

# THE MAIZE SCANDAL

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## Overview

The series of events leading up to the so called “maize scam” began in late 2008. At the time, the country was experiencing a severe maize shortage due to low yields and destruction of close to 3.5 million bags of maize during the post-election violence that also significantly reduced the area under production. The crisis was worsened by the high prices of farm inputs including fertilisers and fuel (diesel, petrol). The country’s Strategic Grain Reserve was 1.6 million bags below the required 4 million bags, which placed the country in a precarious position in the event of famine or any slight shortage.

The maize shortage resulted in an increase in the prices of maize flour and related products, which shot up from KSh48 for a 2 kilogram packet of flour to as high as KSh130. Under pressure from public protests, in October 2008, the Government responded with the following measures:

1. Directing the NCPB to import approximately 3 million bags of maize to ease the shortage.
2. Directing the NCPB to sell maize only to millers at a subsidised price of KSh1,750 per 90kg bag (NCPB was at the time selling maize at KSh1,910 per bag).
3. Launching a maize meal subsidy scheme with two different prices of KSh72 and 52 for the same amount of flour (2kg package). The lower-priced maize was intended for low income earners<sup>1</sup> and those most at risk of starvation. Under the scheme, selected millers<sup>2</sup> with substantial milling capacity were allowed exclusive access to subsidised maize allocations from the NCPB. In addition to buying maize at a subsidised price of KSh1,750 a bag, they received a fee of KSh200 to cover the cost of milling<sup>3</sup>. In return, the selected millers were to sell flour to consumers at a reduced price jointly set with the Government.

Under these measures, hundreds of metric tonnes of maize were imported into the country and allocated to millers. Contrary to intended policy expectations, allocations were made to companies and individuals, who in some instances, were not millers and had no milling premises or capacity. These individuals and companies subsequently sold the maize off to genuine millers and in the process made exorbitant profits<sup>4</sup>. There were some reports of at least one hundred thousand bags diverted in this way. This negatively affected the desired outcome of reducing prices.

1 Nation Team, 2009. Government to release 200,000 bags of maize *Daily Nation* [internet] 14th January. Available at: <http://www.nation.co.ke/News/-/1056/514898/-/u19rko/-/index.html> [Accessed on 17th December 2009]

2 David Okwembah, 2009. Mystery of 100,000 missing bags of maize. *Daily Nation* [internet] 3rd January. Available at: <http://www.nation.co.ke/News/-/1056/510274/-/u16ujd/-/index.html> [Accessed on 17th December 2009]. Eight millers were contracted by the Government were; Pembe Millers, Mombasa Millers, Chania Millers, Capwell Industries, Unga Group of Companies, Uzuri Foods Ltd., Kabansora Millers and Nairobi Flour Millers.

3 Ibid

4 Bernard Namunane, 2009. Maize scandal:briefcase agents profit, *Daily Nation* [internet] 5th February. Available at: <http://www.nation.co.ke/News/-/1056/525430/-/u1vwhs/-/index.html> [Accessed on 17th December 2009]

Consequently, allegations of impropriety, corruption and mismanagement implicating several personalities and government departments were made in Parliament and in the dailies. These allegations exposed underlying

institutional and governance weaknesses not only in the maize sector and agricultural policy, but also in government disaster preparedness and the country's overall food security.

## Background

Maize is Kenya's staple food and an important source of nutrition for a large proportion of the population in both rural and urban areas. Maize consumption is estimated at 98 kilograms per person per year, which translates to a total of roughly 30 to 34 million bags (2.7 to 3.1 million metric tons). However, national maize production has not kept pace with consumption.

Over time, food imports and aid have bridged the gap with trends showing a strong tendency towards increased dependence on imports<sup>5</sup>. Kenya has been importing maize from Uganda and Tanzania in addition to large offshore imports from as far away as South Africa, the US, Brazil and Argentina<sup>6</sup>. At the same time, because maize is produced in surplus mainly in

parts of the Rift Valley and Western Provinces and distributed to other parts of the country which are experiencing deficits, there have been cases where, due to administrative difficulties in handling operations in the food distribution and food security sectors, famine is experienced in these deficit areas while the rest of the country has a surplus.

These issues, coupled with the growing reliance on imports of maize to bridge seasonal supply shortages, point to lack of a clear and effective framework to govern the sector.

The result is a history of erratic supply of maize which, every time it happens, seems to open the door to speculative behaviour for various actors including unscrupulous middlemen.

5 <http://www.fao.org/es/esc/common/ecg/412/en/countries7kenya.pdf>

6 Nyoro J.K, Mary W Kiiru and T.S Jayne. 1999. Evolution of Kenya's Maize Marketing systems in the Post Liberalization Era: Tegemeo Institute/Egerton University

- 7 Heike Hoeffler and Booker Owuor, 2009. *High commodity prices – who gets the Money*. Available at: <http://www.boell.de/navigation/africa-6460.html>. [Accessed on 17th December 2009]
- 8 <http://www.opec.org/library/Annual%20Statistical%20Bulletin/pdf/ASB2008.pdf>
- 9 Kaburu Mugambi 2008. Relax maize import rules, say traders. *Daily Nation* [internet] 1st September. Available at: <http://www.nation.co.ke/business/news/-/1006/466376/-/jyt3tz/-/index.html>. [Accessed on 17th December 2009]
- 10 Nation Media Group, 2008. Kenya unit eases against the dollar on planned maize imports *Daily Nation* [internet] 28th November. Available at: <http://www.nation.co.ke/business/forex/-/1010/495928/-/114hbq5/-/index.html>. [Accessed on 17th December 2009]
- 11 David Okwembah, 2008. Raila team set to tackle food shortage. *Daily Nation* [internet] 29th November. Available at: <http://www.nation.co.ke/News/-/1056/496400/-/tm5n9r/-/index.html>. [Accessed on 17th December 2009]
- 12 Muna Wahome, 2008. Why Kenyans are furious. *Daily Nation* [internet] 13th December. Available at: <http://www.nation.co.ke/News/-/1056/501896/-/item/0/-/kw138mz/-/index.html>. [Accessed on 17th December 2009]
- 13 Samwel Kumba, 2008. Farmers hoard maize over lower prices. *Daily Nation* [internet] 17th December. Available at: <http://www.nation.co.ke/News/-/1056/503656/-/u0mhoo/-/index.html>. [Accessed on 17th December 2009]
- 14 David Okwembah, 2009. Mystery of 100,000 missing bags of maize. *Daily Nation* [internet] 3rd January. Available at: <http://www.nation.co.ke/News/-/1056/510274/-/u16ujd/-/index.html>. [Accessed on 17th December 2009].
- 15 Nation Media Group, 2009. State of emergency as hunger looms. *Daily Nation* [internet] 9th January. Available at: <http://www.nation.co.ke/News/-/1056/512778/-/u18d44/-/index.html>. [Accessed on 17th December 2009]
- 16 Oliver Mathenge, 2009. Maize chiefs sacked as food crisis drags on. *Daily Nation* [internet] 26th January. Available at: <http://www.nation.co.ke/News/-/1056/520402/-/u1sftc/-/index.html>. [Accessed on 17th December 2009]
- 17 Nation Team, 2009. Government to release 200,000 bags of maize. *Daily Nation* [internet] 14th January. Available at: <http://www.nation.co.ke/News/-/1056/514898/-/u19rko/-/index.html>. [Accessed on 17th December 2009]
- 18 David Okwembah and Noah Chepleon, 2009. Revealed: 150 Million Maize Scandal. *Daily Nation* [internet] 10th January. Available at: <http://www.nation.co.ke/News/-/1056/513142/-/u18wmp/-/index.html>. [Accessed on 17th December 2009]
- 19 Lucas Barasa, 2009. MP's Admit buying maize from the board. *Daily Nation* [internet] 9th February. Available at: <http://www.nation.co.ke/News/-/1056/527078/-/item/1/-/we2pg2z/-/index.html>. [Accessed on 17th December 2009]
- 20 Alphonse Shiundu, 2009. Raila orders cereals board audit. *Daily Nation* [internet] 9th February. Available at: <http://www.nation.co.ke/News/-/1056/527064/-/item/0/-/gr7acl/-/index.html>. [Accessed on 17th December 2009]

## The maize scandal: timeline of events

Date	Event
Early 2008	Maize yields and stocks significantly low due to the destruction of close to 3.5 million bags of maize during the post-election violence, which also reduced the area under maize production by 30 percent.
Early 2008	Kenya experienced unprecedented high fertiliser price rates which rose from KSh2,500 for a 50kg bag of Diammonium Phosphate (DAP) to KSh6,000.
July 2008 - June 2009	The estimated shortfall in maize production over the period hits 11.5 Million bags <sup>7</sup> .
June 2008	High cost of petrol internationally results in high costs of transport and inputs <sup>8</sup> , in turn causing the price of maize and related products to shoot up from KSh48 for a 2 kilogram packet of flour to a high of KSh130.
September 2008	Grain millers and traders ask the Government to ease grain importation rules and taxes so as to bring down food prices <sup>9</sup> .
November 2008	Cabinet approves the importation of 5 million bags of maize to mitigate the looming crisis. The first consignment arrives in Mombasa in October 2008. The maize originates from South Africa and the US <sup>10</sup> .
	Allegations about possible shoddy dealings in the handling of maize start to emerge as a cabinet committee headed by the Prime Minister launches investigations <sup>11</sup> .
December 2008	The Government designs a plan to supply cheap maize flour but the plan runs into trouble amid allegations of corruption <sup>12</sup> .
	Media reports reveal that farmers are hoarding maize in a protest against the Government's decision to fix the price of the crop at a much lower rate than what is paid for imports. The Government was paying about KSh3,000 for every sack of imported maize but paid KSh1,950 to local farmers for the same quantity of the grain <sup>13</sup> .
January 2009	Newspaper reports allege the loss of 100,000 bags of maize. The Cereal Millers Association (CMA) spokesperson claims that only 40,000 bags of the 144,000 bags of maize set aside by the National Cereals and Produce Board (NCPB) had reached its members and queries the destination of the other 100,000 bags <sup>14</sup> .
	The grain shortage reaches emergency levels as over 10 million people are reported to be facing starvation <sup>15</sup> .
	The Government waives duty on imported maize as five out of six managers of the NCPB are sacked by Agriculture Minister William Ruto over allegations of corruption <sup>16</sup> .
February 2009	Special programmes Permanent secretary Ali Mohamed announces that the Government is set to release 200,000 bags of maize to the famine relief programme from the Strategic Grain Reserve (SGR) <sup>17</sup> .
	Trustees of the SGR authorise allocations to millers reducing its stocks to levels far below the required 4 million bags, and exposing the country to severe famine in case of any shortfalls in production <sup>18</sup> .
	Following press reports, MPs admit to buying maize from the NCPB as well as writing letters requesting for allocations to individuals known to them. Some of the MPs claimed that they requested for the allocations after hearing that their colleagues were doing the same <sup>19</sup> .
	Prime Minister Raila Odinga orders a forensic audit of the National Cereals and Produce Board to establish the magnitude of the maize scandal <sup>20</sup> .
	Agriculture Minister William Ruto survives a censure motion in Parliament over his alleged role in the maize scam <sup>21</sup> .
March 2009	Maize imported by the Government continues to arrive at the port of Mombasa <sup>22</sup> .
April 2009	Parliament's Departmental Committee on Agriculture, Lands and Natural Resources calls for investigations to be carried out on the alleged role played by the Prime Minister's family in the maize scandal <sup>23</sup> .
May 2009	Controversy emerges about the suitability of part of the imported maize for human consumption amidst revelations that 6,000 tonnes of imported maize is contaminated <sup>24</sup> .
	The Ministry of Public Health issues a public alert over the circulation of contaminated maize reported missing from the Grain Bulk Handlers Ltd store in Mombasa <sup>25</sup> .
	The condemned maize is reported to be intact at the Grain Bulk Handlers Ltd store in Mombasa <sup>26</sup> . It is also reported that tax payers will have to pay for the huge accrued storage bill totalling about Sh14 Million <sup>27</sup> .
	MPs absolve the Prime Minister, his family and his office from blame in the maize scandal by deleting clauses in the Departmental Committee on Agriculture, Lands and Natural Resources Report that had linked them to the scandal. The entire report is also rejected on grounds that it was "politically engineered" and was "absolutely clumsy" <sup>28</sup> .
June 2009	Government makes arrangements for the condemned maize to be shipped back to the country of origin <sup>29</sup> .

21 Anthony Kariuki, 2009. Ruto survives censure motion. *Daily Nation* [internet] 18th February. Available at: <http://www.nation.co.ke/News/politics/-/1064/531934/-/ygaxw3z/-/index.html> [Accessed on 17th December 2009]

22 Oliver Mathenge, 2009. Food prices to fall as imports arrive. *Daily Nation* [internet] 5th March. Available at: <http://www.nation.co.ke/News/-/1056/542402/-/u32w9b/-/index.html> [Accessed on 17th December 2009]

23 Oliver Mathenge and Caroline Wafula, 2009. Probe Raila's family over maize, say MPs. *Daily Nation* [internet] 30th April. Available at: <http://www.nation.co.ke/News/-/1056/592790/-/u650b6/-/index.html> [Accessed on 17th December 2009]

24 Mike Mwaniki and Gitonga Marete, 2009. Spoilt maize still held in silos at the port. *Daily Nation* [internet] 11th May. Available at: <http://www.nation.co.ke/News/-/1056/597098/-/u690f2/-/index.html> [Accessed on 17th December 2009]

25 <http://www.communication.go.ke/media.asp?id=857>

26 Gitonga Marete, 2009. Bad Maize still in safe custody. *Daily Nation* [internet] 12th May. Available at: <http://www.nation.co.ke/News/-/1056/597628/-/u694xl/-/index.html> [Accessed on 17th December 2009]

27 Johnstone Muthama, 2009. Kenyans will have to pay for the bad maize in the silos. *Daily Nation* [internet] 9th June. Available at: <http://www.nation.co.ke/oped/Opinion/-/440808/608654/-/4krtlg/-/index.html> [Accessed on 17th December 2009]

28 Njeri Rugene and Alphonse Shiundu, 2009. Raila cleared as House rejects report on KSh 3bn maize scandal. *Daily Nation* [internet] 15th May 2009. Available at: <http://www.nation.co.ke/News/-/1056/598472/-/u69rt4/-/index.html> [Accessed on 17th December 2009]

29 Gitonga Marete, 2009. Its back to SA for contaminated maize. *Daily Nation* [internet] 20th May. Available at: <http://www.nation.co.ke/Mombasa/-/519978/600482/-/n6xe8g/-/index.html> [Accessed on 17th December 2009]

# Government response to the crisis

With the shortage indisputable and faced with looming food riots, the Government designed a maize meal subsidy scheme in early 2009.

Under the scheme, the NCPB was directed to sell maize to millers only and at a subsidised price of KSh1,750 per 90kg bag (the NCPB was then selling maize at KSh1,910 per bag). The millers were also paid KSh200 per bag to cover milling costs. In turn, they were required to sell the flour at a manageable KSh72 for a 2kg packet, which was the price jointly set between the millers and the Government.

Under this arrangement, a dual price regime was created; two different prices of KSh72 and 52 were set for the same amount of flour (2kg package). The cheaper flour was destined for the poor and packed in 10kg gunny bags to be distributed through outlets located in poor urban areas, with the intention of rolling out this programme to other areas of the country. The more expensive maize meal was to be sold normally through commercial outlets.

In the end, the Government realised that the subsidy was not meeting its intended purpose of reducing the price of flour and ran out of finances for the scheme which eventually collapsed<sup>30</sup>.

## The Key Players

From the onset of the crisis in late 2008, many individuals and institutions have been mentioned in one way or another in connection

### The importation of maize – a rescue plan

In October 2008, maize was imported at KSh3,750 per 90 kilogram bag<sup>31</sup> but sold to millers under the arrangement discussed above at KSh1,750. No explanation has been given as to how the supply price of KSh3,750 was arrived at. Hon. Khalwale, during parliamentary debate, enquired if the high price could be attributed to the procurement method chosen, i.e. direct sourcing<sup>32</sup>.

An investigative report by Parliament's Departmental Committee on Agriculture Lands and Natural Resources questioned how the tendering for the imports was carried out and implicated the Chair of the Cabinet *ad-hoc* Committee on Food Security, Prime Minister Raila Odinga, and some members of his family in the irregular award of a tender<sup>33</sup>.

After expunging the adverse recommendation against the Prime Minister, his staff and family<sup>34</sup>, Parliament rejected on the grounds that it was "politically engineered" and "absolutely clumsy" instead imputing responsibility for the questionable tendering for importation to the NCPB as the lead government agency for managing all aspects of grain importations into the country.

with the saga. The following section analyses who is alleged to have done what and at which stage:

30 Lilian Mwendu and Rose Kamau, 2009. Cheap maize flour a pipe dream for starving millions, Kenya Broadcasting Corporation [internet] 11th February. Available at: <http://www.kbc.co.ke/story.asp?ID=55505>. [Accessed on 17th December 2009]

31 <http://www.bunge.go.ke/parliament/downloads/Tenth%20Parl%201st%20Session/Hansard/18.02.09P.pdf> pg 24

32 Ibid

33 Njeri Rugene and Alphonse Shiundu, 2009. Raila cleared as house rejects report on 3bn Maize scandal. Daily Nation [internet] 15th May. Available at: <http://www.nation.co.ke/News/-/1056/598472/-/u69rt4/-/index.html> [Accessed on 17th December 2009]. Also available at: [http://www.bunge.go.ke/parliament/downloads/tenth\\_third\\_sess/hansard/14.05.09.pdf](http://www.bunge.go.ke/parliament/downloads/tenth_third_sess/hansard/14.05.09.pdf)

34 [http://www.bunge.go.ke/parliament/downloads/tenth\\_third\\_sess/hansard/14.05.09.pdf](http://www.bunge.go.ke/parliament/downloads/tenth_third_sess/hansard/14.05.09.pdf) at

## 1. The NCPB

The maize marketing system draws participants from both the private sector and the Government. The private sector is involved through traders at prices determined by market forces, while government participation is through the NCPB – a body corporate with a statutory mandate established pursuant to the NCPB Act<sup>35</sup>.

### *Who is on the Board?*

The NCPB is set up as a Board whose members are government appointees. Permanent Secretaries in the ministries of Finance, Special Programmes and Agriculture are automatically members of the Board. Others include a chairman appointed by the President; two persons who are maize growers appointed by the Minister; one person who is a wheat grower appointed by the Minister; two persons appointed by the Minister of whom one shall represent consumers' interests and other millers' interests; and one person nominated by the Kenya Grain Growers Co-operative Union Limited (KGGCU) and appointed by the Minister.

### *Powers of the NCPB and the role of the Government*

The NCPB's regulatory functions relate to its role in fixing the price of buying and selling maize in case of either shortage or flooding of markets, hence the term "buyer and seller of the last resort". The NCPB determines market prices of maize by intervening to buy on behalf of Government in times of surplus and selling when supply is low. Previously, the NCPB was mandated to register millers, and, until 1988 when the Government lifted restrictions on maize trade, only millers registered with the NCPB were allowed to buy maize from the Board. With liberalisation of the sector, any

interested buyer could acquire maize from the NCPB. In 2006, the provisions in the NCPB Act requiring millers to be registered with the Board were finally repealed<sup>36</sup>. Even so, the Minister for Agriculture still retains the powers to restrict who the NCPB can sell maize to during times of shortage and limit importation and exportation of maize and other scheduled agricultural produce<sup>37</sup>. Therefore the Government retains extensive discretionary powers over the NCPB and, along with that, the maize sector.

### *Top management implicated*

The top management of the NCPB, led by its Managing Director Prof. Gideon Misoi, was named by Parliament's Departmental committee on Agriculture, Livestock and Co-operatives as culpable in the irregular importation of maize<sup>38</sup>. In addition, further allegations of impropriety were that some allocations of maize to entities/ individuals might have been done contrary to government policy at the time of allocating to millers according to their capacity. The Agriculture Minister however claimed that no law was broken in the allocations<sup>39</sup>.

#### **NCPB STATUTORY MANDATE**

1. Regulate the grain sub-sector
2. Perform certain social duties on behalf of the Government
3. Commercial trading in grain buyer and seller of last resort. leases out stores at commercial rates and provides services such as warehousing, drying, pest control, weighing, quality testing and clearing and forwarding, procuring, storing
4. Maintain the Strategic Grain Reserve (SGR), subsidised agricultural inputs (including fertilisers and agro-chemicals) and stocks meant for emergency relief aid. Trustee of the strategic grain reserve
5. Maintain and store subsidised agricultural inputs (including fertilisers and agro-chemicals) and stocks for emergency relief aid

<sup>35</sup> National Produce and Cereals Board Act, Section 3.

<sup>36</sup> Section 68 of Act. No. 17 of 2006.

<sup>37</sup> National Cereals and Produce Act, Section 18.

<sup>38</sup> Hansard of May 14th 2009 available at [http://www.bunge.go.ke/parliament/downloads/tenth\\_third\\_sess/hansard/14.05.09.pdf](http://www.bunge.go.ke/parliament/downloads/tenth_third_sess/hansard/14.05.09.pdf)

<sup>39</sup> Njonjo Kihuria, 2009. No point in reviewing law on maize reserves. *Daily Nation* [internet] 7th February. Available at: <http://www.nation.co.ke/News/-/1056/526272/-/u1wkc/-/index.html>. [Accessed on 17th December 2009]



## 2. Hon. William Ruto - Minister for Agriculture

Hon. William Ruto, the Minister for Agriculture, came under fire in Parliament for his purported role in the scandal<sup>40</sup>

- Hon. Bonny Khalwale MP accused Hon. Ruto of flouting the Public Officer Ethics Act (POEA) by disregarding its provisions, in particular, Sections 12(4)C, 12(4)D, 17 and 19 and related regulations in the discharge of his duties. In one particular instance, he is alleged to have supported a company he was associated with to receive a contract to supply the NCPB with gunny bags. Mr. Silas Simotwo, Managing Director of African Merchant Assurance Company (AMACO) had attempted to use his connection with the Minister to secure the contract<sup>41</sup>. While Ruto admitted to being a shareholder of AMACO, he denied that the company actually tendered for the contract and that ten foreign firms had tendered for the supply of the gunny bags<sup>42</sup>.
- Khalwale also pointed out that Hon. Ruto had appointed Mr. Mohammed Ali, Managing Director of Mombasa Millers - the country's largest miller, to the NCPB Board<sup>43</sup>. Even though the NCPB Act allows NCPB directors to be drawn from millers, given that Mombasa Millers and its associated companies were the largest beneficiaries of NCPB maize allocations, it at the very least raises issues of possible conflict of interest.
- While Hon. Ruto outlined remedial actions his ministry had taken, including duty

waivers for maize importation, meeting with millers to urge them to reduce prices and his plans for the next crop, failure of these measures to bring down the prices of flour drew wide criticism against the Minister<sup>44</sup>.

- The Minister, when questioned, allegedly quoted the NCPB Act insisting that no provisions of the law had been broken<sup>45</sup>.

## 3. Politicians and Public servants

About 15 members of the current Parliament, some of them ministers and senior government officials, were implicated as having written letters to the NCPB to allocate maize to their associates, friends or constituents. Some of them, including Hon. Henry Kosgei (Minister for Industrialisation), Dr. Kilemi Mwiria (Assistant Minister for High Education Science and Technology), Hon. Kareke Mbiuki (Assistant Minister for Agriculture, Hon. Emilio Kathuri, Hon. Isaac Ruto, and Hon. Gitobu Imanyara) have since been questioned by the KACC<sup>46</sup>.

Dr. Mohammed Isahakia, Permanent Secretary in the Office of the Prime Minister, was summoned to appear before the Public Accounts Committee (PAC) in relation to the scandal. The PS' name is mentioned in one letter by a Mr. Sakibu Misigo, a businessman who was seeking to purchase 50,000 bags<sup>47</sup>.

The introductory letters to NCPB were issued at a time the country was facing an acute shortage of maize. In copies of letters addressed to Prof. Misoi, MPs and senior government officials directly requested for favours in maize allocations.

40 Bernard Namunane, Njeri Rugene and Alphonse Shiundu, 2009. How Ruto survive the censure motion: Inside power politics. *Daily Nation* [internet] 18th February. Available at: <http://www.nation.co.ke/News/-/1056/532172/-/u2gb6t/-/index.html>. [Accessed on 17th December 2009]

41 Hansard of February 18th 2009 available at: <http://www.bunge.go.ke/parliament/downloads/Tenth%20Parl%201st%20Session/Hansard/18.02.09P.pdf>

42 Eric Shimoli And Lucas Barasa, 2009. Ruto on the spot over maize scandal. *Daily Nation* [internet] 5th February. Available at: <http://www.nation.co.ke/News/-/1056/525416/-/view/printVersion/-/13xyk5pz/-/index.html>. [Accessed on 17th December 2009]

43 Ibid.

44 Ibid.

45 Njonjo Kihuria, 2009. No point in reviewing law on maize reserves. *Daily Nation* [internet] 7th February. Available at: <http://www.nation.co.ke/News/-/1056/526272/-/u1wkcn/-/index.html>. [Accessed on 17th December 2009]

46 Many of them have sought to clear themselves of wrongdoing arguing that there is nothing wrong with writing notes requesting for assistance/favours for friends and acquaintances/constituents.

47 Lucianne Limo, 2009. Maize; how MPs sought supplies from cereal board. *The Standard Online* [internet] 11th February. Available at: <http://www.standardmedia.co.ke/InsidePage.php?id=1144006381&catid=4&a=1>

For instance, an MP wrote requesting Prof. Misoi to assist millers "...its directors are well known to me and have been doing business in my constituency..."

An Assistant Minister wrote to introduce a milling company saying "...who are both my constituents as well as my very reliable friends to secure the requested number of bags..."

It is quite telling that these letters were in some instances written seeking favours for personal friends, contrary to the POEA. Section 12 of the POEA prohibits public officers from using their office for personal gain, while Section 17 bars public officers from practicing nepotism or favouritism.

#### 4. The Millers

The milling sector is dominated by a few players and there are indications that collusive practices may have come into play especially when fixing flour prices during periods of grain shortage<sup>48</sup>. During the crisis, Mombasa Millers and its associated companies received the NCPB's biggest allocation. Mombasa Millers is the country's largest miller and dominates the grain business, being the largest buyer of local maize, owner of the largest milling plants in the country and proprietor of the biggest distributorships of maize meal. The diagram below illustrates the key millers and their milling capacity as of May 26, 2009<sup>49</sup>.

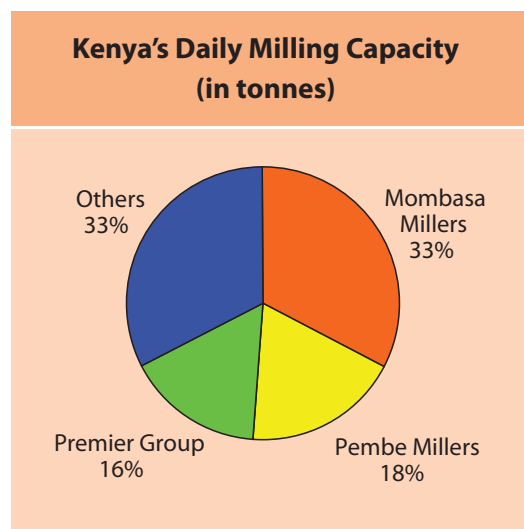
The current consumption of maize in the country is estimated to be 2.7 to 3.1 million metric tons. As the figure below illustrates, the market is rather tightly controlled with three millers controlling more than 67 percent of the market. This may undermine food security as the possibility of collusion between the players is heightened.

In addition to milling, the three are also importers and distributors and have almost complete control of the grain sector's supply chain.

#### 5. Grain Bulk Handlers Limited (GBHL)

Controversy in the maize importation saga also relates to the handling of bulk grain at the port of Mombasa. Grain Bulk Handlers Ltd (GBHL), whose eight-year monopoly in grain handling ended in February 2007, had their monopoly extended, sparking protests from consumers and investors<sup>50</sup>. The Government, through the Kenya Ports Authority, had invited tenders for a second operator but at the last minute the Prime Minister (on advice from the Ministry of Transport) controversially halted the process, citing need for further consultations with stakeholders on the premise that a second facility would undermine investor confidence.

While it may not be feasible at this point to establish specifically how the current operations of GBHL impact on consumer prices and how the monopoly is hurting the maize business, it is probable that inefficiency and



48 Gitonga Marete And Githua Kihara, 2009. Lobby accuses millers of running cartel. *Daily Nation* [internet] 4th May. Available at: <http://www.nation.co.ke/business/news/-/1006/593972/-/ix4ex1z/-/index.html>. [Accessed on 17th December 2009]

49 Kwendo Opanga, 2009. On the high cost of Unga look no further than the millers. *Daily Nation* [internet] 26th May. Available at: <http://www.nation.co.ke/oped/Opinion/-/440808/603344/-/4koamc/-/index.html>. [Accessed on 17th December 2009]

50 Gitonga Marete and Githua Kihara, 2009. Grain firms growth raises storm. *Daily Nation* [internet] 9th September. Available at: <http://www.nation.co.ke/News/-/1056/655582/-/umtat/-/index.html>. [Accessed on 17th December 2009]

high consumer prices can to a large extent be attributed to dominance by one firm. There have been complaints about the high charges for grain handling and the long duration that ships carrying relief food have to wait before being offloaded<sup>51</sup>. Once a ship is chartered to bring in maize to the port, it should come in, offload and be on its way back rapidly. Because Kenya only has one grain bulk handler, there is bound to be a long wait for the facility. This delay attracts demurrage costs which are borne by either the importer or GBHL and then passed on to consumers.

## 6. KACC

While this evidence against the NCPB management points to possible breaches of the POEA, it is strange that anti-corruption investigations initiated by the KACC were concluded without finding any wrongdoing, with the recommendation that the files be closed.

According to the KACC, it was not conclusively established that introductory notes issued by some MPs and PSs and actually led to the favours sought being granted. The investigations established that quite a number of the introductory letters were received by the NCPB after the trustees of the SGR had suspended the sale of the maize stock.

The findings were forwarded to the Attorney General on April 29, 2009 with the recommendation that the file be closed. The AG accepted the recommendation on June 25, 2009<sup>52</sup>. It is difficult to understand the basis of

the KACC's finding as the letters were a clear attempt at influencing allocations thereby improperly enriching individuals, contrary to provisions of the Public Officer and Ethics Act (POEA)<sup>53</sup>. Even where it was shown that the letters did lead to an allocation, the KACC is yet to prosecute those cases.

## 7. Ministries: Agriculture, Special programmes, Finance and Treasury and the Prime Minister's office

All the above are trustees of the Strategic Grain Reserve. As trustees, the Government departments would have authorised the release of the grains from the reserve. In one instance, the trustees are alleged to have released maize to the defunct National Milling Corporation alleged to have closed down in 2007<sup>54</sup>.

According to media reports<sup>55</sup>, "*Interglobal Logistics Limited*"<sup>56</sup>, a company associated with Mr. Mohamed Abdi Isahakia Permanent Secretary in the Prime Minister's office and Mr. Barre Shill, a member of the NCPB board, was allegedly allocated 10,000 bags of maize for which KSh19 million was paid. Mr. Isahakia denied the claims. A search at the Company's Registry reveals that as of November 30, 2004, when the company last filed its returns, one Mohamed Abdi Amana Isahakia was a director and shareholder of Interglobal Logistics Limited. Others were Mr. Wilfred Onyango, Mr. Ali Mohammed Abdi and Elias Bare Shill, who is currently a board member of the NCPB having been appointed by the Minister for Agriculture<sup>57</sup>.

51 David Ohito, 2009. US fury over maize handling delay. *The Standard Online* [internet] 12th March. Available at: <http://www.eastandard.net/InsidePage.php?id=1144008695&cid=4> [Accessed on 17th December 2009].

52 File no. KACC/FI/INQ/19/2008 available at <http://www.kacc.go.ke/Docs/second-quarterly-report-09.pdf> and File no. KACC/FI/INQ/12/2009 page 10.

53 Sections 11, 12 and 17 of the POEA. Section 12 require public officers to put in best effort to avoid being in a position in which their personal interests conflict with their official duties, while Section 17 bar public officers from practice nepotism or favouritism.

54 David Okwembah and Noah Chepleon, 2009. Revealed: 150 Million Maize Scandal. *Daily Nation* [internet] 10th January. Available at: <http://www.nation.co.ke/News/-/1056/513142/-/u18wmp/-/index.html>. [Accessed on 17th December 2009]. A list of 10-day maize allocations to 46 millers that was signed on December 22, 2008 by the trustees of the Strategic Grain Reserve (SGR) includes Milling Corporation, a Nakuru business that closed down last August.

55 <http://allafrica.com/stories/printable/200902120116.html>. Also <http://www.somalipress.com/news/2009-feb-12/raila-ps-name-comes-maize-business.html>

56 Company registration No. 110858

57 The search at Companies registry was carried out on 11th September 2009. There was no indication whether Mr. Isahakia and the other directors have since relinquished their positions in the company.



# Benefitting from calamity?

As the scandal unfolded, it began to emerge that actions by a few individuals including political leaders, businessmen, officials at NCPB and other government officials had significantly contributed to the maize shortage. These individuals and some officials at the NCPB were privy to information about a looming shortage of maize. Rather than providing a cure, they appear to have laid out plans to profit from the situation. Within a space of about six months (July to December 2008), large quantities of maize from the NCPB were allocated to businessmen posing as millers who then offloaded them to genuine millers at huge profits.

The middlemen were reportedly buying a 90 kilogram bag of maize at about KSh1,750 and selling it to genuine millers at between KSh2,200 and KSh2,700<sup>58</sup>. The briefcase millers are said to have inflated their purported milling capacity to the NCPB so that they could be allocated large quantities of maize at the expense of *bona fide* millers<sup>59</sup>.

In one instance, a miller inflated his capacity to mill to 100 bags per hour while his capacity was really 10 bags per hour<sup>60</sup>. A representative of a miller claimed that the NCPB had asked her company to inflate their milling capacity<sup>61</sup>.

In fact, the middlemen did not have to physically move the maize from NCPB stores; all they had to do was sell their allocation to a genuine miller who would then collect the commodity himself<sup>62</sup>. One such instance, is Mr. Jackson Kibor, a prominent businessman and close associate of Agriculture Minister Hon. William Ruto, who has since publicly admitted to having been allocated 100,000 bags of maize through his *Mafuta* farm. He is said to have quipped “I bought them because NCPB was selling maize. There were no restrictions as to who qualified to buy the maize”. He allegedly sold off the allocation to Mombasa Millers who collected the maize from the depot<sup>63</sup>.

In the context of the crisis, and the measures adopted by the Government to address it, the NCPB wielded too much discretionary power. Traders vied to obtain introduction letters and references written by MPs, cabinet ministers, PSs and their deputies asking for maize to be allocated to the bearers. While some of the letters appear fairly harmless on the surface, and indeed some MPs have claimed to have simply been disinterestedly seeking assistance for their constituents without specifically applying for any special consideration<sup>64</sup>, it is not clear what other conversations or agreements preceded some of these notes.

58 Bernard Namunane, 2009. Maize scandal; Briefcase agents. *Daily Nation* [internet] 5th February. Available at: <http://www.nation.co.ke/News/-/1056/525430/-/u1vwhs/-/index.html> [Accessed on 17th December 2009]. reported the subsidised price as KES 1,750

59 David Okwembah and Fred Mukinda, 2009. Investigation launched into the mystery of missing grain. *Daily Nation* [internet] 17th January. Available at: <http://www.nation.co.ke/News/-/1056/516300/-/item/1/-/e9xirm/-/index.html> [Accessed on 17th December 2009]. Reported on various alleged briefcase operators, among them, Western Millers whose milling premises could not be established; former public Milling Corporation of Kenya which had collapsed in August 2008 was allocated 12,000 bags in December 2008

60 Nation Team, 2009. KACC summons MPs over maize scandal. *Daily Nation* [internet] 10th February. Available at: <http://www.nation.co.ke/News/-/1056/527376/-/u1xage/-/index.html> [Accessed on 17th December 2009].

61 Ibid

62 Vincent Bartoo, 2009. We got Maize through clean deal, Ruto Associates say. *The Standard Online* [internet] 7th February. Available at: <http://www.standardmedia.co.ke/InsidePage.php?id=1144006005&catid=4&a=1> [Accessed on 17th December 2009].

63 Ibid

64 Nation Team, 2009. KACC summons MPs over maize scandal. *Daily Nation* [internet] 10th February. Available at: <http://www.nation.co.ke/News/-/1056/527376/-/u1xage/-/index.html> [Accessed on 17th December 2009].

# Emerging Policy Issues and Recommendations

## 1. Governance Structure of the NCPB

The public debate on the maize crisis flagged a number of challenges in the sector, including institutional and policy weakness that have left the country exposed to a predictable cycle of shortages and food insecurity. While relevant institutions in the agricultural sector have been undergoing substantial reforms aimed at ensuring free trade since the 1990's, the Government still has extensive discretionary powers over the NCPB and, along with that, the maize sector. This has seen the NCPB's management structures and operations exposed to various degrees of political influence, particularly in times of grain shortage, when it is administering subsidised fertiliser schemes or distributing relief food.

Currently, the NCPB is managed by a board consisting of both presidential and ministerial appointees. The Minister for Agriculture enjoys excessive, unaccountable discretionary powers over the NCPB. For instance, the Minister determines when to import and export maize, and, during times of scarcity, who the NCPB can sell maize to.

**Recommendation:** The NCPB Act should be amended with a view to reduce the President's and the Minister's excessive discretionary powers over Board appointments. At the same time, making the NCPB accountable to Parliament may go a long way in ensuring the institution is opened up to public scrutiny.

## 2. Mandate of the NCPB

The NCPB mandate allows it to engage in commercial activities like any other private player in the industry and at the same time, carry

out on behalf of the Government, certain social duties including procuring and managing the SGR and emergency relief aid stock. Besides, the NCPB's core duty is to stabilise grain prices and guarantee sufficiency of grain stocks in the country. Towards this end, the NCPB is supposed to import maize to bridge seasonal shortfalls. To stabilise prices, the NCPB intervenes on behalf of the Government buying maize from local farmers when there is surplus and selling the maize during periods of low supply in the country.

However, going by the manner the NCPB went about its duties during the maize scandal, there appears to be a need to streamline the NCPB's mandate for greater accountability. The Chairman of the Departmental Committee on Agriculture, Lands and Natural Resources proposed the separation of the SGR from NCPB as the mixture of functions of NCPB makes it more difficult to distinguish SGR stocks, commercial stocks and famine relief stocks<sup>65</sup>.

**Recommendation:** The NCPB's mandate should be reformed and its public social duties separated from the commercial functions which should be removed from it. Mixing the two functions makes the NCPB prone to political capture by commercial interests.

## 3. Accountability of grain management

The existing procedures for procuring and marketing maize are not transparent. The NCPB for example is not required to make public how much maize it has in its store despite the fact that it is funded using tax payers' money. What has emerged is that there have been irregularities

<sup>65</sup> Hansard of 14th of May 2009 [http://www.parliament.go.ke/parliament/downloads/tenth\\_third\\_sess/hansard/14.05.09.pdf](http://www.parliament.go.ke/parliament/downloads/tenth_third_sess/hansard/14.05.09.pdf)

in the quantities of NCPB maize stockpiles, as well as in their sourcing, whether imported or procured locally. In addition, the manner of their procurement and distribution has also been a concern.

The above irregularities create opportunities for corruption with the consequent severe negative effects on the sub-sector as seen in the maize scandal.

**Recommendation:** The NCPB should publish periodic reports disclosing information on available maize stocks, maize procurements, maize importations and allocations/beneficiaries in order to enhance accountability in its operations.

#### 4. Criminal actions

The Penal Code, Cap 63 of the laws of Kenya sets out the offence of obtaining goods by false pretences:

Section 313 of the Penal Code states that any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years.

In contradicting the Government policy for the allocations to be made to only accredited millers, the government officials and individuals involved are liable under the Penal Code.

**Recommendation:** Individuals and companies who exaggerated their milling capacity to

enable them to get greater allocations from NCPB were criminally liable as they were able to procure goods through false pretences. They should consequently be charged and brought before a court of law.

#### 5. Consumer interest on the board

The NCPB Act states that the Minister shall appoint members to the board, one of whom shall represent consumers' interests. From the unfolding scam, it is clear that consumers interests are not adequately catered for in the NCPB board. While one of the current board members is mandated to play a key role in empowering consumers<sup>66</sup>, it is not clear what organisational affiliation they have that would facilitate this. It is however evident that consumer rights were basically unprotected.

**Recommendation:** The duties and organisational affiliation of the person appointed to the NCPB board to represent consumer interests should be well-defined and publicly declared.

#### 6. Public Officer Ethics Act (POEA)

The actions detailed above by some MPs and public officials would appear to contravene the POEA. Section 11 of the Act bars public officials from using their office to improperly enrich themselves or others. Section 12(3) requires that a public officer whose personal interests conflict with his official duties shall disclose the conflict and refrain from participating in any deliberations on the matter.

Further, from Section 12(4) it is clear that a public official may not award a contract to himself, or a business associate among others. The Act also states that a public officer shall not accept or request gifts or favours<sup>67</sup>.

<sup>66</sup> NCPB Board of directors Mrs. Rozaah Akinyi Buyu [http://www.ncpb.co.ke/index.php?option=com\\_content&task=view&id=35&Itemid=51](http://www.ncpb.co.ke/index.php?option=com_content&task=view&id=35&Itemid=51). Mrs. Buyu's appointment was revoked by the Minister on 20th May 2009 through Gazette Notice No. 5263, the National Cereals and Produce Board Act (Cap 330). Monica Amolo was appointed through the same notice. The NCPB website stated that Mrs. Buyu "plays a key role in empowering consumers, having previously worked as a marketing manager for Johnson & Johnson (Kenya) Ltd."

<sup>67</sup> The Act stipulates conditions where a gift may be accepted as long as the gift is a non-monetary gift and does not exceed the value prescribed in regulation.

Section 17 prohibits public officers from practicing nepotism or favouritism. Although KACC investigated the matter, it is strange that in the end it came out with the reference for a closure of the files in its quarterly report<sup>68</sup>. As mentioned in the report, MPs indicated that they wrote letters requesting allocations after being informed that other members of the House had received allocations. The latter seems to show that preferential opportunities were available to the MPs.

**Recommendation:** All officials found to have contravened the Act should be subjected to penalties and/or disciplinary action as prescribed in the POEA including civil and criminal proceedings where applicable<sup>69</sup>.

## 7. Access to Information

In the maize scandal, the Government hired independent auditors to investigate the alleged mismanagement. PriceWaterhouseCoopers won the contract to carry out the maize forensic audit ordered by the Prime Minister in February 2009<sup>70</sup>. However, both reports and their recommendations are yet to be released to the public.

**Recommendation:** The audit report should be presented to the Parliament's Departmental Committee on Agriculture, Lands and Natural Resources and its findings made public. The Government should implement its recommendations.

68 File no. KACC/FI/INQ/19/2008 available at <http://www.kacc.go.ke/Docs/second-quarterly-report-09.pdf>

69 Under Section 38 of the POEA, a violation of the Act could result in either criminal or civil sanctions.

70 Audit firm set to probe maize scam *Daily Nation* March 05 2009 <http://www.marsgroupkenya.org/multimedia/?StoryID=248122&p=Ministry+of+Special+Programmes&page=5>

# About AfriCOG

Africa Centre for Open Governance (AfriCOG) is a civil society organisation dedicated to addressing the structural and institutional causes of corruption and bad governance in Kenya.

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