (Para 5.6.4). Prior to issuance, the Accounting Officer must be satisfied that the officer requesting has no previous outstanding imprest. Temporary imprests must be surrendered within 48 hours of the end of the officer's journey, failing which the Accounting Officer is required to recover the same from the officer's salary (Para 5.6.5). If

recovery can only be made in instalments to avoid financial embarrassment to the officer, then the outstanding imprest amounts to an unauthorised (salary) advance for which appropriate disciplinary action must be taken (Para 5.6.7).

The second type of imprest is the *standing imprest* which is a lump sum given for instance, where there is need to make frequent payments outside the station (Para 5.6.8). This imprest is issued to an officer by name rather than office, and must be surrendered by the named officer should they be leaving the station, after which a new imprest is issued to a successor. The amount of a standing imprest reflects the level of payments that require to be made, making it imperative that the imprest holder frequently replenish the account by seeking reimbursement of expenses paid out. The

imprest holder is further required to submit monthly returns and to be prepared for frequent spot checks.

Finally, the *special imprest* is issued for expenditures on state duties whose confidentiality would be compromised through regular cash office payments (Para 5.6.11). The imprest holder must account for these to the respective minister.

Managing Losses and Write-Offs

Chapter 12 of Financial Regulations addresses the management of losses and write offs. It allows the Accounting Officer to personally write off or charge to account such losses, or to surcharge an officer for the same on satisfaction that that is an appropriate action (Para 12.4). However, surcharges above KESs 1,000 per month must be referred to Treasury (Para 12.5). Treasury weighs the loss against the officer's character, performance and other extenuating circumstances before deciding on an appropriate rate which must however not be greater than 25% of the officer's monthly salary (Para 12.6). Officers may appeal against surcharge decisions to their respective Accounting Officers, ministers and the president (Para 12.10).

Surcharges above KESs 1,000 per month must be referred to Treasury. Treasury weighs the loss against the officer's character, performance and other extenuating circumstances.

Management of Government Contracts Procurements and Tenders

This is covered under Chapter 14 of Financial Regulations, while procurement and tenders are discussed in Chapter 17. Any procurement above KESs 50,000 must be against a written contract (Chap 14.4) with approval from the respective tender board being mandatory for any subsequent variation(s) (Para 14.5). Unless waived by Treasury, all procurement must be through competitive bidding/quotations, with adjudication among the five required offers being undertaken by the Central, Ministerial or District Tender Board as appropriate (Chap 17.3/4). An Accounting Officer may gazette District Commissioners to sign contracts of not more than KESs 1 million, but may also grant such duties in writing to district heads (Chap 14.3). Purchases below KESs 1,000 may be paid for in cash, otherwise Local Purchase Orders or Local Service Orders must be used (Para 17.16). Paragraph 14.6 requires ministry technical teams to verify the quality and quantity of supplies before an Accounting Officer/district head approves payment.

Management of Stores and Supplies

Financial Regulations also address the management of stores and supplies in Chapters 18 and 19. The Supplies Manual outlines regulations and procedures for the procurement of goods and services (Para 19.2) which must promptly be entered into appropriate ledgers (Para 18.2). Stores

stock-taking is done at least twice a year (Para 18.4). Details on the management of surplus and unserviceable stores are provided (Para 19.6/7), while disposal of stores after a Board of Survey (Para 19.8) must be by public tender (Para 19.9).

2.2 The Auditor General's Work

As highlighted previously, the ECK is subject to constitutional provisions for auditing public spending.

Section 105 (2) (c) of the Constitution provides for the establishment of the office of the CAG which is required:

“(A)t least once in every year to audit and report on the public accounts of the Government of Kenya, the accounts of all officers and authorities of that Government, the accounts of all courts... every Commission established by this constitution and the accounts of the Clerk to the National Assembly.”

Subsection 4 provides that the CAG submit the resulting audit report to the Finance Minister, who “shall, not later than seven days after the National Assembly first meets after he (sic) has received the report, lay it before the Assembly.” Finally, Subsection 5 provides that in the performance of his duties, the CAG “shall not be subject to the direction or control of any other person or authority.”

Meanwhile, Section 8 of the Public Audit Act requires the CAG to audit accounts and “express an opinion on them as highlighted in the box below. Section 9 (1) of the same Act underscores the constitutional requirement (Section 105 (4)) that the CAG submit a report to the Finance minister, which should address the requirements of Section 8 and also contain any other information he may consider appropriate including matters concerning efficient use of resources. Section 9 further requires the Controller and Auditor-General to submit the report to the Minister within six months after the end of the financial year or other period to which the accounts examined and audited relate unless Parliament provides an extension.

What's in the CAG Audit Report?

CAG audit reports state whether:

- (a) All information and explanations considered necessary for the audit were received;
- (b) Proper records were maintained of all transactions as required under the generally accepted accounting practices;
- (c) The accounts are in agreement with the records referred to under paragraph
- (d) In his opinion, the accounts reflected fairly the financial position of the entity audited.”

The report is also required to identify cases in which:

- (a) Money has been spent in a way that was not efficient or economical;
- (b) The rules and procedures followed, or records kept, were inadequate to safeguard property and the collection of revenue;
- (c) Money that should have been paid into the exchequer account was not so paid;
- (d) Money has been spent for purposes other than the purposes for which it was appropriated by Parliament; or
- (e) Satisfactory procedures have not been established to measure and report on the effectiveness of programmes.

While Section 29 of the Act provides that the CAG may examine the economy, efficiency and effectiveness of use of resources, it recognises the technical specificity of the audit function in declaring the CAG “may not question the merits of a policy objective.” This section's provision for examining economy, efficiency and effectiveness actually gels very well with the existing audit typologies, viz. financial audit, compliance audit, and the more technically demanding performance audit.¹¹ In effect, these audit types address the extent to which there was no over/under-spending, the extent to which spending was on designated areas, and the more complex assessment of the impact of such spending.

Section 36 of the Act obliges the CAG to satisfy that all reasonable precautions have been taken to safeguard the collection of revenue and the receipt, custody, issue and proper use of property. The CAG is also obliged to ascertain that the applicable law has been complied with in relation to the above revenue collection and use of property and that all money, other than money appropriated by Parliament, has been dealt with in accordance with the proper authority.

2.3 Role of Parliament in Relation to the CAG's Functions

The Constitution requires the Finance Minister to table the CAG Report no more than seven days after Parliament first meets.¹² Public spending audits are checked by two key Standing Committees to which the Speaker submits the CAG reports. These committees are provided for in Kenya's Parliamentary Standing Orders.

Standing Order (SO) 147 provides for the Public Accounts Committee (PAC) whose purpose is to examine the accounts showing the appropriation of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit. SO 148 provides for the Public Investment Committee (PIC) whose purpose is to examine the reports and accounts of public investments; examine any reports of the Auditor-General (Corporations) on public investments; and examine whether public investments are being managed in accordance with sound business principles and prudent commercial practices (in the context of the autonomy and efficiency of the public investments).

¹¹ See World Bank (2001), 'Features and functions of supreme audit institutions.' PREM Notes No. 59 October 2001. See also Ranker, L. and V. Wang (2005), 'The Accountability Function of Supreme Audit Institutions in Malawi, Uganda, Tanzania.' Chr. Michelsen Institute Report R 2005: 4.

¹² In effect, there is more than just one report, as is implied by Section 105 (2) (c)'s listing in the Constitution of agency accounts that must be audited at least once every year.

Powers of the CAG: Access to Government Documents and Information

Section 37 of the Public Audit Act provides that the Controller and Auditor-General shall have the same access to electronic documents as to other documents under Section 105 (3) of the Constitution. This includes access to books, records, returns, reports and other documents, including electronic documents with respect to audits and examinations and access to any government property.

The Controller and Auditor-General may require any government employee or employee of any organisation under audit or examination to provide explanations, information and assistance.

The Controller and Auditor-General may station any of his staff, temporarily or permanently, at the premises of the organisation under audit or examination and that organisation shall provide such staff, at its own expense, with adequate office space, furniture and telephones.

The Controller and Auditor-General may, without payment of a fee, cause a search of any records in a public office to be made; and require copies to be made of, or extracts to be taken from, any records in this office.

The Standing Orders provide that 10 members of the two committees be nominated by the House Business Committee and that the members elect chairs who are not from the ruling party. While the membership should be shared proportionate to party parliamentary strength, the ruling party's majority must not exceed two.

In keeping with the Westminster tradition, on which Kenya's parliamentary system is based, the roles of the PAC and PIC only review the CAG reports after which they make recommendations to the Government.

In the case of the United Kingdom, a review of the PAC function cites a government source as concluding:

“...that it takes the Committee's recommendations seriously as the fruit of the accountability process. The best proof of this is that, as the report acknowledges, the vast majority of the Committee's recommendations have been acted upon. The Committee has thus helped the Government to secure financial savings, raise the standards of public services and improve the quality of delivery.”¹³

However, in the Kenyan case, the Government has appeared reluctant to act on these Committees' recommendations, despite the requirement that:

“While appearing on behalf of their Minister before committees, departmental officials are often able to provide more detailed information on departmental plans and performance than Ministers can. The Permanent Secretary and other officials must be prepared to describe in detail the plans, activities and performance of the department in areas such as financial management, programme and service delivery, and human resources management.... In practice, officials should endeavour to work with Members of Parliament, in cooperation with Ministers and their offices, to find ways to respond to legitimate requests for information from Members of Parliament, within the limitations placed on them.”¹⁴

The Government's failure to implement PAC recommendations can partially be attributed to extensive delays in producing CAG reports, which were at one point more than a decade in arrears. This problem has largely been resolved with the establishment of the Kenya National Audit Office. However, an even more serious underlying reason for inaction on the recommendations could be the high political status of persons indicted in the reports. An ingrained culture of impunity promotes 'development by edict', where senior politicians simply order non-budget projects into life. A further problem is that some sitting committee members are themselves the subjects of previous similar unresolved audit queries.

¹³ Committee of Public Accounts (2007), 'Holding Government to Account: 150 years of the Committee of Public Accounts.' London: House of Parliament. Available at <http://www.parliament.uk/documents/>

¹⁴ See 'Handbook of Governing Responsibility in Kenya'; at <http://www.cabinetoffice.go.ke/downloads/download.pdf>

PART II: FINANCIAL MISMANAGEMENT AT THE ECK

Questionable Expenditure from 1991 to 2007

The management of the series of activities that constitute the electoral cycle is an expensive undertaking. As such, it is imperative that it be carried out as efficiently and cost-effectively as possible. The Kriegler Report argued that electoral management boards often sacrifice sustainability and efficiency to acquire credibility; but nonetheless emphasised that an electoral organisation needed to strive for the most cost-effective way to achieve a defined level of credibility¹⁵.

This section presents findings from CAG audits of ECK accounts as a preliminary assessment of the Commission's cost-effectiveness. Section Four will relate these audit queries to the frameworks outlined in Section Two.

Suspect Accounts on the 2005 Referendum

While the period under review includes the momentous November 2005 referendum on the Draft Constitution, the CAG report for the year ending June 30th 2006, surprisingly, raises very few issues on the ECK's management of finances during the exercise. Given the Commission's history of irregularities during such national exercises highlighted below, it is doubtful that it had a clean bill of health in this instance alone, when it had a massive KES 3 billion at its disposal. The bulk of referendum spending would have been charged to the Consolidated Fund Services, as is done with national exercises of that one-off nature, such as national crises. However, the CAG Report has estimates and actual expenditure for "other operating expenses" balancing out at exactly KES 3 billion. This outcome is rather curious.

1.9 Billion Down the Drain

Between 1991 and 2007, the ECK was entrusted with KES 15.8 billion with which to undertake various electoral activities including voter education, registration and the conduct of elections. During that period, Kenya held three general elections at regular five-year intervals and a number

¹⁵ See Kriegler Report, page 42.

of by-elections occasioned by politicians defecting to other parties, notably KANU, in the immediate wake of the 1992 elections.

A review of ECK audit reports for the same period found the CAG to have taken issue with how the Commission spent over KES 1.9333 billion amounting to about 12% of the Commissions disbursement for the period. A summary of the breakdown of the monies in question is provided in Table 3.1. The table shows that the area of the highest questionable spending was unauthorized over-expenditure either reflecting weak budgeting by the Accounting Officer or poor resource flows from Treasury. Outstanding imprests reflected the area of least concern, but given the nature of the resource, an outstanding amount of KES 6.5 million also reflects badly on the Accounting Officer's management capability.

Table 3.1: Summary of Questionable ECK Expenditures 1991-2007	
CATEGORY	AMOUNT (KES)
Commissioners- Irregular Payments	219,482,556
Irregular Allowances to Security Personnel and other Public Servants	69,527,050
Doubtful Hire and Repair of Vehicles	119,501,805
Irregularities in Procurement of Spares, Fuel and other Stores	52,141,281
Outstanding Imprests	8,378,478
Unauthorised Over-expenditure	868,831,740
Unsupported Expenditure	263,404,463
Other Irregular and Wasteful Expenditure	332,445,600
TOTAL	1,933,712,973

Source: various CAG Reports

To put these figures in perspective, we refer to Kenya's health ministry norms for the construction and equipment of health facilities. Health ministry norms estimate that a dispensary with a catchment population of 10,000 people would cost about KES 10 million to build and equip. A health centre with a catchment population of 30,000 would cost about KES 30 million to build and equip. Thus, the irregular payments to commissioners highlighted in Table 3.1, for example, would have built and equipped 22 dispensaries or seven health centres. The total amount questioned by the CAG would have provided Kenyans with 193 fully-equipped dispensaries or 64 fully-equipped health centres!

The rest of this section reviews irregularities relating to the excesses of the commissioners; allowances for services rendered; doubtful hire and repair of vehicles; irregularities in the procurement of fuel, spares and stores; outstanding imprests; gross over-expenditure; unsupported expenditure and other questionable transactions.

3.1 The Excesses of the Commissioners

The most blatant improprieties at ECK in the 1990s were perpetrated by the Commissioners themselves. Over a period of seven years from 1991, during which the late Retired Justice Chesoni served as Chairman, Commissioners were direct beneficiaries of questionable expenditures amounting to over KES 148 million through irregularly-paid sitting and subsistence allowances as well as other expenses such as wasteful hire of cars. The impunity with which this was done was astounding, with the practice continuing even after the CAG raised the matter over successive financial years. The questionable payments were as follows:

3.1.1 Unwarranted Sitting and Subsistence Allowances

The Constitutional Offices (Remuneration) Act provides for ECK commissioners to draw sitting allowances when attending meetings. The members are also allowed to draw subsistence allowance in other circumstances as authorized by Treasury, notably while travelling away from their recognised duty stations. They cannot, however, draw both allowances simultaneously. Since subsistence allowance is paid to enable an officer to 'subsist' away from his or her duty station, the claim of the allowance would therefore likely preclude the concurrent payment of the sitting allowance unless the Commission took its officers on an official retreat.

The Chairman and Commissioners, in a rather bizarre interpretation of the provisions of the Act, paid themselves sitting allowances while also receiving subsistence allowances for every day of the year including Saturdays, Sundays and public holidays

During the 1990s, however, the Chairman and Commissioners, in a rather bizarre interpretation of the provisions of the Act, paid themselves sitting allowances while also receiving subsistence allowances for every day of the year including Saturdays, Sundays and public holidays and, in some instances, when they were out of the country. No evidence (for example in the form of minutes of meetings) was produced to confirm that the Commission was in session every day of the year to justify the payments. The ECK provided no explanation as to why subsistence allowances were paid together with sitting allowances.

By FY 1993/94, such questionable double payments amounted to KES 15.5 million accumulating to KES 29.7 million by 1996. When put to task by PAC regarding these irregularities, the Accounting Officer's explanation was that it is the ECK's prerogative to decide whether or not to maintain

records of its own meetings. The Officer further explained that since ECK meetings had no quorum, a sitting can be by one member, two members or the whole commission; which justifies payment of sitting allowances for the 365 days of a year.¹⁶ Indeed, these malpractices became so entrenched that a Commissioner who received an unauthorised KES 926,600 ex-gratia refund of medical and travel expenses for treatment at a Nairobi hospital and abroad, also received full sitting and subsistence allowances while incapacitated.

In August 2001, the Commissioners' remuneration package was improved and back dated to July the same year. The new package more than doubled the monthly salary of the Chairman which rose from KES 180,654 to KES 392,990 while those of the Vice-Chairman and Commissioners increased threefold from KES 100,626 to KES 306,820. The new packages included additional monthly allowances of KES 238,100, KES 194,100 and KES 158,100 for the Chairman, Vice-Chairman and Commissioners respectively. These allowances included monthly sitting allowances of KES 3,000 for the Chairman and KES 2,000 for the Vice-Chairman and Commissioners.

However, in total disregard of these provisions, the Commission paid monthly sitting allowances of KES 63,000 and KES 42,000 to the Chairman and Vice-Chairman and Commissioners respectively. This practice continued in spite of several letters from the Auditor General and Finance Secretary drawing the attention of the Commission Secretary to these irregularities. By June 30th 2007, these unauthorized payments amounted to KES 61,212,000, with no obvious hope of recovery from beneficiaries.

In total disregard of these provisions, the Commission paid monthly sitting allowances of KES 63,000 and KES 42,000 to the Chairman and Vice-Chairman and Commissioners respectively

3.1.2 Double Dealing: Irregular Payment of Accommodation and Subsistence Expenses

Over and above the sitting and subsistence allowances which were paid for every day of the year, the Chairman and members of the ECK were reimbursed all expenses incurred on travel, meals and hotel accommodation on production of receipts despite there being no records of the official purposes for which the Commissioners had travelled. No explanation was given on the reimbursements when the commissioners had also received subsistence and sitting allowances. Records also showed that the Commissioners used privately registered official cars which did not have work ticket evidence of the authenticity of the journeys made.

¹⁶ Republic of Kenya, 'Report of the Public Accounts Committee on the Government of Kenya Accounts for the Year 1993/4 Volume 1.'

In FY 1993/94, such payments amounted to KES 23 million. In FY 1995/96 and 1996/97, such payments were more modest, amounting respectively to KES 5.23 million and KES 5.56 million. For these three FYs, the cumulative total of these irregular payments was KES 33.79 million.

3.1.3 Wasteful Expenditure: Unnecessary Hire of Cars for Commissioners

During the FYs under review, Commissioners were habitually provided with privately registered government vehicles.¹⁷ Such vehicles would be fully fuelled and maintained by the Government.

Further, FY 1996/97 saw the ECK purchase 12 four wheel-drive Land Rover Discovery vehicles for use by Commissioners at a cost of KES 29.7 million. Comparing this expenditure with expenditures on hiring vehicles illustrated in Table 3.2, buying vehicles cost less than half the amount used in the three previous FYs to hire similar vehicles. Indeed, the Commission's conduct during FY 1996/97 most glaringly illustrates its wastefulness: at the average rate of KES 2.5 million per vehicle, the amounts spent on hiring luxury vehicles during that FY could have bought another 13 such vehicles. In other words, the ECK spent the same amount of money to buy 12 vehicles that it spent to hire similar vehicles in the same year.

A significant factor concerning the bizarre instances presented in Tables 3.1 and 3.2 is that they occurred when the ECK did not have a substantive secretariat. The ECK's Accounting Officer was effectively the Clerk to the National Assembly who seemed to accept any claim for the Commission to be a proper charge against public funds.

Over and above the sitting and subsistence allowances paid on a daily basis, the Chairman and members of the ECK were reimbursed all expenses incurred on travel, meals and hotel accommodation

The bulk of financial irregularities reported by the CAG after 1998, discussed in the following sections, relate to district-level transactions.

3.2 Embezzlement or Allowances for Services Rendered ?

Whenever the ECK has conducted nationwide exercises such as registration of voters and general elections, as noted in Section 2.3, District Election Officers have recruited short-term auxiliary staff to make up the numbers necessary to undertake these labour-intensive assignments. Whereas the bulk of the recruits would be unemployed school leavers or tertiary-level students on school holidays, senior positions that require some administrative capacity are often filled by active or

¹⁷ This practice of privately registering Government vehicles is a security measure which has been used with Permanent Secretaries and members of the Judiciary.

retired civil servants. The extraordinary security demands of these operations also mean that policing needs to be beefed up by redeploying security officers, including those who might otherwise be on leave or off duty.

Temporary engagement of such personnel means they are unlikely to either issue invoices for allowances, or issue receipts acknowledging payment. Consequently, payment schedules are used as supporting documents and should identify the parties to the payment in sufficient detail, with the name and (some) national identification of the payee, the reasons for payments as well as the rates applied. Where employees to be paid are already on the Government's payroll, then

Where employees to be paid are already on the Government's payroll, then employment regulations require that authority and approval be sought from a relevant department

employment regulations require that authority and approval be sought from a relevant department, such as the Directorate of Personnel Management (DPM) of the Office of the President.¹⁸

However, CAG reports for the years under review found numerous cases where such allowances were purportedly paid, yet the authenticity of payments could not be confirmed due to various irregularities. For

instance, where available, the documents supporting such payments were found wanting in many respects - in many cases, no schedules were availed to support the payments; in others, the nature of services rendered was not explained; some schedules were unsigned or payees could not be identified. In some instances where payments were allegedly made to civil servants, authority from the DPM was apparently not sought. Effectively, such civil servants received double payments from the Government even though they only did one task as delivery of ECK work could only have been at the expense of performing their regular work. Some of these doubtful payments amounting to KES 67.63 million are listed in Table 3.2.

In the course of deliberations on the Accounts for FY 1996/97, PAC heard from the Accounting Officer that the ECK operates as an independent body and does not require approval from the DPM as regards payment of allowances. While this may be true of private agents, it cannot be true of public officers, particularly those such as security agents, where tasks assigned by ECK are likely to already be part of their remit.

For the foregoing reasons, the CAG found it difficult to confirm whether or not the KES 67.63 million in payments was a proper charge to public funds.

¹⁸ The Directorate of Personnel Management (DPM) provides specialised human resource management services and advice to Government ministries, departments, local authorities and public enterprises

Table 3.2 : Sample of Allowances paid for Part-time ECK Staff

Year	(KES)	Paid to :	Area	Comments
1993/94	5,445,680	Security Personnel	HQ	No evidence that the Office of the President submitted expenditure returns from the District to account for the expenditure.
1993/94	1,827,000	Security Personnel	HQ	The schedules to the vouchers did not bear the signatures of the recipients.
1993/94	947,000	Presidential Press Unit and staff of state house	HQ	Amount paid to for services rendered during by-elections .The specific nature of services rendered by the staff was not disclosed.
1996/97	4,503,360	Election officials	Mombasa	Copies of payrolls attached to the payment vouchers were not certified , lacked specimen signatures, I.D. numbers and the period worked by the payees.
1996/97	1,547,300	Clerical staff, registration and assistant registration officers	Busia	Authorization from the DPM allowing the payments to civil servants was not produced.
1996/97	1,054,740	Security Personnel	Busia	Attendance registers supposed to be maintained at the registration centers for security personnel were not maintained and thus correctness of the payment could not be confirmed.
1996/97	30,000	Civil servants including staff of the District Internal Audit	Nyeri	No explanation given for making payment to civil servants in government payroll. No authority from the DPM authorizing the payments
1997/98	9,884,020	Staff of the National Assembly and other ministries/depts	HQ	The specific nature of services rendered was not disclosed. It was not explained how the officers were able to perform their normal duties which they are employed to do and at the same time provide services to the Commission
1997/98	3,716,600	Various officers purported to have participated in General Election	Kwale	Schedules attached did not disclose specific services rendered and the period worked
1997/98	765,600	Security officers who participated in the general elections	Trans Mara	None of the payees signed for the payments or acknowledged receipt of the money.
1997/98	8,775,440	Election officials	Tana River	No verifiable documents were seen in support of the payments.
1997/98	144,000	Election officials	Nandi	Paying officers received the amount on behalf of six people.
1997/98	65,000		Nandi	Two persons only identified by identification numbers received payment on behalf of thirteen (13) officers without any written authority from the payees.
1998/99	87,340	District Officer 1 and two internal auditors	Bungoma	No evidence to show that these officers were involved in Elections
1998/99	420,000	3 government officials	Kuria	Paid as traveling allowance for 21 days.The records do not show the period when the traveling took place or nature of duty the three officers were carrying out and whether the duties were related to the general elections since they were paid after the general elections.
1998/99	230,300	Election officials	Kuria	Claims included refunds for laundry and refreshment expenses, claims for travel to Nairobi when officers did not travel, double payment of hire of motor vehicles, payment for services not rendered and payment to an unidentified officer.
1999/2000	19,200		Police Department	Double payment to 8 officers
1999/2000	8,400	security personnel	Police Department	Information available show that two were attending a training course and one was under interdiction
1999/2000	2,183,320	Security personnel	Police Department	Double payment of allowances
1999/2000	382,800	Nyanza Provincial Police Officer	Police Department	Paid with respect of recruits from Kiganjo College said to have been providing security at polling stations. The recruits were however found to have gone back to back to the college for the period- there were no schedules signed by the officers acknowledging receipt of payment.

Source: various CAG Reports

3.3 Doubtful Hire and Repair of Vehicles

3.3.1 Doubtful Hire of Vehicles

Due to the periodic nature of the ECK's work, it is neither desirable nor feasible that it should acquire a permanent fleet of vehicles for all or even most of its district offices. Consequently, the practice has been for the agency to engage vehicles from other government departments for the short durations of exercises such as voter registration and polling. Where the supply of such Government vehicles is inadequate, as is invariably the case, the ECK hires privately-owned vehicles, especially for the transportation of bulky materials such as ballot papers and boxes. Even where Government vehicles are available, they are not always in a reliable state of repair, invariably because departmental officers may not have the money to undertake such repairs immediately. Consequently, in order to expedite its own activities, the ECK is often forced to finance the repair of such Government vehicles. Financial Regulations however do not allow the repair of privately-owned vehicles without authorisation from Treasury.

The time constraints invariably faced during such ECK exercises means it would be impractical to carry out procurement centrally from the ECK headquarters in Nairobi. It is more cost-effective to hire vehicles for use in

Financial Regulations however do not allow the repair of privately-owned vehicles without authorisation from Treasury

far-flung districts from nearby sources; for one, the potential wear and tear would attract steep daily or per-kilometre rates. The need for decentralised procurement may also explain why the ECK sometimes prefers alternative procurement methods to open tendering. However, ECK guidelines for the conduct of these alternative procuring approaches are unclear. As shown below, CAG reports point to this need for expediency as an avenue for extensive malpractices.

The CAG raised numerous concerns over what appeared to be dubious transactions in the hire and repair of vehicles. It estimated that these transactions amounted to KES 120 million over the review period. Such transactions were especially rampant during the 1997 registration of voters and conduct of general elections, particularly so among the District Elections Coordinators (DEC). So widespread were the malpractices that the CAG expressed doubts that the entire KES 372,955,320 purportedly spent on these exercises was justifiably incurred.

3.3.2 Dubious Transactions in the Repairs of Vehicles

There is ample evidence that DECs feigned repairs of vehicles to siphon off public funds during elections and voter registration. In many cases Government regulations concerning repair of vehicles were not followed. Some examples include the following:

- In many cases, motor vehicle inspection reports indicating the defects to be repaired and the estimated costs of repair were not prepared. Details of the purported repairs were not recorded.
- Local Service Orders (LSOs) and quotations were not obtained
- Repairs were claimed in some cases where work tickets showed that the vehicles supposedly under repair were on the road at the time.
- Invoices for work allegedly done were raised well after the general elections.
- Such transactions may have resulted in the loss of public funds amounting to KES 15.58 million as is reflected in Table 3.3.

A major indictment against the ECK arises from its failure to provide substantive evidence of guidelines to DECAs on how to single source, which was obviously the mode of procurement.

3.4 Irregular Procurement of Spares, Fuel and Stores

Traditionally, government procurement was managed through contracts awarded to a single supplier for a financial year. However, as the government expanded and its service outlets increased across the regions, the centralised procurement system became unwieldy; however this later degenerated into an ad hoc decentralisation with a wide variety of suppliers.

While this near-spontaneous transformation has ensured the supply of goods and services to sub-national levels, it has undermined the capacity to ensure the quality of such deliveries. Devolved funds such as the Local Authority Transfer Fund (LATF) and the Constituency Development Fund (CDF) have merely aggravated this inability to regulate procurement using Government funds. Indeed, it is likely that such decentralised project implementation has made the management of public finances rather informal, even within the mainstream public service, central and local governments. For example, where budget and decentralised funds augment each other in delivering development, this often undermines the strict adherence to financial management standards, such as are found in the Financial Regulations.

In the case of the ECK, CAG reports of the period under review are littered with incidents where regulations were recklessly flouted in procuring fuel, spares polling booths and other stores.

3.4.1 Irregular Purchase of Motor Vehicle Spare Parts

The following are some cases of doubtful purchase of motor vehicle spare parts in which procurement procedures were contravened. It is doubtful whether the purchases were ever actually made:



- No inspection reports were found to confirm that the vehicle repairs and spares were indeed necessary
- LPO/LSOs were not raised consistently. Indeed, some documentation of orders for delivery show this to have been done after the general elections had been held.
- Records to show receipt and issue of the spares reportedly bought and whether they were fitted to particular vehicles were not available.
- The vehicles supposedly fitted with the new parts were not systematically identified.
- The CAG could not establish the identities of the mechanics or companies that allegedly fitted the spares.
- There is no record of old parts such as tyres and tubes which were removed from vehicles.

The CAG estimated that KES 29.4 million was probably lost through the malpractices presented in Table 3.4. It is worth noting that the Police Department, which would investigate these irregularities with a view to prosecuting offenders, was the greatest procurement offender with a massive 62% of all suspected losses.

3.4.2 Purchase of Fuel or Purchase of Air?

At least KES 11.2 million may have been embezzled at various district election offices through doubtful and irregular purchases of fuel during the voter registration exercise and General Elections in 1997. The following are some highlights of irregularities noted:

In Nyeri, KES 241,340 was paid for the purchase of 11,936 litres of petrol, one tyre tube and oil from a local service station. No details of the vehicles fitted with the tyres and tubes were available. No fuel register was maintained and although it was noted that the fuel was claimed to have been bought for various government vehicles, no work tickets or detailed orders were produced for verification.

The Narok DEC paid KES 3 million for the bulk purchase of fuel for the voter registration exercise in 1997, through six payments made on the same day. The fuel account was later frozen without any of the fuel being used. The fate of the fuel was not established.

AREA	FY	AMOUNT (KES.)
Kilifi	1996-97	466,800
Busia	1996-97	136,420
Narok	1996-97	3,202,760
Kwale	1997-98	1,560,360
Taita Taveta	1997-98	4,235,020
Trans Mara	1997-98	1,469,260
Tana River	1997-98	948,600
Garrisa	1998-99	240,900
Kuria	1998-99	354,000
Hola	1998-99	854,220
Kirinyaga	2002-03	1,007,705
Others	-----	1,113,260
TOTALS		15,589,305

Source: Various CAG Reports

Were these cars actually hired?

The following district examples illustrate cases of the doubtful hire of vehicles during the 1997 general elections, through which the taxpayer may have lost over KES71 million.

In Taita Taveta, KES 1,215,940 was reportedly spent to hire private transport for the elections. No evidence was provided to show how the vehicles were identified or how the rates charged were arrived at.

In Kwale, KES 4,410,340 was purportedly spent on hiring private vehicles to deliver ballot papers, stationery and pressure lamps from Nairobi to Kinango, Matuga and Msambweni constituencies. However, no indication was given of how the vehicles were identified or how the rates, which ranged from KES 3,500 to KES 65,000 per vehicle per day, were arrived at. The criteria used in awarding the tenders was also not clear. The DEC further paid KES 50,000 to tow an unidentified vehicle to an unknown destination. No receipt or cash sale to support the expenditure was attached to the payment voucher.

In Trans Mara, KES 198,000 was reportedly spent to hire 64 vehicles even though the district has only one constituency and government vehicles were at the Commission's disposal. A further KES 150,000 was allegedly paid to an individual as the cost of hiring his vehicle to transport registration material. No documents were provided to justify the expenditure.

The Mwingi DEC claimed to have spent KES 5.5 million on hiring 18 private vehicles for use by registration officers and their assistant during the 1997 General Elections. In addition to other irregularities, information from the Registrar of Motor Vehicles showed that vehicles purportedly hired were high-sided steel lorries which could not possibly have been used for the purpose intended. The same DEC paid KES 500,000 to his son for the hire of a motor vehicle – a clear conflict of interest – and despite his having already been allocated a government vehicle for daily use.

The Tana River DEC paid KES 1.7 million to various firms for boat hire and to a hardware firm for road transport. The services were not tendered for and the period for which the services were rendered was not indicated. The same officer also paid a firm twice for transportation of the same election equipment from Garsen to Hola.

In Kitui, a sum of KES 5.6 million was irregularly paid on the strength of minutes of a meeting comprising of the DEC, returning officers and security officers. Some of the contracts were awarded to civil servants and members of the District Tender Board. Other dubious aspects of these contracts included:

- The DEC, together with the District Tender Board, approved daily rates of KES 36,500 for a 7 to 10 ton lorry, KES 20,000 per matatu type 3.3 and KES 16,000 for 1 ton pickup, thus applying the maximum rates as opposed to the ECK fixed rate of KES 7,000. (James to check what original researcher meant by 'maximum rates').
- No records were made available to confirm that 95 vehicles were actually hired or to indicate the details of these vehicles.
- 54 private vehicles were inspected and approved for hire but an additional 41 somehow made it into the hiring schedule.
- The distribution list for the constituencies only accounted for 20 motor vehicles assigned to two out of four constituencies in the district. There were no records to support the purported allocation of the remaining 75 vehicles to the constituencies or polling stations.

In Garissa, KES 8.33 million was paid to six contractors for the hire of 62 motor vehicles. The vehicles were hired for 10 to 60 days, yet the general elections took only two days. A Local Purchase Order (LPO) requesting the supply of seventeen vehicles was issued in February 1998, months after the general election.

In Bungoma, trucks of between 15 to 25 tons were hired at between KES 19,000 and KES 22,000 per day for three days each. However, the CAG expressed strong doubts that such trucks were used for election purposes, meaning the KES 2.8 million paid for them could not have been a proper charge to public funds.

In Wajir, payments of KES 861,000 and KES 289,000 were made in February and March 1998, long after the general elections in December, 1997. Incredulously, the vehicles hired included a Government vehicle for which KES 70,000 was paid. A sum of KES 3.55 million was paid to registration officers who used their private vehicles during the voter registration exercise in Nyeri. The DEC paid a flat rate of KES 2,000 per day irrespective of the distance covered and in total disregard of an ECK circular authorising payment at a rate ranging from between KES 174 and KES 195 per km depending on the cubic capacity of the vehicle used.

In Mandera, during the same elections, the DEC paid KES 16.2 million for the hire of 176 motor vehicles from one supplier. The general elections were held over two days yet the vehicles were hired for between 7 and 47 days at a rate of KES 7,000 per day. Records to show that the vehicles were actually used during the election exercise, such as lists of allocations to polling stations, were not available.

During the 2002 general elections, similar practices were witnessed including:

In Mombasa, three firms were paid KES 1,624,800 to supply transport services. The allocation lists showing which vehicles were attached to which polling stations were not available. It was also not possible to confirm whether the ECK actually used these services as the allocation lists were not available.

In Homa Bay, KES 101,360 worth of fuel was paid for but not delivered. Similarly, in Kirinyaga, a fuel order worth KES 175,000 was paid for but not delivered. In both instances, no explanations were offered for the turnabout.

An expenditure of KES 873,840 purportedly incurred on fuel for government vehicles in Taita Taveta was queried because details of the vehicles which were fuelled were not disclosed.

In Kwale, it was doubtful that fuel worth KES 159,740 was delivered because necessary documentation such as a fuel register, delivery notes or detail orders to confirm that the fuel was received and issued were missing. A similar situation occurred in Trans Mara where records relating to the alleged purchase of fuel worth KES 1.2 million were only maintained at a petrol station.

In Mwingi, KES 2.7 million was paid to a firm purportedly to supply fuel, lubricants, vehicle batteries and tubes for use during the voter registration exercise. No details on orders, delivery notes or lists of the vehicles fuelled or fitted with the parts were available. The fact that a sum of KES 5.5 million was also reportedly spent on the hire of motor vehicles for use in the same voter registration exercise makes either or both expenditure categories suspect.

Similar doubtful purchases of fuel were queried in Teso (KES 449,980) and Lamu (KES 216,000). The CAG raised queries on this category of spending every year from FY 1996/97 to FY 2004/05. For example, the CAG queried KES 158.4 million paid to a Mombasa businessman for the delivery of tyres and tubes - only a quarter of which were delivered. The ECK had to sue for KES 118.8 million before taking delivery of the order.

3.4.3 Polling Booths and Other Stores

A number of irregularities were noted with regard to the procurement of polling booths and other stores which could have led to the loss of KES 10.8 million. Some examples include the following: In Trans Mara, no competitive bids were invited for the procurement of 334 polling booths worth KES 377,120 for the 1997 general election. Meanwhile, in Mandera, orders for 381 polling booths worth KES 2.04 million were placed in January 1998, while elections had taken place in December, 1997. Records on the delivery and disposal of the booths were not available. Notwithstanding the natural resource disparities between the districts, the price discrepancy per booth was an incredible one to five, indicating ineffective cost-management, or worse, by the ECK.

In Mombasa, KES 946,200 was purported to have been spent on polling booths during the 2002 elections. The request raised queries as it was made long after the tender had been awarded, and indeed after the elections had been held. Additionally, no store records were maintained to verify if the booths were received and how they were distributed among polling stations.

In Garissa, expenditure worth KES 6.2 million on stores during the 1997 elections was suspect because:

- Tenders were not invited to ensure that goods and services were procured from the lowest bidder;
- Some LPOs were issued after the general elections had been conducted; and
- Store records confirming the actual receipt and distribution of the equipment and materials to polling stations were not available.

3.5 Outstanding Imprests

Table 3.4: Questionable Procurement of Fuel, Spares and Stores

AREA	FY	AMOUNT (KES)
Taita Taveta	1997/98	3,256,960
Kwale	1997/98	1,44,260
Tana River	1997/98	36,500
Mandera	1998/99	1,981,480
Wajir	1998/99	3,271,900
Lamu	1998/99	1,024,860
Teso	1998/99	1,246,940
Police Department	1999/00	16,900,000
Tana River	2002/03	230,589
TOTALS		29,392,489

Source: Various CAG Reports

The regulations governing imprests were discussed in detail in Section 2.1. Temporary imprests must be surrendered within 48 hours of returning to the duty station; standing imprests must be surrendered when the officer in receipt of them leaves the station; special imprests must be promptly accounted for to the minister, and all imprests must be used only for the intended purpose.

The management of imprests seems to be a perennial challenge for civil servants as shown in successive CAG reports. In this respect, ECK also seems to have had serious difficulties enforcing imprest regulations as shown in Table 3.5. The magnitude of the problem is more evident in the FYs before the ECK set up an independent secretariat. The outstanding KES 2 million for FY 1998/99 was probably accounted for by a staff contingent of about 30 compared to the more modest FY 2003/04 amount for a staff of nearly 200. The management of imprests seems to have improved after the establishment of the secretariat. However, the outstanding imprests detailed in Table 3.5 reflect shortcomings that require attention.

3.6 Gross Over-Expenditure: Making Confetti of Public Funds

According to Sections 99 and 100 of the Constitution of Kenya, no payments should be made from the Consolidated Fund without Parliament's approval. As noted in Section 2.1, such approval is provided by the Appropriations Act; and any spending beyond this must be approved through supplementary estimates. These factors mean that ministries and government departments should religiously stick to budget ceilings.

At the ECK, however, the period between FYs 1991/92 and 1993/94 saw the agency overshoot its approved budget by KES 475 million without seeking the necessary Treasury approval. By FY 1994/95, accumulated unauthorised over-expenditure on voter registration and elections alone was KES 156 million. During the 1997 voter registration and general elections, the ECK overspent by KES 394 million, overshooting the budget by 160%.

On the face of it, over-expenditure may not look too serious if one is aware of the logistical difficulties that normally arise during these exercises. In 1997 for example, voter registration had to be extended twice because of a backlog in the issuance of new national identity cards by the National Registration Bureau.¹⁹ However, given the financial management provisions already discussed, such unauthorised over-spending is both illegal and unconstitutional.

Besides the need to extend voter registration due to factors beyond ECK's remit, other explanations often given for such overspending can be quite spurious. For example, arguing that a particular expenditure was not provided for in the budget is to explicitly admit incompetence among the agency's technocrats. In any case, section 3.2 to 3.4 illustrated excessive financial malfeasance among ECK field offices in obvious collusion with the head office providing room for an argument that such budget over-runs merely make up for resources that have been misappropriated.

Table 3.5: Outstanding ECK Imprests

FY	AMOUNT	COMMENTS
1993/94	180,960	Due from a member of the ECK
1994/95	1,862,500	Outstanding Temporary Imprests
1995/96	1,245,460	Clerk of National Assembly was experiencing difficulties in having the imprests accounted for by three members of the ECK.
1996/97	1,243,560	Imprests not accounted for by due dates. No reasons given for the delay.
1997/98	809,820	No satisfactory explanation given for the delay in surrendering these imprests.
1998/99	1,869,120	Imprests issued in 1997/98 and earlier years still outstanding as at that date.
2002/03	459,000	Imprest outstanding from an officer in Mombasa - no evidence of action taken to recover the balance.
2003/04	708,058	Imprests due from the staff still outstanding. No explanation given for failure by the staff members to account by the due dates.
TOTALS	8,378,478	

¹⁹ See for example, http://www.iedafrica.org/documents/1997_report.pdf

This sort of over-expenditure is, at best, a worrying sign of very weak financial planning. At worst, it is a sign that many ECK officials at the district levels treat public funds like confetti – a resource to be casually tossed about.

3.7 Unsupported Expenditure

Gross over-expenditure of public funds remains illegal and unconstitutional even if adequate supporting documentation is available. However, expenditure without evidence is even more damning since establishing the authenticity of spending is one of the prime purposes of the office of the CAG.

Section 2.1 outlined the processes of incurring expenditure namely, invitation of tenders, adjudication by tender boards, award of tenders, requisition of goods and supplies, technical verification of deliveries, entry into stores ledgers, suppliers' invoices and receipts of payment. Failure to adequately support purported spending suggests that an Accounting Officer could not put together a plausible set of the foregoing documents to prove the destination of Government funds – quite a serious indictment of the Officer's competence. Given KANU's reluctance to distinguish itself from the government even during the multi-party period, one surmises that some of this unsupported spending could easily have been facilitating party activities.

3.8 Other Questionable Transactions

The CAG also raised the red flag on a variety of other wasteful and irregular transactions which may have cost the taxpayer over KES 332 million between 1992 and 1997:

- The purchase of finger print pads for the 1992 general elections which the CAG considered far in excess of requirements. This resulted in wasteful expenditure of KES 3.6 million.
- Revenue amounting to KES 340,000 from political candidates' nomination fees and purchase of tender documents was misused. Of this, KES 215,000 from nomination fees in four constituencies in Garissa was not surrendered to District Treasury for safe custody as required by Financial Regulations. Instead, the money was loaned to seven election officials in sums ranging from KES 10,000 to 73,000. No satisfactory explanation was given for the misuse of revenue and the money was not recovered from the officials or surrendered to District Treasury.
- Cases of diversion of funds amounting to KES 6.6 million were reported. In Koibatek, KES 2.4 million allocated for voter registration was diverted to construction work during FY 1996/97. Similarly, in Nakuru, KES 4.2 million intended for voter registration was used to construct ECK offices, essentially compromising the people's right to vote.



- In Mwingi, during FY 97/98, a builder was awarded a KES 613,000 contract which he had neither applied nor quoted for. The related LPO, LSO and invoices were issued, the voucher processed and payments effected on the same day at the end of the fiscal year. The work was however never done.
- During FY 1997/98, KES 6.48 million was spent in the purchase of sixty portable generators for lamination of voter's cards. Only thirty of the specified generators were delivered, the rest being of a different model from what was originally ordered. Out of the 60 generators bought for use in 18 districts during the general election, only 4 were ever issued out with 56 remaining as stock in the store. One wonders whether the generators were required at all.
- Poor management of funds, irregular payments and waste are reported to have characterized the 1997 General Election. The CAG questioned expenditure amounting to KES 269 million spent through the police department on "provision of security".

Missing documents make expenditure of KES 263 million highly suspect

In the FYs under review, supporting documents of up to KES 263 million were missing. They include:

- KES 198.5 million paid to the Permanent Secretary, Office of the President to meet costs of the voter registration exercise in FY 1991/92. The payment was made against a list of claims by District Commissioners which was not supported by any expenditure returns or vouchers showing how the amount was spent.
- KES 19 million expenditure by the DEC, Kwale in FY 1997/98 where vouchers were not produced for audit review.
- Missing payment vouchers from DEC, Mombasa amounting to KES 25,902,148 in FY 2002/03.
- KES 567,715 paid to the DEC in Tana River, and two other individuals in FY 2002/03. There were no supporting payment vouchers.
- Payments of KES 16,760,000 were entered in the Cash Book and Vote Book in Nakuru. No payment vouchers or other supporting documents were produced for an audit review in FY 2002/03.

Overview of CAG audit Queries - 1991/92 - 2006/07

- **Excesses of commissioners:** unwarranted sitting and subsistence allowances accumulated to KES 29.7 million by 1996, while irregular payment of accommodation and subsistence expenses totalled KES 33.79 million from 1993-1997. Expenditure through unnecessary hire of cars during FY 1996/97 glaringly illustrates wastefulness - at the average rate of KES 2.5 million per vehicle, the amounts spent on hiring luxury vehicles during that FY could have bought another 13 such vehicles.
- **Allowances for Services Rendered or Embezzlement?** At least KES 67.63 million was dubiously spent in allowances for services rendered in 1996/97. Doubtful hire and repair of vehicles was so widespread over the review period that it is questionable whether KES 372,955,320 purportedly spent was justifiable. There is evidence that DEC's feigned repairs of vehicles to siphon off public funds during elections and voter registration in this period. Irregularities in procurement of fuel, spares and stores resulted in losses of KES 29.4 million between 1997 and 2003.
- **Outstanding Imprests:** the management of imprests seems to be a perennial challenge for civil servants as shown in successive CAG reports. In this respect, ECK also seems to have had serious difficulties enforcing imprest regulations. The management of imprests seems to have improved after the establishment of the secretariat.
- **Gross Over-Expenditure:** between 1991 and 1994 the ECK overshot its approved budget by KES 475 million without seeking the necessary Treasury approval. By FY 1995, accumulated, unauthorised over-expenditure on voter registration and elections alone was KES 156 million. During the 1997 voter registration and general elections, the ECK overspent by KES 394 million, overshooting the budget by 160%. This sort of over-expenditure is a worrying sign of very weak financial planning, or, at worst, a sign that many ECK officials at the district level treat public funds as a resource to be carelessly tossed about.
- **Unsupported Expenditure:** Failure to adequately support purported spending is a serious indictment of the Accounting Officer's competence. KES 198.5 million paid to the Permanent Secretary, Office of the President for voter registration in 1991/92 was not backed by the necessary documents. Neither was KES 19million expenditure by the DEC in Kwale in 1997/98 and KES 25,902,148 by the DEC, Mombasa in 2002/03. Payments of KES 16,760,000 were entered in the Cash Book and Vote Book in Nakuru - the requisite supporting documents were not produced for an audit review carried out in FY in 2002/03.
- **Other Questionable Transactions:** other wasteful and irregular transactions which may have cost the taxpayer over KES 332 million between 1992 and 1997 include poor management of funds and irregular payments on security for the 1997 general election amounting to KES 269 million; KES 2.4 million allocated for voter registration in Koibatek diverted to construction work in 1996/97; and KES 6.48 million spent on purchasing generators in 1997/98, only 30 of which were delivered.



4

Challenges Facing the ECK

The CAG/PAC audit queries highlighted above illustrate problems at various levels rather than just within the ECK. Firstly, there are problems which arise from Kenya's political set up, which trickle down in varying degrees to sub-national institutions. The queries also reflect shortcomings within the pre-eminent national financial agency, the Finance ministry and related institutions. Finally, of course, the queries reflect problems at the ECK.

However, rather than fitting into mutually exclusive categories, the problems reflect extensive overlaps among the listed institutions resulting in a domino effect.

Key Challenges facing the ECK

1. Political patronage and a poor public service culture

The fundamental problem in Kenya is one of national governance - of whether Kenya's governance structure (the Constitution and laws and institutions arising from it) is conducive to transparent and accountable management of elements of national development. These include the electoral process and management of public finances.

An immediate explanation for the challenges highlighted in the introduction is that Kenya's political and legal structures are inadequate with respect to good governance. The Constitution provides for the separation of powers between the three arms of government, viz. the Legislature, Executive and Judiciary. However, in what might be considered a claw back clause, the Constitution also provides that all public servants are employed at the pleasure of the President (Section 25), meaning that none of the arms of Government are entirely independent.

Usurpation of the functions of the ECK by the Supervisor of Elections was a consequence of presidential excesses designed to advantage the incumbent in political contests. Being a mere civil servant, the Supervisor of Elections was easier to manipulate than an independent electoral commission grounded in the Constitution. When the Supervisor eventually ceded functions to the constitutionally established ECK in 1992, the choice of the inaugural chair was

an act of extreme expediency on Moi's part. The late Retired Justice Chesoni could not by law hold public office, but it would seem the President used Section 25 of the Constitution to effect his controversial appointment as Chairman of the ECK. Apparently secure in the President's patronage, the Chairman managed the ECK quite casually. For example, the CAG found that despite his judicial experience, the chair ran the sensitive organisation without recording minutes of meetings at which critical decisions were made. Given such evident political protection, it is likely the CAG and/or Finance Minister considered it risky to act on available evidence of financial improprieties at the ECK, such as illegal payment of allowances. Indeed, Section 3.5 also showed that outstanding imprests declined sharply once Chesoni left office in 1998.

Successive CAG reports show that such financial indiscretions were not the preserve of the ECK. On the contrary, financial impropriety seems to be the *modus operandi* in the public service as summarised in a 2001 analysis of almost a decade of CAG reports.²⁰

Financial malfeasance has gone unchecked by successive presidents setting the tone for the public service. While Accounting Officers, accountants and auditors are often technically competent to manage public finances scrupulously, the environment in which they operate undermines efficiency, so that they overlook questionable transactions, and are sometimes complicit.²¹ Indeed, it is conceivable that district ECK officers cited in the CAG reports (see Section 3), shared their ill-gotten wealth with other secretariat staff, thus compromising internal audits.

Consequently, punishing offenders would require that action be taken against the very top echelons of the public service. Para 5.1.2 of Financial Regulations stipulates that an accounting officer ignoring misappropriation by subordinate officers will have failed to ensure funds are only applied for the purposes identified by Parliament and should be held liable for the loss. Political patronage however shackles Treasury, undermines well-meaning accounting officers and the Attorney General's prosecutorial function.

2. Low Capacity for Delivering Financial Scrutiny

As the public service grew, it became increasingly impractical to monitor financial affairs manually. The Moi regime was averse to the extensive use of information and communication technology (ICT).²² Thus, the management of financial accounts became increasingly inefficient, to the extent that the constitutionally-mandated annual CAG audits fell into nearly a decade of arrears. Collusion in financial impropriety became possible as delayed external audits meant that

²⁰ See Centre for Governance and Development (2001), 'A Survey of Seven Years of Waste: a study of corruption in Kenya.' Nairobi: CGD.

²¹ For example, how could either of these officers with a cost-effectiveness mandate approve a five-fold disparity in the cost of a domestically produced polling booth?

²² Anecdotal information suggests that one head of the civil service actually outlawed the use of the internet within the public service.

indiscretions could only be discovered long after the fact, often after alleged perpetrators had changed departments/stations, retired, or died, and records had been conceivably destroyed.

However, since the Public Audit Act was passed in 2003, giving rise to the Kenya National Audit Office (KNAO) and KNAO Commission, the CAG's office has been reinvigorated and annual audits brought back on track. These reforms have partially been enabled by Kenya's adoption of the Integrated Financial Management Information System (IFMIS), which amongst other things, networks financial data across the country, speeding up the process by which the CAG accesses expenditure information.

3. Erratic Flow of Financial Resources to the Sub-National Level

Government spending relies heavily on the collection of tax revenues, delays in which undermine the flow of resources to spending units in ministries and at sub-national levels. The ECK for example, laments the failure to meet its anticipated monthly disbursements in 'sufficient amounts in good time'.²³ Erratic resource flows result in pending bills for goods and services supplied on credit. Since such arrangements are not provided for in Financial Regulations, they compromise adherence to regulations and procedures. Such credit arrangements also attract higher prices which might explain some of the inflated rates discussed in Section 3, purportedly for goods and services. Indeed, the ECK has made a case for direct funding from the Consolidated Fund Services rather than from Ministry of Finance budgets, which are subject to parliamentary approval. This would be a drastic departure from the financial management guidelines of such agencies.²⁴

While the foregoing might seem to absolve ECK of blame, it must be emphasised that the agency's Accounting Officer is culpable, as are all other Government departments indicted by the CAG. Given years of financial malfe asance, it is ludicrous that the PS Treasury has never acted decisively against any of the Accounting Officers responsible for exercising in detail all the financial controls necessary before expenditure takes place. Consequently, there is no deterrence to such misconduct. Whereas the ECK's challenge up to 1998 was its lack of independence, financial problems since then have been due to management failure on the part of the Accounting Officer. Whether the internal auditor should share the blame depends on the quality of advice offered to the Accounting Officer. Given the recurrence of violations reflected in Section 3, it is likely the auditor's advice fell on deaf ears.

4. The Challenge of Decentralisation

Rampant misconduct among ECK officers at the district level also raises the question of whether the agency is too decentralised for effective financial management. Given the nature of

²³ See Kriegler Report, page 39.

²⁴ See Kriegler Report, page 39 – 40.

electioneering, it is not surprising that there should be some crisis or other on the eve of balloting, which calls for urgent management at the grassroots level. However, the rampant improprieties might also undermine democratic deepening, as was apparent in the mismanagement of the 2007 elections. This strengthens the argument for devolution to an intermediate level between the head office and the district.

5. Cost-effectiveness of operations

The Kriegler Report compares the ECK's average cost of conducting an election with costs in other countries. It found the ECK to be highly inefficient. Given that Kenya has extensive experience in conducting elections, holds presidential, parliamentary and civic elections simultaneously, and has low costs of temporary personnel, its overall electoral costs should be low. Using conservative figures however, the ECK's cost per registered voter was US\$13.74, compared to US\$1.6 for Benin, US\$2.7 for Botswana, US\$ 0.7 for Ghana and US\$1.2 for Senegal.²⁵ The Kriegler Report observes that ECK costs are only comparable to "very special cases of post-conflict elections like in Angola, Afghanistan or Cambodia...and are even higher than in cases like Bosnia-Herzegovina under the Dayton Accord."

One explanation for the ECK's high costs may lie in lack of control over all the processes surrounding elections. For one, management of the electoral calendar remains the exclusive domain of the President, constraining the ECK's capacity for cost-effective, long-term planning. Secondly, to register as a voter one must have national identification in the form of a national ID card issued at the age of 18 years, or a passport. Yet, the issuance of both documents is outside ECK's domain. The issuance of the mandatory and therefore more widely distributed national ID is itself quite erratic, meaning ECK often has to revise its work plans to accommodate voter registration of new recipients of IDs, which makes it difficult to minimise costs. Indeed, it has been suggested that the issuance of IDs, should include voter registration such that all Kenyans over 18 years of age automatically register to vote even if they choose never to vote.

6. Poor Internal Audit

Turning to the audit function, the failure of this study to get interviews with ECK officers limits the amount of information available from the agency's internal auditors who have the crucial responsibility of pointing out financial impropriety to the Accounting Officer. Up to 1998, the ECK's institutional setup hindered effective internal auditing, given that it shared administrative services with other Government departments. However, this obstacle should have been overcome after the establishment of ECK's independent secretariat with its own accountants and auditors.

²⁵ See the Kriegler Report, page 44.



Consequently, the financial improprieties highlighted by the CAG reports suggest either that the ECK's Accounting Officer was not receiving appropriate technical advice from its accountants and auditors, or that such advice was received but disregarded. The recurrent improprieties highlighted in Section 3 therefore suggest culpability of the district offices, the Secretariat, or both.

7. Weak Public Accountability and Public Investments Committees

As mentioned earlier, the Public Audit Act of 2003 and Treasury's financial management reforms have created opportunity for greater financial efficiency. However, there is concern over the role of the PAC, which at the moment seems to merely rubberstamp CAG reports.

In the UK, prompt government action on the PAC recommendations over CAG reports was reported.²⁶ In Kenya, neither legislation nor the parliamentary Standing Orders define the role of PAC beyond commenting on the CAG report. Nor do these documents state what happens when the government does not act on PAC recommendations, despite the Committee having extensive powers to summon officers to elaborate on issues raised. Further, the membership of individuals

who are the subject of unresolved audit queries significantly undermines the seriousness with which they can address current indiscretions.²⁷

The Report observed that ECK costs are only comparable to “very special cases of post-conflict elections like in Angola, Afghanistan or Cambodia”

Consequently, while the PAC sometimes makes strong recommendations, in most cases it resorts to rhetoric in the tradition of international diplomacy: “appalled”, “greatly perturbed”, “gravely concerned” and “the Accounting Officer must ensure government procurement procedures are adhered to at all times.” Its lack of bite undermines the realisation of the full benefits of the audit function.

The Public Officers Ethics Act (POEA) of 2003, the Anti-Corruption and Economic Crimes Act (ACECA) of 2003 and the Public Procurement and Disposal Act of 2005 provide a means to deal with errant officers.²⁸ For example, Section 10 of the POEA provides against improper enrichment. Part IV of the same Act requires that officers declare their incomes, assets and liabilities, while Section 26 requires that such declarations be done annually. Section 35 provides for disciplinary action by the Kenya Anti-Corruption Commission against offenders and Section 37 provides that the Commission may recommend civil or criminal proceedings against officers as its investigations might suggest.

²⁶ See *Committee of Public Accounts (2007)*.

²⁷ For example, a member of Kenya's 10th Parliament who sits on its PIC has previously been the subject of CAG/PIC queries over dealings with the National Social Security Fund.

²⁸ For these laws, go to http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

8. Lack of political will

The ACECA, which establishes the Kenya Anti-Corruption Commission, defines corruption as, amongst other things, bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust, or an offence involving dishonesty. Many of the audit queries of Section 3 pre-date the new legislation. However, prior to ACECA, Kenya had the Prevention of Corruption Act of 1956, which was revised in 1999 to facilitate the establishment of the Kenya Anti-Corruption Agency.²⁹ Arguably, the minimal application of the old Act, repealed in 2003, is one explanation for the growth of corruption in Kenya. Looking at the audit queries of Section 3, one can see many instances in which the provisions of ACECA could be applied to prosecute various ECK officers at the secretariat as well as in the districts.

Part V of ACECA defines offences, with Section 46 specifically referring to abuse of office and noting that a person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence. Part VI of the Act provides for compensation and recovery of improper benefits.

The Public Procurement and Disposal Act has similar provisions for acting against errant officers. However, in both instances, political will to undertake measures permitted by these laws is sorely lacking.

The foregoing shows that while Kenya has various potentially effective institutions for the proper management of public finances, backed by deterrent legislation, there are still numerous obstacles to ensuring good economic governance. This calls for extensive reforms including a change in mindsets, and deliberate steps to address the culture of patronage, impunity and poor accountability.



²⁹ The constitutionality of the Agency was successfully challenged in court leading to its disbandment and the replacement of the Prevention of Corruption Act with ACECA.

Recommendations on the Way Forward

With respect to the ECK's internal financial management problems, the Kriegler Report's overriding recommendation was that the Government should carefully consider the issue of the ECK's expenses being a charge on the Consolidated Fund. This would ensure the smooth flow of adequate resources to the ECK, significantly reducing reliance on the goodwill of Parliament. However, this measure would not in itself necessarily improve financial scrutiny within the ECK, as highlighted in Section 4. In light of these challenges, the following recommendations are made on the way forward:

1. Rationalise the powers of the President

Kenya has been striving to review its Constitution, with one of the driving demands being that the powers of the President be pruned. This is important so that public officer holders owe allegiance to the State and not to the person of the President. This would reduce the indebtedness of a successful candidate to any one person, and increase accountability. This would help diminish the culture of impunity that underlies corruption and the malpractices such as are discussed in this report.

2. Improve the levels and flows of resources

The ECK's request to draw finances directly from the Consolidated Fund was presented to the Kriegler Commission.³⁰ However, as clearly indicated in this report, the ECK has demonstrated limited financial efficiency. There is no precedent for charging the entire expenses of an institution to the Fund. Meanwhile, timely resource flows to the ECK would prevent rushed procurement, which would likely translate to massive savings for the ECK. Linking voter registration to other population databases or national processes such as the issuance of national IDs would also improve management of the electoral process.

³⁰ Kriegler Report, page 39-40 discusses the rationale for current ECK funding modalities, comparing the ECK's financial independence with other independent institutions such as the Judiciary and the Parliamentary Service Commission. This section pages also discusses the merits and demerits of the proposal that all ECK expenses be a charge upon the consolidated fund

3. Strengthen ECK's Internal Capacity

The hierarchical structures of the ECK should be rationalised for greater efficiency. Beyond that, the agency's operations should be computerised for greater transparency over its activities, such as voter registration, and financial management. Computerisation would also improve information flows between the head office and districts, in order to reduce expenses currently incurred by sending runners to Nairobi. Weak accounting and internal audit capacities must be raised immediately. If, on the other hand, capacity exists but has simply been poorly utilised, then the impending reforms at the Commission must ensure that such technical offices perform their functions.

4. Strengthen the Role of PAC

The PAC should be given powers to act on its recommendations and more resources with which to effectively perform its role. Further, measures must be taken to ensure that members of PAC and PIC are beyond reproach by amending Standing Orders to bar anyone with an unresolved public audit query from sitting on the Committees.

5. Punish Past Offenders

Kenya's failure to successfully prosecute any grand corruption to date perpetuates the vice. Making past offenders face the provisions of the various laws discussed above is imperative to deterring future malpractices. However, besides the legal statutes of limitation on prosecuting alleged crimes, it will be very difficult to decide how far back to go regarding individuals responsible for the audit queries outlined in this report. Some witnesses might have died, and records been lost or destroyed. Further, as mentioned previously, many of these queries pre-date new anti-corruption legislation. That said, it is imperative that some action be taken to illustrate that it is no longer business as usual. For example, the Government could actively pursue restitution of loss or ensure that those implicated in financial malpractice are brought to account. It is important that the PS Treasury and the Attorney General take concrete steps to act against the mismanagement of public resources.

6. Provide People-Friendly Audit Reports

Both the language and extent of the CAG reports make them inaccessible to the average Kenyan. It is therefore recommended that popular versions be produced to enable wananchi to see where taxpayers' money goes. Indeed, for agencies such as the ECK, it would be useful to publish district resource flows. The resulting publicity could also act as a deterrent to financial malfeasance among public officers as district residents would be in a position to point out misrepresentations emanating from officers.

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

YEAR	AMOUNT (KES)	DETAILS	STATION
1. IRREGULAR PAYMENTS TO COMMISSIONERS			
2006/07	61,212,000	<ul style="list-style-type: none"> ▪ The Chairman was paid KES 63,000, and the Vice-Chairman and members KES 420,000 per month contrary to approved monthly sitting allowances. ▪ No justification was provided for the variation in monthly sitting allowances 	HQ
TOTAL	61,212,000		
2. IRREGULAR ALLOWANCES PAID TO SECURITY PERSONNEL AND OTHER PUBLIC OFFICERS			
1997/98	9,884,020	Honoraria payments made to staff of the National Assembly and other ministries and departments for assistance in reviewing constituency boundaries and in conducting by elections. The specific nature of services rendered was not disclosed and there was no explanation of how the officers were able to perform their normal duties and at the same time provide services to the Commission	HQ
1997/98	3,716,600	Paid to various officers purported to have participated in the General Elections. The attached schedules and payment vouchers did not disclose specific services rendered and the period worked.	Kwale
1997/98	765,600	Paid as allowances to security officers who participated in the General Elections. None of the payees signed for the payments or acknowledged receipt of the money. It was therefore not possible to confirm that the payments correctly made.	Trans Mara
1997/98	8,775,440	Paid as field allowances for election officials. No verifiable documents were available to support the payments. Payment vouchers were presented without lists, schedules or any other records to show the number, identity of persons being paid or the period for which they were being paid.	Tana River
1997/98	1,012,840	Paid to security and other personnel. Although the payments were supported by lists/schedules, they were not signed and identities of payees, Personal Identification Numbers (P.I.N) or acknowledgments of receipt of cash were missing. The period for which they were paid is also not indicated.	Tana River
1997/98	1,730,460	Paid to various persons as allowances. PV did not have supporting documents did not indicate the period worked or contain signatures for receipt of cash	Tana River
1997/98	3,428,900	Overpayment of K£171,445 and underpayment of K£7,194-05. No explanation was provided for the differences in allowances paid to election officials.	Rachuonyo

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1997/98	144,000	Paying officers received the amount on behalf of 6 colleagues without written authority from the payees.	Nandi
1997/98	65,000	Two persons, only identified by Identification Numbers, received payment on behalf of thirteen (13) officers without any written authority from the payees.	Nandi
1998/99	248,300	Doubtful and unsupported payment of allowances to registration officials. No schedules bearing the names and signatures of the payees as acknowledge of receipt of payment were attached to the payment vouchers. It was therefore not possible to confirm that the amounts were paid to genuine payees who participated in the registration exercise and that they were correctly payable from public funds.	Mandera
1998/99	87,340	Doubtful payments to government officials for services not rendered. District Officer 1 (DO1) was paid K£ 1,900 and two internal auditors paid K£1,387 and K£1,080 respectively with no evidence of services rendered.	Bungoma
1998/99	420,000	Doubtful payment of travel allowances to 3 government officials. The payments were made in January 1998 as travelling allowance for 21 days. The records do not show the dates of travel or nature of duty and whether the duties were related to the General Elections since they were paid after the elections.	Kuria
1998/99	230,300	Irregular and fraudulent payment of allowances. Claims included refunds for laundry and refreshment expenses, claims for travel to Nairobi when officers did not travel, double payment of hire of motor vehicles, payment for services not rendered and payment to an unidentified officer. There was no control of election expenses in the DEC's office.	Kuria
1998/99	6,935,400	Doubtful payment of allowances. Payments were not supported by signed payrolls casting doubts that the payments were actually made to bona fide election officials who were entitled to payments	Hola
1998/99	1,380,860	Doubtful payment of allowances. Paid during the voter registration exercise in August and September 1997. Payment vouchers were not supported by signed/receipted payrolls, while names of payees not indicated on others.	Lamu
1998/99	171,060	Payment to security personnel. No registers were maintained as required by the ECK to show that the security officers were on duty at registration centres during voter registration.	Teso
1999/2000	19,200	Allowances to security personnel. Double payment to 8 officers.	Police Department
1999/2000	8,400	Allowances to security personnel. Payments were made to three security officers without the requisite records showing that one attended a training course while the other was under interdiction.	Police Department

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1999/2000	2,183,320	Double payment of allowances. Double/overpayments by DEC, area OCPD and the CID in Nairobi, North Meru, Narok, Bomet, Commandant ASTU, Gilgil.	Police Department
1999/2000	62,980	Irregular payment of allowances. Payments collected by officers on behalf of 8 payees. No evidence of receipt of payment by the payees.	Police Department
1999/2000	382,800	Nyanza Provincial Police Officer received payment on behalf of recruits from Kiganjo College said to have been providing security at the polling stations in the province. Records show that by the time of payment, the recruits had gone back to college. Further, there were no signed schedules to show receipt of payment by the officers.	Police Department
1999/2000	249,040	Irregular expenditure by Taita Taveta DEC as payment of field allowances. No verifiable documents were produced to support payments to security officers, typists and drivers during the Ronge Juu by-election. Payments were made without lists, schedules or other documents to verify identities and services rendered. There was also no record of the imprest issued to the DEC to pay the by-election officers.	Taita Taveta
2002/2003	329,350	Unsupported payments by the Electoral Coordinator. The DEC paid KES 98,000 for 77 Security personnel, KES 104,000 as sitting allowances for Peace Committee members and KES 127,350 for the voter registration exercise. Some payrolls signed by the recipients were not attached to the payment voucher. No documents authorizing security officers to collect the allowances on behalf of colleagues were provided making it impossible to confirm the propriety of the payments.	Kilifi
2002/2003	3,673,300	Doubtful payment of allowances for registration of voters and the General Election. No signed schedules accompanied the payment vouchers making it impossible to verify that the amounts were paid to genuine payees and chargeable to public funds.	Tana River
TOTAL	45,904,510		

3. DOUBTFUL HIRE AND REPAIR OF VEHICLES

1997/98	1,215,940	Hire of private transport for the General Elections. No evidence on how the vehicles were identified and the rates charged arrived at. Authenticity of the expenditure could therefore not be confirmed.	Taita Taveta
---------	-----------	---	--------------

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1997/98	4,410,340	Hire of vehicles. The vehicles were to transport ballot papers, stationary and pressure lamps from Nairobi to Kinango, Matuga and Msambweni constituencies. No evidence on how the vehicles were identified and the rates, which ranged from K£175 and K£3,250 per vehicle per day, were arrived at. There was no record of authorization for the hire from the ECK Chairman as alluded to. It was therefore not possible to ascertain the authenticity of the expenditure.	Kwale
1997/98	50,000	Paid to the DEC to tow an unidentified vehicle to an unknown destination. There was no receipt or cash sale available to support the expenditure. No L.S.O was issued for the service and it could therefore not be established how the rate charged per kilometre or distance covered were arrived at. The possibility that the amount was diverted to private use could not be ruled out.	Kwale
1997/98	198,000	Hire of 64 vehicles. This is curious considering the district has only one constituency and that fully-maintained government vehicles were at the Commission's disposal.	Trans Mara
1997/98	150,000	Paid to an individual for the hire of his own vehicle to transport registration material. No evidence was provided to support the use of the vehicle and justification for the expenditure.	Trans Mara
1997/98	5,500,000	Hire of vehicles for the General Elections. <ul style="list-style-type: none"> ▪ For the hire of 18 vehicles from private firms and individuals for use by registration officers and Assistant Registration Officers (ARO). ▪ Two payment vouchers were made to "sundry persons" and cheques for the amounts drawn in June, 1997 and September 1997 in favour of the DEC who cashed them at the District Treasury and purportedly paid the transporters. Invoices were not issued against any L.P.Os or L.S.Os. ▪ Before the transporters issued the invoices, the DEC had already sent them letters requesting for the vehicles to be hired at a daily rate of K£250 per vehicle for 50 days. ▪ A total of K£2488-15 was spent on public transport for AROs between July and September, 1997. ▪ The DEC used a government vehicle for both official and personal errands during this period. ▪ Information from the Registrar of motor vehicles shows that vehicles purportedly hired were high-sided steel lorries which could not possibly have been used for the stated purposes. 	Mwingi
1997/98	500,000	Paid to the DEC's son for hire of vehicles for 10 days. It is not clear why the DEC would hire his own vehicle when he had already been assigned a government vehicle for use daily from May 13 1997 to January 1998 to commute from Mutitu to Mwingi and back.	Mwingi

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1997/98	1,703,000	Paid to various firms for boat hire and to a hardware firm for road transport. Services were not tendered for and it was not possible to establish how rates were arrived at. In most cases, the period for which the services were rendered was not indicated. No hire of transport certificate was attached to payment vouchers.	Tana River
1997/98	45,000	Paid to a firm for transportation of election equipment from Garsen to Hola. The two claims appear to have been made for the same purpose, indicating a case of double payment.	Tana River
1998/99	5,603,000	<p>Hire of vehicles.</p> <ul style="list-style-type: none"> ▪ Vehicles were hired based on minutes of a meeting held at the end of December, 1997 in the DEC's office attended by the DEC, returning officers and security officers. The ECK had fixed a rate for hire of motor vehicles at a daily rate of K£350 but the DEC and the District Tender Board approved higher daily rates of K£1,375 for a 7 to 10 ton lorry, K£1,000 per matatu type 3.3. and K£800 for a 1 ton pickup. ▪ Only 54 private vehicles were inspected and found suitable for use in accordance with the ECK guidelines and were approved for hire. ▪ No explanation was provided on how the 41 additional vehicles were included in the schedule of vehicles for hire. ▪ Only K£37,800 should have been paid to hire the 54 vehicles. The schedule of payment accounted for only K£309,950 while the amount actually paid out was K£313,950. ▪ Further, it was noted that some of the contracts were awarded to civil servants and members of the district tender board in a clear conflict of interest which may account for the higher rates. ▪ The distribution list for the constituencies only accounted for 20 motor vehicles assigned to two out of four constituencies in the district. ▪ No records were available to support the purported allocation of the remaining 75 to the constituencies or polling stations or to confirm that the 95 vehicles were actually hired. 	Kitui

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1998/99	17,390,000	<p>Hire of 348 vehicles for use in 4 constituencies.</p> <ul style="list-style-type: none"> ▪ The amount was paid to one contractor under two separate vouchers at the rates of K£500 per day for 314 Land Rovers and K£600 per day for 5 buses and lorries and K£200 per day for 2 saloon cars. ▪ The DEC hired 348 vehicles at a rate of K£350 per private vehicle for which the cost would have been K£609,000 instead of what was paid. ▪ It is not clear what role the Contractor played as the DEC had already identified the vehicles for hire. ▪ Records show there were a total of 267 polling stations, none of which records allocation of vehicles. ▪ It was therefore not possible to ascertain whether the 348 vehicles hired were required or whether all of them were actually hired and performed election duties as claimed. 	Meru North
1998/99	8,330,000	<p>Paid to 6 contractors.</p> <ul style="list-style-type: none"> ▪ Irregular and doubtful hire of motor vehicles for the 1997 General Elections. ▪ 62 vehicles were missing from the allocation list for private motor vehicles. ▪ Motor vehicles were hired for 10 to 60 days and yet the general elections took only 2 days. ▪ LPOs to one of the suppliers of 17 vehicles were issued in February 1998 after the General Election. 	Garrisa
1998/99	16,156,000	<p>Hire of 176 vehicles from one supplier.</p> <ul style="list-style-type: none"> ▪ 84 vehicles hired for 10 days, 42 for 20 days, and 7 for 41 days at a rate of K£350 per day per vehicle. ▪ The general elections took only two days but the vehicles were hired for between 7 to 47 days. ▪ Lists of allocation of the vehicles to the polling stations were not available. No records to show vehicles were actually used during the general elections exercise. 	Mandera
1998/99	2,834,000	<p>Excessive hire of vehicles. 42 motor vehicles were hired for the General Elections. The vehicles were 15 to 25 ton trucks hired at between K£950 to K£1,100 per day for three days each. It is not clear what the trucks were used for or how the rates were arrived at. The amount could therefore not be confirmed as a proper charge to public funds.</p>	Bungoma
1998/99	861,000	<p>Irregular and doubtful hire of 6 private vehicles for the elections. Motor vehicles were hired through a Local Service Order dated February 1998, long after the general elections ended in December, 1997. The vehicles hired included a government vehicle for which K£3,500 was paid.</p>	Wajir
1998/99	289,000	<p>Hire of vehicles for the elections. The vehicles were hired in March 1998 for 40 days long after the general elections were concluded. The authenticity of the expenditure as a public fund could not be confirmed.</p>	Wajir

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1998/99	637,000	Irregular and wasteful expenditure of hire of vehicles for the elections. The amount was paid to a public servant for the use of a private vehicle for 28 days plus an additional, unspecified number of days. The DEC had already been assigned a government vehicle.	Kuria
2002/2003	1,624,800	Irregular hire of vehicles. Three firms were paid to provide vehicles for the elections. Allocation lists were not available and it was therefore impossible to confirm if and where the vehicles were used.	Mombasa
2002/2003	430,000	Irregular hire of vehicles. One of the firms was paid KES 430,000 for hire of 4 saloon cars from 2-26 November even before the District Tender Committee evaluated the tenders. Although payment was supported with a LSO, the original, duplicate and triplicate of the LSO were still intact in the book. It was therefore not possible to ascertain the propriety of the expenditure.	Mombasa
2002/2003	344,000	Hire of vehicles by the DEC. 4 motor vehicles were hired for 20 days at a rate of KES 4,300 a day. The Commission had instructed the DEC to draw up plans for effective use of transport facilities provided and this was not done. It is therefore not possible to confirm whether the vehicles were used for the voter registration exercise.	Mombasa
2002/2003	965,000	Hire of vehicles by DEC for 2002 elections. Payment vouchers and supporting documents revealed that the contracted individuals were civil servants working at the District Headquarters and a relative of the Chairman of the Kilifi District Tender Committee. Also, there were no copies of insurance certificates, logbooks, work tickets or an allocation list to show if and where the vehicles were used.	Kilifi
2002/2003	2,080,500	Hire of vehicles by DEC for 2002 elections. <ul style="list-style-type: none"> ▪ KES 273,000 was paid for the hire of 2 Land Rovers and a lorry for 2 days. No work ticket was available to establish use of the vehicle. Also, there were no records to show how the vehicles were procured. ▪ KES 825,000 was used to hire of 2 vehicles at a rate of KES 15,000 per day. The work ticket showed that some days were paid twice or thrice for both vehicles e.g. 21-20 December and 28-30 December. ▪ KES 294,000 was paid to transport election materials from Lamu to Nairobi for warehousing. It was not possible to establish why it was necessary to make three trips to Nairobi. ▪ KES 400,000 was paid for hire of vehicles and boats. No records were made available for the audit review and it not be established if the services were actually rendered. 	Lamu
1997/98	534,420	Repair of government vehicles. Out of this figure, K£14,818-05 was paid to a garage for motor vehicle repair ostensibly carried out in FY 1992/93. The balance was also paid without issuing an LSO. Thus the propriety of the expenditure could not be confirmed.	Kwale

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1997/98	4,235,020	Repair of vehicles. No records were produced to confirm that the repairs were actually done.	Taita Taveta
1997/98	1,025,940	Doubtful repair of 4 government vehicles during voter registration. LSOs and quotations were raised after the invoice and mechanical inspection reports had been submitted. The vehicle tickets also showed that the vehicles were on the road throughout the period of the registration of voters with no indication that they were ever taken to the garages during the periods the repairs were purportedly carried out.	Kwale
1997/98	1,469,260	Irregular repair of government vehicles. There were no motor vehicle inspection reports indicating the defects to be repaired and the estimated cost. The repairs were carried out at local garages in Kilgoris.	Trans Mara
1997/98	741,320	Purchase of spare parts. Paid to two firms based in Hola. There were no records to show that the spares were received in the stores. It was not possible to establish the identity of the mechanics/companies that fitted the spares and how the spares were issued to them. Since the purchase was generalized, it could not be established which spare parts were fitted to which vehicles. Mechanical inspection reports indicating the necessity of the spares were not available. Further, there was no evidence that the vehicles were actually used for election purposes.	Tana River
1997/98	117,380	Paid to a firm in Hola as payment for repairing a government vehicle. A copy of an invoice from another firm was used as proof of purchases of parts worth K£4,500-00. it could not be established if the spares were accounted for and how the two firms were identified. Further, no mechanical report was produced as evidence of need to carry out repairs.	Tana River
1997/98	89,900	Repair of 3 vehicles Repair of Motor vehicle. The DEC used cash receipts to claim the amount. It could however not be established if these vehicles were actually used for the General Election.	Tana River
1998/99	134,660	Irregular repair of government vehicles used in 1997 elections. The order for repair for one of the vehicles was issued in March 1998 and inspection carried out the same day. The invoice was raised in April 1998. It is not clear why the expenditure was classed as an election cost yet all the documentation was done well after the elections.	HQ
1998/99	352,100	Repair of motor vehicles and purchase of spare parts. There were no mechanical and transport engineers inspection reports showing what repairs were to be carried out on each government vehicle. Further, copies of the logbooks were not attached to support the payments.	HQ
1998/99	224,000	Repair of 3 government vehicles. Vouchers were not supported and the LSO quoted was tampered with by way of inserting the payee's name in place of the original payee whose name was rubbed out. The original LSOs which could have been used to confirm the propriety of the expenditure were not made available for audit verification. It is doubtful that the expenditure was a proper charge to public funds.	HQ

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1998/99	240,900	Irregular and doubtful expenditure on repair of motor vehicles. The official was issued with an imprest for repairs of motor vehicles in contradiction of financial regulations which would have required the contractor to be paid by cheque. There were no records to show that the vehicles were repaired and the imprest was never surrendered.	Garrisa
1998/99	354,000	Doubtful repair of government vehicles. This amount was spent in December 1997 and January 1998 to repair government vehicles used during the general elections. There were no records to show that the vehicles were repaired.	Kuria
1998/99	854,220	Doubtful purchase of fuel and motor vehicle repairs. - There were no records to show that the vehicles were repaired or fuelled.	Hola
1999/2000	402,500	Repair of motor vehicles and purchase of parts. There were no records to show that the vehicles were repaired or that the parts (namely batteries, tyres and tubes) had been purchased.	Police Department
2002/2003	1,007,705	Doubtful repair of government vehicles during the general elections. Review of documents show that quotations for the jobs were opened by the staff at the district office without involving the District Supplies Officer. LSOs were issued before the quotations were opened and in some cases the invoices were raised on the same date as the LSO raising the question of when the works or repairs being paid for were actually carried out.	Kirinyaga
TOTAL	119,501,805		

4. IRREGULARITIES IN PROCUREMENT OF SPARES, FUEL AND OTHER STORES

1997/98	377,120	Paid for supply of 334 polling booths at K£49 per booth. No competitive bids were invited for the procurement of the booths	Trans Mara
1997/98	687,300	Construction and transportation of 374 polling booths each at K£72-10-00. There was no record of how the contract was awarded and no evidence of delivery and receipt of the booths at the polling station. Construction and transportation costs were not separated and the certificate of receipt was not completed. It was therefore not possible to confirm that the booths were actually provided and distributed to the required locations.	Tana River

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1998/99	2,036,000	Doubtful procurement of 381 polling booths for the 1997 elections. 150 booths were ordered from one supplier at K£270 and 231 were ordered from another supplier at K£265. Both orders were placed on January 5 and 6 1998, while the elections took place on 29 and 30 December, 1997. There were no records on how booths were allocated, whether they were received and how they were disposed of having been ordered after the elections. It was not possible to confirm that expenditure was properly incurred and chargeable to public funds.	Mandera
2002/2003	946,200	Over-expenditure for polling booths. The requested for money was made long after the award of the tender by the District Tender Committee and after the elections had taken place. The amounts requested exceeded the budget and the explanation given was there was no cheaper supplier. It is therefore not clear how the contracts were awarded. Also, no store records were maintained to verify if the booths were received and distributed to various polling stations.	Mombasa
2002/2003	558,900	Procurement of polling booths paid to 2 firms on 16 December 2003. This was an advance payment for supply of polling booths. No explanation was given for the advance payment.	Meru Central
1997/98	873,840	Fuel for government vehicles. Details of the vehicles which were fuelled were not available and it was therefore not possible to confirm the propriety of the expenditure.	Taita Taveta
1997/98	159,740	Fuel not accounted for. A supplier was paid for the supply of 4,340.30 litres of premium petrol during the voter registration exercise. However, there was no fuel register, delivery notes or detail orders to confirm if the fuel was received and issued to the government vehicles.	Kwale
1997/98	368,660	Payment for the supply of 40 tyres and 18 tubes for government vehicles during the 1997 elections. Vehicles fitted with tyres and tubes were not identified and it was not therefore possible to confirm that the expenditure was a proper charge to public funds.	Kwale
1997/98	1,237,140	Purchase of Fuel. Fuel was purchased at a petrol station between June 1997 and December 1997. Records relating to these purchases were only maintained at the petrol station and it was therefore not possible to confirm that the fuel was used for the intended purposes.	Trans Mara
1997/98	2,685,180	Payment for fuel. A firm was purportedly paid to supply fuel, lubricants, a battery and tubes during the voter's registration exercise. No detail orders, delivery notes or lists of the vehicles which drew the fuel or were fitted with the tyres and a battery were available. The expenditure was incurred notwithstanding the fact that K£275,000 was supposedly spent on the hire of motor vehicles for use in the same voter registration exercise.	Mwingi
1998/99	449,980	Unaccounted for fuel. 11,764 litres of regular fuel was purchased for use during the voter registration exercise. Fuel was paid for on the basis of proforma invoices. There was no indication that the fuel was delivered or used for the intended purpose.	Teso

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1998/99	89,140	Undelivered fuel. K£6,741-10-00 was paid for supply of 3,940.98 litres of premium petrol. Only 1,277 litres worth K£2,144-00-35 was delivered. The balance of 2,663.98 litres worth K£4,457-17-10 was unaccounted for and never delivered.	Kwale
1998/99	750,000	Undelivered fuel. A service station in Kerugoya was paid in January 1998 to deliver 20,000 litres of fuel. There was no evidence that the fuel was delivered at the election coordinator's office or drawn by vehicles used in the election.	Kirinyaga
1999/2000	4,860	Unaccounted for fuel. Work tickets for the vehicles which drew the fuel were not available for audit verification.	Taita Taveta
2002/2003	216,000	Unaccounted for goods. – KES 196,000 paid for fuel and KES 20,000 for 4 batteries. No motor vehicle work tickets or detailed orders were available for auditing. There was no record of the motor vehicles to which they were issued.	Lamu
2003/04	1,000,000	Fuel not supplied	HQ
1997/98	3,256,960	Purchase of spare parts for various government vehicles for the 1997 elections. There were no store records showing the receipt and issue of the items and it was therefore not possible to verify the vehicles to which the spares were fitted.	Taita Taveta
1997/98	1,443,260	Unaccounted for vehicle spare parts. There were no records showing receipt and use of the items for audit verification and it was therefore not possible to confirm the authenticity of the expenditure	Kwale
1997/98	36,500	Spare parts for government vehicle. The certificate of payment signed by the District Accountant indicated that the vehicle broke down in Garissa. There was no evidence that the vehicle was on election duties at the time and no indication on how spares were received and fitted to the vehicle.	Tana River
1998/99	1,981,480	Doubtful procurement of spare parts for use during the 1997 elections. There were no records to confirm that the tyres and spares were supplied and fitted on the government vehicles. The order was made in January 27, 1998 after the general elections that took place in December 1997.	Mandera
1998/99	3,271,900	Doubtful procurement of spare parts. Payments made in January 1998 but there was no record the spare parts were received and fitted into government vehicles.	Wajir
1998/99	1,024,860	Payment for services not rendered. purchase of motor vehicle spare parts, fuel, hire of boats and motor vehicles during registration-no evidence that fuel/spare parts was supplied	Lamu
1998/99	1,246,940	Doubtful repair of government vehicles during the registration exercise. The repairs not recorded in the log books and there was no evidence to show that the spares were fitted into government vehicles.	Teso

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1999/2000	16,900,000	Irregular procurement of spares. According to instructions issued for purchase of spares and overhaul of vehicles during the general elections, imprest cheques paid to OCPDs were to be deposited with the District Treasuries and the money spent following the normal government procurement procedures. However, cheques were cashed by the OCPDs and the money supposedly spent on repairs without indicating how the service providers were identified or how cost was determined. Purchases were also made in cash. It was therefore not possible to establish value for money in use of the funds.	Police Department
2002/2003	230,589	Doubtful procurement of spares and repairs. The respective motor vehicle logbook and work tickets were not available for auditing. The authenticity of the expenditure could not be established.	Tana River
1998/99	5,238,160	Doubtful expenditure for purchase of stores for 1997 elections. K£21,012-10-00 was spent on electrical equipment, K£22,320-00-00 for polythene sheets, K£42,950-00-00 for timber, K£166,600-00-00 for polling booths, K£3,481-00 for spare parts, and K£5,024-15-00 for stationery. Tenders were not invited to ensure that procurement was made for the lowest bidder and all LPOs, except for spare parts and stationery, were issued after the elections. There were no stores records showing the receipt and distribution of equipment and materials to the respective polling stations.	Garrisa
1998/99	390,600	Undelivered Polythene Sheets. K£22,594-01-00 was paid for 177 rolls of polythene at a cost of K£127-13-00 per roll but only 24 rolls worth K£3,063-12-00 were received.	Garrisa
1998/99	539,400	Overpayment for polythene sheets. A supplier was paid K£26,970 at a rate of K£ 127-13-00 per polythene roll resulting in an overpayment of K£23,268-07-00.	Garrisa
2004/05	797,952	Fuel supplies. A vendor - the second lowest bidder - stopped supplying fuel, by which time ECK had a balance of undelivered petrol worth 797,952	
TOTAL	48,798,661		

5. OUTSTANDING IMPRESTS

1997/98	809,820	No satisfactory explanation given for the delay in surrendering these imprests.	HQ
1998/99	1,869,120	Issued to various officers on diverse dates in 1997/98 and earlier years and were not accounted for by June 1999 as required.	HQ
2002/2003	459,000	Un-surrendered imprest. An officer in Mombasa was given KES 3,000,000 in December 2000 for payment of meal allowances to election officials. The officer surrendered KES 2,541,000 through various payment vouchers leaving a balance of KES 459,000.00 outstanding. The balance was not recovered and there was no evidence of action taken to recover the balance.	Mombasa
2003/04	708,058	Imprests due from staff by 30 June 2004 were not paid by the time of audit. No explanation was given.	HQ
TOTAL	3,845,998		

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

6. UNSUPPORTED EXPENDITURE

1997/98	19,148,920	Un-vouched for expenditure by the DEC.	Kwale
1997/98	3,239,820	Un-vouched for expenditure	Rachuonyo
1998/99	546,680	Insurance premiums for fire and burglary. The list and values of the assets insured were not made available for review and it has not therefore been possible to ascertain the propriety of the expenditure.	HQ
1999/2000	14,465,800	Advanced to police department for security allowances, fuel and vehicle repairs. There were no documents supporting expenditure.	Police Department
2002/2003	25,902	Unsupported expenditure was entered in a cash book maintained at the District Treasury. It was not possible to ascertain the propriety of the expenditure or confirm it was a proper charge to public funds	Mombasa
2002/2003	567,715	It was not possible to establish the nature of the payments as there were no supporting documents.	Tana River
2002/2003	17,750,526	Missing cash and payment vouchers worth KES 16,760,000. Payments were entered in the cash book and vote book, but no payment vouchers and supporting documents were produced for audit review. Cash book as at 30 June 2003 showed a balance of KES 371,690 but no physical balance of cash was produced for audit count. Cheque payments amounting to KES 618,836.00 were made without payment vouchers and were not recorded in cash book.	Nakuru
TOTAL	55,745,363		

7. OTHER IRREGULAR AND WASTEFUL EXPENDITURE

1997/98	613,000	K£30,650 for construction of the District Coordination office block. It could not be established how the contractor was identified and awarded a contract for which he had not applied or quoted for while four other contractors had presented quotations. LPOs/LPOs and the invoices were issued, the voucher processed and payments effected on the same day (at the end of the fiscal year). The work was not done and the transactions were done to ostensibly clear the unspent funds before closure of financial year. In response to audit query the DEC blamed the then DEC for the apparent misappropriation of public funds. No action was taken against the officer.	Mwingi
---------	---------	---	--------

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

1997/98	6,480,000	Procurement of 60 portable generators for lamination of voters' cards. Only 30 generators were delivered as at July, 1997. The remaining 30 generators delivered were of the wrong specifications. There was no evaluation of the substitute generators by the technical Committee of the Ministry of Works and no explanation for the substitution. Out of the 60 generators bought for use in 18 districts during the election, only 4 were issued leaving a balance of 56 as stock in store.	HQ
1998/99	75,000	Compensation for damages to Kisumu County Council during the 1997 elections. The payment was made on the strength of the letter from the County Council who carried out their own assessment of damages caused during the election, without independent corroborative assessment. The propriety of the expenditure could not be confirmed.	HQ
1998/99	269,000,000	General election Expenses on security. Money was spent through the police department for provision of security during the 1997 elections. Poor management of funds was noted resulting in irregular payments and waste.	HQ
2002/2003	5,052,494	Excluded expenditure from appropriation account in 13 districts. No explanation was given this exclusion from the account for 2002/2003	HQ
1997/98	109,000	Failure to remit deposits from prospective candidates to the exchequer.	Kwale
1998/99	215,000	Misuse of revenue collected as nomination fees in 4 constituencies. The amount was not surrendered to District Treasury for safe custody as required by Financial Regulations and Procedures. Instead, the money was loaned to seven election officials in sums ranging from K£500-00 to K£3,650-00 while K£100-00 was apparently used to pay casuals. No satisfactory explanation was given for the misuse of revenue and the money was not recovered from officials or surrendered to District Treasury.	Garrisa
2002/2003	16,000	Unaccounted for revenue. Miscellaneous receipts for purchase of tender documents were issued but not entered in the cash book or revenue surrendered to the headquarters. The amount was therefore not accounted for and no explanation was given for the anomaly.	Kirinyaga
2006/07	40,705,086	Excess AiA relating to 2005/06 and earlier years. Failure to remit to the exchequer as required	
TOTAL	322,265,580		
GRAND TOTAL	657,273,917		

CAG QUERIES ON THE ECK: 1997/8 – 2006/7

SUMMARY OF AUDIT QUERIES DURING SAMUEL KIVUITU'S TENURE AS CHAIRPERSON OF THE ECK (1997-2007)

	CATEGORY	AMOUNT (KES)		
		1992-2007	1997-2007	Percentage
1	Commissioners - Irregular Payments	219,482,556	61,212,000	28%
2	Irregular Allowances to Security Personnel and other Public Servants	69,527,050	45,904,510	66%
3	Doubtful Hire and Repair of Vehicles	119,501,805	119,501,805	100%
4	Irregularities in Procurement of Spares, Fuel and other Stores	52,141,281	48,798,661	93%
5	Outstanding Imprest	8,378,478	3,845,998	46%
6	Unauthorised Over-expenditure	868,831,740	-	
7	Unsupported Expenditure	263,404,463	55,745,363	21%
8	Other Irregular and Wasteful Expenditure	332,445,600	322,265,580	97%
	TOTAL	1,933,712,973	657,273,917	34%

*Kindly note that the above analysis/computation does not contain figures for the period 2007/2008 financial year

OBSERVATIONS

- Between 1991/92 and 2006/07, the CAG took issue with how the Commission spent over KES 1.933 billion.
- KShs. 657,273,917 (34%) was queried during Samuel Kivuitu's tenure as the ECK Chair.
- The most questionable area of spending was in the Hire and Repair of Vehicles.



Permanent Civic Vigilance

WHO WE ARE

AfriCOG is a civil society organisation dedicated to addressing the structural causes of corruption in Kenya. It seeks to rebuild and entrench the anti-corruption and pro-reform coalition which remains under serious strain, given uneven progress and setbacks to reforms since 2002.

AfriCOG would like to thank the following for their support:

Department for International Development (DfID); Open Society Initiative for East Africa (OSIEA); The Royal Finnish Embassy in Kenya; The Royal Netherlands Embassy in Kenya; Donor partners in the National Response Initiative (URAIA) and German Technical Cooperation (GTZ)

Free for all?

Misuse of funds at the Electoral Commission of Kenya

CONTACT INFORMATION

MAILING ADDRESS

P.O Box 18157-00100
Nairobi, Kenya.

TELEPHONE

+254 20 2723031

WEBSITE

www.africog.org

eMAIL

admin@africog.org

FAX

+ 254 20 2714675

MARCH 2009